

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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

EHEALTH, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

6411
(Primary Standard Industrial
Classification Code Number)

77-0470789
(I.R.S. Employer
Identification Number)

440 East Middlefield Road
Mountain View, California 94043
(650) 584-2700

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

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

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

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, 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.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Common Stock, \$0.001 par value	\$ 85,000,000	\$ 9,095

(1) Estimated solely for the purpose of calculating the registration fee pursuant to 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 this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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

SUBJECT TO COMPLETION

PROSPECTUS
Issued _____, 2006

Shares
eHealth[®]
Common Stock

eHealth, Inc. is offering _____ shares of its common stock. This is our initial public offering and no public market currently exists for our shares.

We will apply to list the common stock on the _____ under the trading symbol “_____”.

Investing in our common stock involves risks. See “[Risk Factors](#)” beginning on page 7.

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

We have granted the underwriters an option to purchase up to _____ additional shares of common stock at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus to cover over-allotments, if any.

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

The underwriters expect to deliver the shares of common stock to purchasers on or about _____, 2006.

Morgan Stanley

Merrill Lynch & Co.

Thomas Weisel Partners LLC

JMP Securities

The date of this prospectus is _____, 2006

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You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information different from that contained in this prospectus. We are offering to sell, and are seeking offers to buy, shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock.

For investors outside the United States: neither we 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 in 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.

Until , 2006 (25 days after the commencement of this offering), all dealers that buy, sell or trade our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus and does not contain all of the information you should consider before buying shares of our common stock. Before deciding to invest in shares of our common stock, you should read the entire prospectus carefully, including our consolidated financial statements and the related notes and the information set forth under the headings “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” in each case included elsewhere in this prospectus.

eHealth

We are the leading online source of health insurance for individuals, families and small businesses. We are licensed to market and sell health insurance in all 50 states and the District of Columbia. We have invested significant time and resources in building a scalable, proprietary ecommerce platform, and we have developed partnerships with over 140 health insurance carriers, enabling us to offer more than 5,000 health insurance products online. Our ecommerce platform can be accessed directly through our website addresses (www.ehealth.com and www.ehealthinsurance.com) as well as through our broad network of marketing partners. We organize and present voluminous and complex health insurance information in a user-friendly format and enable consumers to choose from a wide variety of health insurance products. Our platform enables individuals, families and small businesses to research, analyze, compare and purchase health insurance products that best meet their needs. Our technology also enables us to communicate electronically with our insurance carrier partners and process consumers’ health insurance applications online. As a result, we simplify and streamline the complex and traditionally paper-intensive health insurance sales and purchasing process. We estimate that as of December 31, 2005, we had more than 275,000 members. We define a member as an individual currently covered by an insurance product for which we are entitled to receive compensation.

Market Opportunity

The private health insurance market is large and growing. Aggregate private health insurance premiums in the United States were estimated to be \$658 billion in 2004, and have increased consistently over time, largely unaffected by economic cycles. The individual and family segment and the small business segment, which we currently address, are both well-established and significant components of the private health insurance market. The large size of these markets, combined with the growing number of self-employed individuals and small businesses, the large and increasing number of uninsured, and declining health benefits offered by employers, create a significant opportunity to provide health insurance to individuals, families and small businesses.

The process of selling and purchasing individual, family and small business health insurance is highly localized and has not changed significantly in over 50 years. The purchase and sale of health insurance has historically been complex, time-consuming and paper-intensive. Extensive state government regulation has also made the traditional distribution of health insurance on a national basis difficult.

For the individual, family and small business health insurance markets, the Internet’s convenient, information-rich and interactive nature offers both the opportunity to provide consumers with more organized information and a broader choice of products than are typically available from traditional health insurance distribution channels. The Internet also offers a means of providing up-to-date health insurance information and products 24 hours a day, seven days a week, and reduces the cost and time associated with marketing, selling, underwriting and administering health insurance products. We believe that individuals, families and small businesses will rapidly adopt a new health insurance distribution medium that harnesses the power of the Internet to address the weaknesses in the current distribution channels.

Our Solution and Our Ecommerce Platform

Our ecommerce platform organizes and presents voluminous and complex health insurance information in an unbiased and objective format and empowers individuals, families and small businesses to research, analyze, compare and purchase a wide variety of health insurance products.

Key elements of our platform include:

- *Online Rate Quoting and Comprehensive Plan Information.* Our ecommerce platform instantly provides consumers online rate quotes and comprehensive plan benefit information from a large number of health insurance carriers.
- *Plan Comparison and Recommendations.* Our ecommerce platform enables consumers to compare and contrast health insurance plans in a side-by-side format based on plan characteristics such as price, plan type, deductible amount, co-payment amount and in-network and out-of-network benefits.
- *Online Application and Enrollment Forms.* Our online application process offers consumers significant improvements over the traditional, paper-intensive application process. It employs dynamic business logic to help consumers complete application and enrollment forms correctly in real-time.
- *Electronic Processing Interchange.* Our Electronic Processing Interchange (EPI) technology integrates our online application process with health insurance carriers' technology systems, enabling us to electronically deliver consumers' applications to health insurance carriers. This expedites the application and carrier underwriting process by eliminating manual delivery and reducing the need for data entry and human review.
- *Customer Care Center.* At any step of the application process, consumers can obtain help from one of our licensed sales and customer service representatives through email, web-based chat or our toll-free telephone number.

We believe that our ecommerce platform provides our health insurance carrier partners access to new and profitable business. For example, more than 40% of our members were uninsured prior to obtaining health insurance through us, according to an October 2005 survey of our members. We are a leading sales originator for many of the nation's leading carriers, including Aetna, Humana, Kaiser Permanente, PacifiCare, Unicare, UnitedHealthcare and a number of leading BlueCross BlueShield carriers. We also enable carriers to reduce their processing costs, expand into new markets and gather and utilize relevant market data.

Our financial model is characterized by recurring revenue, an average member life that exceeds two years and health insurance pricing that is set by each carrier and approved by state regulators. We generate revenue primarily from commissions we receive from health insurance carriers whose policies are purchased through us by individuals, families and small businesses. We typically receive commission payments on a monthly basis for as long as a policy remains active. As a result, much of our revenue for a given financial reporting period relates to policies that we sold prior to the beginning of the period and is recurring in nature. Because health insurance pricing is set by the carrier and approved by state regulators, health insurance pricing is fixed. We, therefore, are not generally subject to negotiation or discounting of prices by health insurance carriers or our competitors.

Our Strategy

Our objective is to continue to strengthen our position as the leading online distribution platform for health insurance sold to individuals, families and small businesses. Key elements of our strategy are to:

- *Increase Our Brand Awareness.* We intend to increase our direct website traffic by strengthening our brand awareness through a variety of marketing and public relations efforts that highlight our company as a leading source of objective health insurance information and affordable health insurance plans for individuals, families and small businesses.

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- *Offer the Best Consumer Experience.* We intend to further develop an online experience that empowers consumers with the knowledge, choice and services they need to select and purchase health insurance plans that best meet their needs. We also intend to continue to offer a wide selection of health insurance products, including tax-advantaged products such as Health Savings Account-eligible health plans that make health insurance more affordable and accessible for consumers.
- *Extend Our Technology Leadership.* We plan to continue to enhance our platform and its key capabilities to increase functionality, reliability, scalability and performance. In addition, we intend to continue to explore new ways to leverage and enhance our technology, including the licensing of our technology to carriers, enabling them to market and sell their products online, the introduction of new products and services, and our entry into new markets.
- *Broaden Our Carrier Network.* We intend to continue to add new health insurance carriers to our ecommerce platform, expand our existing carrier relationships and work closely with our carrier partners to help them more efficiently utilize our ecommerce platform to access previously underserved markets.
- *Expand Our Network of Marketing Partners and Other Member Acquisition Programs.* We plan to continue to develop and expand our marketing relationships with banking, insurance, mortgage, and other services and association partners.
- *Continue Our Public Policy and Legislative Assistance and Support.* We plan to continue to serve as a resource regarding the health insurance market to legislative and public policy organizations, without regard to political affiliation, as well as serve as an advocate for affordable and accessible health insurance.

Corporate Information

Our principal executive offices are located at 440 East Middlefield Road, Mountain View, California 94043, and our telephone number is (650) 584-2700. Our website addresses are www.ehealth.com and www.ehealthinsurance.com. The information on or that can be accessed through our website is not part of this prospectus.

Except where the context requires otherwise, “eHealth,” “we,” “us” and “our” refer to eHealth, Inc. and its wholly-owned subsidiaries on a consolidated basis. eHealth and eHealthInsurance.com are registered trademarks of eHealth in the United States. This prospectus also includes other registered and unregistered trademarks of eHealth and other persons.

THE OFFERING

Common stock offered by us	shares
Common stock to be outstanding after this offering	shares
Use of proceeds	We intend to use the net proceeds of this offering for working capital and for other general corporate purposes. We may also use a portion of the net proceeds to acquire complementary technologies or businesses. See “Use of Proceeds.”

Proposed symbol

The number of shares of common stock to be outstanding after this offering is based on 31,553,654 shares of common stock outstanding as of December 31, 2005. The number of shares of common stock to be outstanding after this offering does not include:

- 10,773,819 shares of common stock issuable upon the exercise of stock options outstanding as of December 31, 2005 with a weighted average exercise price of \$1.52 per share;
- 4,000,000 shares of common stock to be initially reserved for issuance under our 2006 Equity Incentive Plan; and
- an additional 759,080 shares of common stock reserved as of December 31, 2005 for issuance under our other equity compensation plans, which will not be available for issuance after this offering. See “Management—Equity Benefit Plans” and Note 7 of the notes to our consolidated financial statements.

Except as otherwise indicated, the information in this prospectus assumes:

- the conversion of all our outstanding preferred stock and Class A nonvoting common stock as of December 31, 2005 into 21,975,816 shares of common stock upon the closing of this offering and,
- no exercise by the underwriters of their right to purchase _____ shares of common stock to cover over-allotments.

SUMMARY CONSOLIDATED FINANCIAL DATA

The consolidated statements of operations and balance sheet data below should be read together with our consolidated financial statements and the related notes, as well as “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results to be expected in any future period.

	Year Ended December 31,				
	2001	2002	2003	2004	2005
	(in thousands)				
Revenue:					
Commission	\$ 9,166	\$ 16,500	\$ 21,868	\$ 29,783	\$ 41,237
License and other	121	80	368	432	515
Total revenue	9,287	16,580	22,236	30,215	41,752
Operating costs and expenses:					
Cost of revenue	103	542	600	447	614
Marketing and advertising (1)	10,384	7,472	7,002	12,732	17,786
Customer care and enrollment (1)	6,905	5,906	6,185	7,577	8,822
Technology and content (1)	7,293	6,668	6,595	7,461	8,054
General and administrative (1)	5,791	5,644	5,123	5,385	7,108
Total operating costs and expenses	30,476	26,232	25,505	33,602	42,384
Loss from operations	(21,189)	(9,652)	(3,269)	(3,387)	(632)
Other income, net	1,422	6	74	60	239
Loss before provision for income taxes	(19,767)	(9,646)	(3,195)	(3,327)	(393)
Provision for income taxes	—	—	—	—	21
Net loss	<u>\$ (19,767)</u>	<u>\$ (9,646)</u>	<u>\$ (3,195)</u>	<u>\$ (3,327)</u>	<u>\$ (414)</u>
(1) Includes stock-based compensation as follows:					
Marketing and advertising	\$ —	\$ —	\$ 49	\$ 59	\$ 97
Customer care and enrollment	—	—	25	7	6
Technology and content	—	—	9	14	62
General and administrative	269	68	9	19	26
Total	<u>\$ 269</u>	<u>\$ 68</u>	<u>\$ 92</u>	<u>\$ 99</u>	<u>\$ 191</u>

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The consolidated balance sheet data in the table below presents a summary of our consolidated balance sheet data as of December 31, 2005:

- on an actual basis;
- on a pro forma basis, giving effect to the conversion of all of our outstanding shares of preferred stock and Class A nonvoting common stock as of December 31, 2005 into an aggregate of 21,975,816 shares of common stock upon the closing of this offering; and
- on a pro forma as adjusted basis to give further effect to our receipt of the net proceeds from our sale of _____ shares of common stock at an initial public offering price of \$ _____ per share after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	As of December 31, 2005		
	<u>Actual</u>	<u>Pro Forma (unaudited) (in thousands)</u>	<u>Pro Forma As Adjusted (unaudited)</u>
Cash and cash equivalents	\$ 9,415	\$ 9,415	\$
Working capital	3,636	3,636	
Total assets	15,165	15,165	
Other non-current liabilities	212	212	
Convertible preferred stock	86,319	—	—
Accumulated deficit	(80,132)	(80,132)	
Total stockholders' equity (deficit)	(78,181)	8,138	

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this prospectus, including the consolidated financial statements and the related notes appearing at the end of this prospectus, before deciding to invest in shares of our common stock. If any of the following risks actually occurs, our business, financial condition, results of operations and future prospects could be materially and adversely affected. In that event, the market price of our common stock could decline and you could lose part or even all of your investment.

Risks Related to Our Business

Our future operating results are likely to fluctuate and could fall short of expectations

Our operating results are likely to fluctuate as a result of a variety of factors, many of which are outside of our control. As a result, comparing our 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. If our revenue or operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. In addition to other risk factors listed in this “Risk Factors” section, factors that may affect our operating results include:

- our ability to continue to attract individuals, families and small businesses to complete health insurance applications through our ecommerce platform;
- the loss of recurring revenue when members terminate their health insurance policies purchased through our ecommerce platform or terminate us as the agent on their policies;
- our ability to continue to offer a wide variety of health insurance plans in the individual, family and small business markets;
- changes in the quality, cost or variety of health insurance products that health insurance carriers offer;
- changes in the amount or timing of our receipt of commissions or commission override payments that carriers pay to us;
- our ability to maintain and enhance the functionality of our ecommerce platform and to prevent website technical difficulties and downtime;
- our ability to build and maintain alliances with marketing partners;
- the announcement or introduction of new services or products by our current competitors or the entry of new competitors into our market;
- the amount and timing of operating expenses and capital expenditures related to our marketing, operations and infrastructure and the maintenance and expansion of our business;
- costs and expenses incurred in connection with litigation; and
- government regulation of our business, the health insurance industry and the Internet.

Our business model is characterized primarily by recurring revenue based on commissions we receive from insurance carriers whose policies are purchased by our members. Although our services are complete upon the approval of a member’s application, we receive commissions and record related revenue, typically on a monthly basis, until the health insurance policy is cancelled or we otherwise do not remain the agent on the policy. A significant component of our marketing and advertising expenses consists of payments owed to our marketing partners in connection with referrals of potential members in the period during which an application is submitted by the potential member. As a result of this timing difference between expense and associated revenue recognition, our operating results and cash flow may be adversely affected in periods where we experience a significant increase in new applicants. In addition, if we incur other unanticipated or one-time expenses in a

particular quarter or if we lose a significant amount of our member base for any reason, we would likely be unable to offset these expenses by increasing sales within that quarter or to replace lost revenue in the quarter with revenue from new members. As a result, our quarterly results may suffer due to unanticipated expenses, one-time charges or significant member turnover.

We have a history of losses and our rate of growth may decline

We have a history of net losses and have only achieved net profitability for the quarters ended June 30, 2005 and December 31, 2005. We incurred net losses of \$3.3 million for the year ended December 31, 2004 and \$0.4 million for the year ended December 31, 2005. As of December 31, 2005, our accumulated deficit was \$80.1 million. We may in the future make significant expenditures related to the development of our business, including expenditures relating to marketing, website and technology development and hiring of additional personnel. In addition, we will incur significant legal, accounting and other expenses as a public company that we did not incur as a private company. Maintaining profitability will require us to generate and sustain substantially increased revenue. Although we have experienced revenue growth in prior periods, this growth may not be sustainable, and we may not achieve sufficient revenue to maintain profitability. Our future revenue growth will depend in large part upon our ability to continue to attract new individuals, families and small businesses to purchase health insurance through our ecommerce platform. To the extent that the rate of growth of our net new members slows, our revenue growth is also likely to slow. In addition, the commission rates that we receive for individuals and families are typically higher in the first twelve months of a policy. As a result, to the extent that the rate of growth of new members slows, our revenue could decline.

If the purchase of health insurance over the Internet does not achieve and maintain widespread consumer and health insurance carrier acceptance, or if consumers or carriers opt for more traditional channels for the purchase and sale of health insurance, our business will be harmed

Our success will depend in large part on widespread consumer and health insurance carrier acceptance of the Internet as a marketplace for the purchase and sale of health insurance. Consumers and health insurance carriers may choose to depend more on traditional sources, such as individual agents, or alternative sources may develop. Our future growth, if any, will depend in part upon:

- the growth of the Internet as a commerce medium generally, and as a market for consumer financial products and services specifically;
- consumers' willingness to conduct their own health insurance research;
- our ability to make the process of purchasing health insurance online an attractive alternative to traditional means of purchasing health insurance;
- our ability to successfully and cost-effectively market our services as superior to traditional sources for health insurance to a sufficiently large number of consumers; and
- health insurance carriers' willingness to use us and the Internet as a distribution channel for health insurance products.

If consumers and health insurance carriers do not widely adopt the Internet as a source for the purchase and sale of health insurance, or if they determine that other sources for health insurance and health insurance applications are superior, our business will not grow and our business, operating results and financial condition would be harmed.

Our business may not grow if consumers are not informed about the availability and accessibility of affordable health insurance

Numerous health insurance products are available to consumers in any given market. Most of these products vary by price, benefits and other policy features. Health insurance terminology and provisions are often

confusing and difficult to understand. As a result, researching, selecting and purchasing health insurance can be a complex process. We believe that this complexity has contributed to a perception held by many consumers that individual health insurance is prohibitively expensive and difficult to obtain. We attempt to make the health insurance research and application process on our website understandable and user-friendly. We also attempt to use our website to educate consumers about the accessibility and affordability of health insurance. If consumers are not informed about the availability and accessibility of affordable health insurance, our business may not grow and our business, operating results and financial condition would be harmed.

If we are unable to retain our members, our business and operating results would be harmed

We receive revenue from commissions health insurance carriers pay to us for health insurance policies sold through our ecommerce platform. When one of these policies is cancelled, or if we otherwise do not remain the agent on the policy, we no longer receive the related commission revenue. Individuals, families and small businesses may choose to discontinue their health insurance policies for a variety of reasons. For example, individuals and families may replace a health insurance policy purchased through us with a health insurance plan provided by a new or existing employer. In addition, our members may choose to transfer their policies to a different agent if, for example, they are not satisfied with our customer service or the health insurance products that we offer. Health insurance carriers may also terminate health insurance plans offered on our ecommerce platform. If we are not successful in transferring members covered under a terminated plan to another policy that we offer, we will lose these members. Our cost in acquiring a new member is substantially greater than the cost involved in maintaining our relationship with an existing member. If we are not able to successfully retain existing members and limit member turnover to levels we have experienced in the past, our operating margins will be adversely impacted and our business, operating results and financial condition would be harmed.

Our business may be harmed if we lose our relationships with health insurance carriers, become dependent upon a limited number of insurance carriers or fail to develop new carrier relationships

We typically enter into contractual agency relationships with health insurance carriers that are non-exclusive and terminable on short notice by either party for any reason. Carriers may be unwilling to allow us to sell their health insurance products for a variety of reasons, including competitive or regulatory reasons, as a result of a reluctance to distribute their products over the Internet or because they do not want to be associated with our brand. For example, one carrier terminated its relationship with us with respect to the policies it offers in a particular state because the carrier decided to sell those policies through agents that exclusively offered that particular carrier's products. In the future, an increasing number of carriers may decide to rely on their own internal distribution channels, including traditional in-house agents and carrier websites, to sell their own products and, in turn, could limit or prohibit us from selling their products on our ecommerce platform. Carriers may also choose not to distribute insurance products in the individual, family and small business markets.

We may decide to terminate our relationship with a carrier for a number of reasons, including as a result of a reduction in a carrier's financial ratings, a carrier determining to pay lower commissions or a carrier demanding a sales process that we believe impairs the value of our service. The termination of our relationship with a carrier could reduce the variety of health insurance products we offer, which could harm our business. We also would lose a source of commissions for future sales, and, in a limited number of cases, future commissions for past sales. Our business could also be harmed if in the future we fail to develop new carrier relationships and are unable to offer consumers a wide variety of health insurance products.

The health insurance industry in the United States has experienced a substantial amount of consolidation over the past several years, resulting in a decrease in the number of health insurance carriers. In the future, we may be forced to offer insurance policies from a reduced number of insurance carriers or to derive a greater portion of our revenue from a more concentrated number of carriers as our business and the health insurance industry evolve. Commission revenue we derived from our agreement with Golden Rule Insurance Company, which is owned by UnitedHealthcare, represented 17% of our total revenue in 2005. Our commission revenue derived from our agreement with Blue Cross of California and Unicare, which are owned by WellPoint,

represented 15% of our total revenue in 2005. Should our dependence on fewer carrier relationships increase (whether as a result of the termination of carrier relationships, further carrier consolidation or otherwise), we may become more vulnerable to adverse changes in our relationships with our carriers, particularly in states where we offer health insurance from a relatively smaller number of carriers or where a small number of carriers dominates the market, and our business, operating results and financial condition could be harmed.

Changes in the quality and affordability of the health insurance products that carriers offer on our ecommerce platform could harm our business and operating results

The demand for health insurance marketed through our ecommerce platform is impacted by, among other things, the variety, quality and price of the health insurance products offered on our ecommerce platform. If health insurance carriers do not continue to provide us with a variety of high-quality, affordable health insurance products in the individual, family and small business markets, or if their offerings are limited as a result of consolidation in the health insurance industry or otherwise, our sales may decrease and our business, operating results and financial condition could be harmed.

Health insurance carriers could determine to reduce the commissions paid to us or to change their underwriting practices in ways that reduce the number of insurance policies sold through our ecommerce platform, which could harm our business and operating results

Our commission rates and the commission override payments we receive from health insurance carriers are either set by each carrier or negotiated between us and each carrier. Carriers have altered, and may in the future alter, the contractual relationships we have with them, either by renegotiation or unilateral action. If these contractual changes result in reduced commissions, our business may suffer and our operating results and financial condition could be harmed. In addition, carriers periodically change the criteria they use for determining whether they are willing to insure individuals. In the past, these changes have resulted in a decrease in the number of insurance policies we would have otherwise sold. Future changes in carrier underwriting criteria could negatively impact sales of insurance policies on our ecommerce platform and could harm our business, operating results and financial condition.

If we are not able to maintain and enhance our brand, our business and operating results will be harmed

We believe that maintaining and enhancing our brand identity is critical to our relationships with existing members, marketing partners and health insurance carriers and to our ability to attract new members, marketing partners and carriers. The promotion of our brand may require us to make substantial investments and we anticipate that, as our market becomes increasingly competitive, these branding initiatives may become increasingly difficult and expensive. The successful promotion of our brand will depend largely upon our marketing and public relations efforts and our ability to continue to offer high-quality products and services in an understandable and objective manner. Our brand promotion activities may not be successful or yield increased revenue, and to the extent that these activities yield increased revenue, the increased revenue may not offset the expenses we incur. In addition, we may take actions that have the unintended consequence of harming our brand. For instance, we currently receive payment from a limited number of insurance carriers for the prominent listing of certain health insurance products on our website. We disclose this practice on our website, and although we do not believe it harms our objectivity, consumers may have a different perception. If we do not successfully maintain and enhance our brand, our business may not grow and we could lose marketing partners and members, which could, in turn, cause health insurance carriers to terminate their relationships with us, all of which would harm our business, operating results and financial condition.

If we are not successful in converting visitors to our website into members, our business and operating results would be harmed

Our growth depends in part upon growth in our membership. The rate at which we convert consumers visiting our ecommerce platform and seeking to purchase health insurance into members is a significant factor in

the growth of our membership. A number of factors could influence this conversion rate for any given period, some of which are outside of our control. These factors include:

- the quality of the consumer experience on our ecommerce platform and with our customer care center;
- the variety and affordability of the health insurance products that we offer;
- system failures or interruptions in the operation of our ecommerce platform;
- changes in the mix of consumers who are referred to us through our direct, marketing partner and online advertising member acquisition channels;
- the number, type and identity of the health insurance carriers offering the health insurance products for which consumers have expressed interest, and the degree to which our technology is integrated with those carriers; and
- the health insurance carrier underwriting guidelines applicable to applications submitted by consumers and the amount of time a carrier takes to make a decision on that application.

In the event the rate at which we convert consumers visiting our ecommerce platform into members declines, our membership growth rate will decline, which would harm our business, operating results and financial condition.

System failures or capacity constraints could harm our business and operating results

Our revenue depends upon the number of health insurance applications consumers submit utilizing our ecommerce platform that are approved by health insurance carriers. As a result, the performance, reliability and availability of our ecommerce platform and underlying network infrastructure are critical to our financial results, our brand and our relationship with members, marketing partners and health insurance carriers. Although we regularly attempt to enhance our ecommerce platform and system infrastructure, system failures and interruptions may occur if we are unsuccessful in these efforts, if we are unable to accurately project the rate or timing of increase in our website traffic or for other reasons, some of which are completely outside our control. Although we have experienced only minor system failures and interruptions to date, we could experience significant failures and interruptions in the future, which would harm our business, operating results and financial condition.

We rely in part upon third-party vendors, including data center and bandwidth providers, to operate our ecommerce platform. We cannot predict whether additional network capacity will be available from these vendors as we need it, and our network or our suppliers' networks might be unable to achieve or maintain a sufficiently high capacity of data transmission to allow us to process health insurance applications in a timely manner or effectively download data, especially if our website traffic increases. Any system failure that causes an interruption in, or decreases the responsiveness of, our service would impair our revenue-generating capabilities and harm our business and operating results and damage our reputation. In addition, consumers may access our customer care center for assistance in connection with submitting health insurance applications through our ecommerce platform. We depend upon third parties, including telephone service providers, to operate our customer care center. Any failure of the systems that we rely upon in the operation of our customer care center could negatively impact sales of insurance policies through our ecommerce platform and could harm our business, operating results and financial condition.

Our data center operations are located in leased facilities in Redwood City, California. If we experience a system failure or disruption, the performance of our website would be harmed and our service could shut down. Our database and systems are vulnerable to damage or interruption from human error, earthquakes, fire, floods, power loss, telecommunications failures, physical or electronic break-ins, computer viruses, other attempts to harm our systems and similar events. Our operations are particularly vulnerable to earthquakes in the San Francisco Bay Area.

Although we regularly back-up our system and store these system back-ups in a site located in the greater Sacramento, California area, we do not have full second-site redundancy. If we were forced to rely on our system back-ups, we would experience significant delays in restoring the functionality of our website and could experience loss of data, which would harm our business and our operating results. We intend to create a fully redundant disaster recovery system for our data center and website. We may face significant technical challenges in successfully replicating our system and database. Any steps that we take to increase the redundancy and reliability of our systems may be expensive and may not be successful in reducing the frequency or duration of system failures or website downtime.

We depend upon Internet search engines to attract a significant portion of the consumers who visit our website, and if we are unable to advertise on search engines on a cost-effective basis, our business and operating results would be harmed

We derive a significant portion of our website traffic from consumers who search for health insurance through Internet search engines, such as Google, MSN and Yahoo!. A critical factor in attracting consumers to our website is whether we are prominently displayed in response to an Internet search relating to health insurance. Search engines typically provide two types of search results, unpaid (natural) listings and paid advertisements. We rely on both unpaid listings and paid advertisements to attract consumers to our website.

Unpaid search result listings are determined and displayed in accordance with a set of formulas or algorithms developed by the particular Internet search engine. The algorithms determine the order of the listing of results in response to the consumer's Internet search. From time to time, search engines revise these algorithms. In some instances, these modifications have caused our website to be listed less prominently in unpaid search results, which has resulted in decreased traffic to our website. Our website may also become listed less prominently in unpaid search results for other reasons, such as search engine technical difficulties, search engine technical changes and changes we decide to make to our website. In addition, search engines have deemed the practices of some companies to be inconsistent with search engine guidelines and decided not to list their website in search result listings at all. If we are listed less prominently in search result listings for any reason, the traffic to our website likely would decline, which would harm our operating results. If we decide to attempt to replace this traffic, we may be required to increase our marketing expenditures, which also would harm our operating results.

We also purchase paid advertisements on search engines in order to attract users to our website. We typically pay a search engine for prominent placement of our name and website when particular health insurance-related terms are searched for on the search engine, regardless of the unpaid search result listings. In some circumstances, such as with Google AdWords, the prominence of the placement of our name and website is determined by a combination of factors, including the amount we are willing to pay and algorithms designed to determine the relevance of our paid advertisement to a particular search term. We bid against our competitors and others for the display of these paid search engine advertisements. If there is increased competition for the display of paid advertisements in response to search terms related to our business, our advertising expenses could rise significantly or we could reduce or discontinue our paid search advertisements, either of which could harm our business, operating results and financial condition.

We rely significantly on marketing partners for the sale of health insurance on our ecommerce platform and our business and operating results would be harmed if we are unable to maintain effective relationships with our existing marketing partners or if we do not establish successful relationships with new marketing partners

In addition to marketing through Internet search engines, we frequently enter into contractual marketing relationships with other online and offline businesses that promote us to their customers. These marketing partners include financial and online service companies, affiliate programs and online advertisers and content providers. We typically compensate our marketing partners for their referrals on a submitted health insurance

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application basis and, if they are licensed to sell health insurance, may share a percentage of the commission we earn from the health insurance carrier for each member referred by the marketing partner. Although many of our marketing partners agree to an initial one or two-year term contract, some of our marketing partner agreements are terminable more quickly.

Many factors influence the success of our relationship with our marketing partners, including:

- the continued positive market presence, reputation and growth of the marketing partner;
- the effectiveness of the marketing partner in marketing our website and service;
- the interest of the marketing partner's customers in the health insurance products that we offer on our ecommerce platform;
- the contractual terms we negotiate with the marketing partner, including the marketing fee we agree to pay a marketing partner;
- the percentage of the marketing partner's customers that submit applications or purchase health insurance policies through our ecommerce platform;
- the ability of a marketing partner to maintain efficient and uninterrupted operation of its website; and
- our ability to work with the marketing partner to implement website changes, launch marketing campaigns and pursue other initiatives necessary to maintain positive consumer experiences and acceptable traffic volumes.

If we are unable to maintain successful relationships with our existing marketing partners or fail to establish successful relationships with new marketing partners, our business, operating results and financial condition will be harmed.

The demand for the health insurance products that we market and sell can be significantly impacted by economic and other factors beyond our control

Our revenue depends upon demand for health insurance in the individual, family and small business markets, which can be influenced by a variety of factors beyond our control. For instance, we believe that the number of small businesses is growing and that an increasing number of individuals are becoming self-employed. In addition, as a result of substantial health insurance premium inflation in recent years, we believe that many employers are seeking to reduce the costs associated with providing health insurance to their employees, including offering fewer benefits to employees, reducing or eliminating dependent coverage, increasing employee health insurance premium contributions and eliminating health insurance benefits altogether. We also believe that demand in the individual and family health insurance market will increase as the employees of these employers look to other sources for their health insurance needs and as the number of small businesses and self-employed individuals increases. We have no control over the economic and other factors that influence these trends, and if these trends reverse, our business, operating results and financial condition would be harmed.

We rely on health insurance carriers to accurately and regularly prepare commission reports, and if these reports are inaccurate or not sent to us in a timely manner, our business and operating results could be harmed

Health insurance carriers typically pay us a specified percentage of the premium amount collected by the carrier during the period that a member maintains coverage under a policy. We rely on carriers to report accurately and in a timely manner the amount of commissions earned by us, and we calculate our commission revenue, prepare our financial reports, projections and budgets and direct our marketing and other operating efforts based on the reports we receive from health insurance carriers. It is often difficult for us to independently determine whether or not carriers are reporting all commissions due to us, primarily because the majority of our members terminate their policies by discontinuing their premium payments to the carrier instead of by informing

us of the cancellation. To the extent that health insurance carriers understate or fail to report the amount of commissions due to us in a timely manner or at all, we will not collect and recognize revenue to which we are entitled, which would harm our business, operating results and financial condition.

Our operating results fluctuate depending upon health insurance carrier payment practices and the timing of our receipt of commission reports from health insurance carriers

The timing of our revenue depends upon the timing of our receipt of commission reports and associated payments from health insurance carriers. Although carriers typically report and pay commissions to us on a monthly basis, there have been instances where their report of commissions and payment have been delayed for several months. In addition, much of our commission override revenue is not reported and paid to us in accordance with a scheduled pattern, and some is only reported and paid to us once per year. This could result in a large amount of commission revenue from a carrier being recorded in a given quarter that is not indicative of the amount of revenue we may receive from that carrier in subsequent quarters, causing fluctuations in our operating results. We could report revenue below the expectations of our investors or securities analysts in any particular period if a material report or payment from a health insurance carrier were delayed for any reason.

We may be unsuccessful in competing effectively against current and future competitors

The market for selling health insurance products is intensely competitive and the sale of health insurance over the Internet is new and rapidly evolving. Consumers have the ability to use several sources other than our ecommerce platform to research and purchase health insurance. In addition, consumers can research health insurance using our ecommerce platform and purchase their health insurance through one of our competitors. We compete with a large number of local insurance agents across the United States that sell health insurance products in their local communities. Some of these traditional insurance agents utilize the Internet in various ways to acquire their customers. For instance, some local agents use "lead aggregator" services that find potential consumers and are compensated for referring that consumer to the traditional agent. As we do, lead aggregators often use Internet search engines and other forms of online advertising to drive Internet traffic to the lead aggregator's website.

In addition to traditional agents, a number of agents operate websites that provide some form of online shopping experience for consumers interested in purchasing health insurance. Although most of these online agents only sell health insurance in a limited number of states and/or represent only a limited number of health insurance carriers, these agents could expand their service area and product offerings. Moreover, while national insurance brokers such as Aon Insurance Services, Arthur J. Gallagher & Co., Marsh, Inc. and Willis Group Limited, have traditionally not focused on the individual, family and small business markets, they could enter these markets and compete with us in the future, particularly if these markets continue to grow. We also compete directly with health insurance carriers, including many of the carriers that offer health insurance through our ecommerce platform. Many carriers market and sell their health insurance plans directly to consumers using call centers, their own websites and other means. We also believe that we are likely to face increasing competition as the online financial services industry develops and evolves.

We may not be able to compete successfully against our current or future competitors. Some of our current and potential competitors have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, technical, marketing and other resources than we do. As compared to us, our current and future competitors may be able to:

- undertake more extensive marketing campaigns for their brands and services;
- devote more resources to website and systems development;
- negotiate more favorable commission rates and commission override payments; and
- make more attractive offers to potential employees, marketing partners and third-party service providers.

Competitive pressures may result in our experiencing increased marketing costs, decreased traffic to our website and loss of market share, or otherwise may harm our business, operating results and financial condition.

There are many risks associated with our operations in China

A portion of our operations is conducted in China. Among other things, we use employees in China to maintain and update the significant amount of software on our ecommerce platform. This and other information is delivered to us through secured communications over the Internet. Our business would be harmed if this connection temporarily failed, and we were prevented from promptly updating our software or implementing other changes to our database and systems. Our operations in China also expose us to different laws, rules and regulations, including different intellectual property laws, which are not as protective of our intellectual property as the laws in the United States. We also face other risks in connection with our operations in China, including:

- unfamiliar legal and regulatory restrictions and permit requirements, and unexpected changes in laws and regulations;
- difficulties in recruiting and retaining employees and staffing and managing foreign operations;
- different labor laws, regulations and restrictions, including labor laws that could facilitate the unionization of our employees in China;
- potentially adverse tax consequences, including taxes that we may not be able to offset against taxes imposed upon us in the United States;
- lack of infrastructure to adequately conduct operations;
- United States and Chinese trade restrictions, including those that may impose restrictions on the importation of programming or technology to or from the United States;
- fluctuations in foreign currency exchange rates and interest rates, including risks related to any interest-rate swap or other hedging activities that we may decide to undertake;
- challenges caused by distance, language and cultural differences; and
- political, economic, social or military instability.

These risks could cause us to incur increased expenses and could harm our ability to effectively and successfully manage our operations in China, which in turn could cause our business, operating results and financial condition to suffer. We plan to continue to expand our Chinese operations. These expansion plans will require additional management attention and resources and may be unsuccessful, as we have limited experience with respect to operations in China.

We may not be able to adequately protect our intellectual property, which could harm our business and operating results

We believe that our intellectual property is an essential asset of our business and that our technology infrastructure currently gives us a competitive advantage in the distribution of individual, family and small business health insurance. We rely on a combination of copyright, trademark and trade secret laws as well as confidentiality procedures and contractual provisions to establish and protect our intellectual property rights in the United States. Although we have pending patent applications in the United States, they may not result in issued patents. We have not filed for protection of our intellectual property in any foreign jurisdiction other than China. We have Chinese-registered computer software copyrights for an internally-developed software system and a project management tool and have filed certain trademark applications in China. The efforts we have taken to protect our intellectual property may not be sufficient or effective, and our trademarks, copyrights and patents if issued, may be held invalid or unenforceable. Moreover, the law relating to intellectual property is not as developed in China, and our intellectual property rights may not be as respected in China as they are in the United States. Any United States or other patents issued to us may not be sufficiently broad to protect our

proprietary technologies, and given the costs of obtaining patent protection, we may choose not to seek patent protection for certain of our proprietary technologies. We may not be effective in policing unauthorized use of our intellectual property, and even if we do detect violations, litigation may be necessary to enforce our intellectual property rights. Any enforcement efforts we undertake, including litigation, could be time-consuming and expensive, could divert our management's attention and may result in a court determining that our intellectual property rights are unenforceable. If we are not successful in cost-effectively protecting our intellectual property rights, our business, operating results and financial condition could be harmed.

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

Companies in the Internet and technology industries own large numbers of patents, copyrights, trademarks and trade secrets and frequently enter into litigation based on allegations of infringement or other violations of intellectual property rights. We have received, and may in the future receive, notices that claim we have misappropriated or misused other parties' intellectual property rights, and, to the extent we gain greater visibility, we face a higher risk of being the subject of intellectual property infringement claims. 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 claim against us, with or without merit, could be time consuming, expensive to settle or litigate and could divert our management's attention and other resources. These claims also could subject us to significant liability for damages and could 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 third-party intellectual property, which may not be available on reasonable terms or at all. Even if a license is available, we could be required to pay significant royalties, which would increase our operating expenses. We may also be required to develop alternative non-infringing technology, which could require significant effort and expense. If we cannot license or develop technology for any infringing aspect of our business, we would be forced to limit our service and may be unable to compete effectively. Any of these results would harm our business, operating results and financial condition.

Any legal liability for the information on our website or that we otherwise communicate to our members will likely harm our business and operating results

Our members rely upon information we publish on our website or through our customer care center or otherwise regarding the health insurance plans offered on our website, including information relating to insurance premiums, coverage, benefits, exclusions, limitations, availability, plan comparisons and insurance company ratings. A significant amount of both automated and manual effort is required to maintain the considerable amount of insurance plan information on our website. If the information we provide on our website or through our customer care center is not accurate, members, health insurance carriers and others could claim that we are liable for damages to them as a result of the inaccuracy. In the past, we have received complaints from members that information we provided regarding policy terms was not accurate. Although we have resolved these complaints without significant financial cost, we cannot guarantee that we will be able to do so in the future. In addition, these types of claims could be time-consuming and expensive to defend, could divert our management's attention and other resources and could cause a loss of confidence in our service. As a result, whether or not we are able to successfully resolve these claims, they could harm our business, operating results and financial condition.

Future litigation against us could be costly and time-consuming to defend

We have been, and may in the future be, subject to legal proceedings and claims that arise in the ordinary course of business. Litigation may result in substantial costs and may divert management's attention and resources, which may harm our business, operating results and financial condition.

We rely on insurance to mitigate some risks and, to the extent the cost of insurance increases or we maintain insufficient coverage, our business and operating results may be harmed

We contract for insurance to cover potential business risks and liabilities. In the current environment, insurance companies are increasingly specific about what they will and will not insure. It is possible that we may not be able to obtain sufficient insurance to meet our needs, may have to pay very high prices for the coverage we do obtain or may not acquire any insurance for certain types of business risk. This could leave us exposed, and to the extent we incur liabilities and expenses for which we are not adequately insured, our business, operating results and financial condition could be negatively impacted. Also, to the extent the cost of maintaining insurance increases, our operating expenses will rise, which could harm our business, operating results and financial condition.

Our ability to attract and retain personnel is critical to our success

Our success is substantially dependent upon the performance of our senior management and key personnel. Our management and employees can terminate their employment at any time, and the loss of the services of any of our executive officers or other key employees could harm our business. Our success is also substantially dependent upon our ability to attract additional personnel for all areas of our organization. Competition for qualified personnel is intense, and we may not be successful in attracting and retaining such personnel on a timely basis, on competitive terms or at all. If we are unable to attract and retain the necessary personnel, our business would be harmed.

Many of our senior management and other key employees have become, or will soon become, substantially vested in their stock options. While we have in the past, and may in the future, grant these employees additional stock options, these employees may be more likely to leave us after their existing stock options fully vest, especially if the shares underlying the options have significantly appreciated in value relative to the option exercise price. Our business could be harmed if we lose their services.

If we fail to manage future growth effectively, our business and operating results would be harmed

We have expanded our operations significantly and anticipate that further expansion will be required in order for us to grow our business. Our growth has placed, and if our growth continues will continue to place, increasing and significant demands on our management, our operational and financial systems and infrastructure and our other resources. If we do not effectively manage our growth, the quality of our services could suffer, which could harm our business, operating results and financial condition. In order to manage future growth, we will need to hire, integrate and retain highly skilled and motivated employees. We will also be required to continue to improve our existing systems for operational and financial management, including our reporting systems, procedures and controls. These improvements may require significant capital expenditures and will place increasing demands on our management. We may not be successful in managing or expanding our operations or in maintaining adequate financial and operating systems and controls. If we do not successfully implement improvements in these areas, our business, operating results and financial condition will be harmed.

Seasonality may cause fluctuations in our financial results

The number of health insurance applications submitted through our ecommerce platform has generally increased in our first quarter compared to our fourth quarter and in our third quarter compared to our second quarter. Conversely, we have generally experienced a decline in submitted applications in our second quarter compared to our first quarter and in our fourth quarter compared to our third quarter. Because a significant portion of our marketing and advertising expenses are driven by the number of health insurance applications submitted on our ecommerce platform, those expenses generally have increased or decreased in conjunction with these seasonal patterns. We believe that consumer adoption of the Internet is still in its early stages and, therefore, the reasons for these seasonal patterns are not entirely clear. As the use of the Internet for the purchase and sale of health insurance becomes more widely accepted, other seasonality trends may develop and the

existing seasonality and consumer behavior that we experience may change. Any seasonality that we experience may cause fluctuations in our financial results.

Future acquisitions could disrupt our business and harm our financial condition and operating results

In the future, we may decide to acquire businesses, products and technologies. We have not made any acquisitions to date, and our ability as an organization to successfully make acquisitions is unproven. Acquisitions could require significant capital infusions and could involve many risks, including the following:

- an acquisition may negatively impact our results of operations because it may require us to incur charges and substantial debt or liabilities, may require the amortization, write down or impairment of amounts related to deferred compensation, goodwill and other intangible assets, or may cause adverse tax consequences, substantial depreciation or deferred compensation charges;
- we may encounter difficulties in assimilating and integrating the business, technologies, products, personnel or operations of companies 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;
- we may be required to implement or improve internal controls, procedures and policies appropriate for a public company at a business that prior to the acquisition lacked these controls, procedures and policies;
- the acquired businesses, products or technologies may not generate sufficient revenue to offset acquisition costs;
- we may have to issue equity securities to complete an acquisition, which would dilute our stockholders' ownership and could adversely affect the market price of our common stock; and
- acquisitions may involve the entry into geographic or business markets in which we have little or no prior experience.

We cannot assure you that we will be able to identify or consummate any future acquisition on favorable terms, or at all. If we do pursue an acquisition, it is possible that we may not realize the anticipated benefits from the acquisition or that the financial markets or investors will negatively view the acquisition. Even if we successfully complete an acquisition, it could harm our business, operating results and financial condition.

We may not be able to secure additional financing on favorable terms, or at all, to meet our future capital needs

We may require additional capital to respond to business opportunities, challenges, acquisitions or unforeseen circumstances and may determine to engage in equity or debt financings or enter into credit facilities for other reasons. We may not be able to secure additional debt or equity financing in a timely manner, on favorable terms or at all. If we raise additional capital through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution in their percentage ownership of us, and any new equity securities we issue could have rights, preferences and privileges senior to those of holders of our common stock, including shares of common stock sold in this offering. Any debt financing secured by us 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.

Issues arising from the implementation of our new commission accounting system and an enterprise data management system could affect our operating results and ability to manage our business effectively

We are in the process of implementing a new commission accounting system, which we currently expect to complete in 2006. In addition, we are in the initial stages of implementing an enterprise data management

system. Each of these systems is or will be important to our accounting, financial and operating functions, and the implementation of these systems raises costs and risks associated with the conversion to new systems, including disruption to our normal accounting procedures and problems achieving accuracy in the conversion of electronic data. Failure to properly or adequately address these issues could result in increased costs, and the diversion of management's attention and resources and could harm our operating results and ability to manage our business effectively.

If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements could be impaired, which could adversely affect our operating results, our ability to operate our business and our stock price

We have a complex business organization. Ensuring that we have adequate internal financial and accounting controls and procedures in place to help ensure that we can produce accurate financial statements on a timely basis is a costly and time-consuming effort that needs to be re-evaluated frequently. We are in the process of documenting, reviewing and improving our internal controls and procedures in connection with Section 404 of the Sarbanes-Oxley Act. Section 404 requires annual management assessments of the effectiveness of our internal controls over financial reporting and a report by our independent auditors addressing these assessments. Both we and our independent auditors will be testing our internal controls in connection with the Section 404 requirements and could, as part of that documentation and testing, identify areas for further attention or improvement. Implementing any appropriate changes to our internal controls may require specific compliance training of our directors, officers and employees, entail substantial costs in order to modify our existing accounting systems and take a significant period of time to complete. Such changes may not, however, be effective in maintaining the adequacy of our internal controls, and any failure to maintain that adequacy, or consequent inability to produce accurate financial statements on a timely basis, could increase our operating costs and could harm our ability to operate our business. In addition, investor perception that our internal controls are inadequate or that we are unable to produce accurate financial statements on a consistent basis may adversely affect our stock price.

Our net income in future periods could be significantly reduced when we are required to expense employee stock options

In December 2004, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 123 (Revised 2004), *Share-Based Payment*, or SFAS 123R. SFAS 123R requires measurement of all employee stock-based compensation awards using a fair value method and the recording of such expense in the consolidated financial statements. The adoption of SFAS 123R will require additional accounting related to the income tax effects, and additional disclosure regarding the cash flow effects, resulting from share-based payment arrangements. We adopted SFAS 123R on January 1, 2006. As permitted, we will continue to account for the portion of awards outstanding on or before December 31, 2005 using the provisions of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, and its related interpretative guidance. Because the amount, terms and fair values of awards to be issued in the future are unknown, we are unable to predict the impact of the adoption of SFAS 123R on our consolidated financial statements. However, we expect that the impact could be material over time as the number of options issued and outstanding after January 1, 2006 increases.

We will incur increased costs as a result of being a public company

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. We will incur costs associated with our public company reporting requirements. We also anticipate that we will incur costs associated with corporate governance requirements, including requirements under the Sarbanes-Oxley Act of 2002, as well as rules implemented by the Securities and Exchange Commission and any exchange on which our common stock is listed or traded. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-

consuming and costly. We also expect that being a public company will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs. Any of these expenses could harm our business, operating results and financial condition.

Any expansion of our business into foreign countries involves significant risks

Although we currently do not sell health insurance or license our technology platform outside the United States, we are exploring ways to expand our business into foreign countries, particularly China. We would face significant challenges in connection with expanding our business into a foreign country. Demand for private health insurance is not significant in many foreign countries as a result of government-sponsored healthcare systems. In addition to facing many of the same challenges we face domestically, we also would have to overcome other obstacles such as:

- legal, political or systemic restrictions on the ability of United States companies to market insurance or otherwise do business in foreign countries;
- varied, unfamiliar and unclear legal and regulatory restrictions;
- less extensive adoption of the Internet as a commerce medium or information source and increased restriction on the content of websites; and
- the adaptation of our website and distribution model to fit the particular foreign country.

As a result of these obstacles, we may find it impossible or prohibitively expensive to expand our services internationally or we may be unsuccessful should we attempt to do so, which could harm our business, operating results and financial condition.

Terrorist attacks, acts of war or natural disasters may disrupt our business

Terrorist attacks, acts of war or acts of nature, such as earthquakes, floods or hurricanes, may cause damage or disruption in the United States and abroad and adversely affect our ability to provide our services. If any of these events occurs, it may cause economic instability and, directly or indirectly, negatively affect our facilities, our operations and our business. We cannot predict with certainty the potential effect of future terrorist attacks, the national and international responses to terrorist attacks, other acts of war or hostility or future natural disasters on our business. Such attacks or natural disasters could harm our business, operating results and financial condition.

Risks Related to Insurance Regulation

Compliance with the strict regulatory environment applicable to the insurance industry and the specific products we sell is difficult and costly. If we fail to comply with the numerous laws and regulations that are applicable to our business, our business and operating results would be harmed

The health insurance industry is heavily regulated by each state in the United States. For instance, state regulators require our company to maintain a valid license in each state in which we transact health insurance business and further require that we adhere to sales, documentation and administration practices specific to that state. In addition, each employee who transacts health insurance business on our behalf must maintain a valid license in one or more states. Because we do business in all 50 states and the District of Columbia, compliance with health insurance-related laws, rules and regulations is difficult and imposes significant costs on our business. Each jurisdiction's insurance department typically has the power, among other things, to:

- grant and revoke licenses to transact insurance business;
- conduct inquiries into the insurance-related activities and conduct of agents and agencies;

- require and regulate disclosure in connection with the sale and solicitation of health insurance;
- authorize how, by which personnel and under what circumstances insurance premiums can be quoted and published and an insurance policy sold;
- approve which entities can be paid commissions from carriers;
- regulate the content of insurance-related advertisements, including web pages;
- approve policy forms, require specific benefits and benefit levels and regulate premium rates;
- impose fines and other penalties; and
- impose continuing education requirements.

Due to the complexity, periodic modification and differing interpretations of insurance laws and regulations, we may not have always been, and we may not always be, in compliance with them. Failure to comply could result in significant liability, additional department of insurance licensing requirements or the revocation of licenses in a particular jurisdiction, which could significantly increase our operating expenses, prevent us from transacting health insurance business in a particular jurisdiction and otherwise harm our business, operating results and financial condition. Moreover, an adverse regulatory action in one jurisdiction could result in penalties and adversely affect our license status or reputation in other jurisdictions due to the requirement that adverse regulatory actions in one jurisdiction be reported to other jurisdictions. Even if the allegations in any regulatory or other action against us are proven false, any surrounding negative publicity could harm consumer, marketing partner or health insurance carrier confidence in us, which could significantly damage our brand. Because some consumers, marketing partners and health insurance carriers may not be comfortable with the concept of purchasing health insurance using the Internet, any negative publicity may affect us more than it would others in the health insurance industry and would harm our business, operating results and financial condition.

In addition, we have received, and may in the future receive, inquiries from state insurance regulators regarding our marketing and business practices. We typically respond by explaining how we believe we are in compliance with relevant regulations or may modify our practices in connection with the inquiry. Although these inquiries have not resulted in any material harm to our business to date, any modification of our marketing or business practices in response to future regulatory inquiries could harm our business, operating results or financial condition.

Regulation of the sale of health insurance is subject to change, and future regulations could harm our business and operating results

The laws and regulations governing the offer, sale and purchase of health insurance are subject to change, and future changes may be adverse to our business. For example, once health insurance pricing is set by the carrier and approved by state regulators, it is fixed and not generally subject to negotiation or discounting by insurance companies or agents. Additionally, state regulations generally prohibit carriers, agents and brokers from providing financial incentives, such as rebates, to their members in connection with the sale of health insurance. As a result, we do not currently compete with carriers or other agents and brokers on the price of the health insurance products offered on our website. If these regulations change, we could be forced to reduce prices or provide rebates or other incentives for the health insurance products sold through our ecommerce platform, which would harm our business, operating results and financial condition.

Another example of a potentially adverse regulatory change relates to the adoption of “guaranteed issue” laws and regulations in the individual and family health insurance markets. These requirements, which are currently in effect in a limited number of states such as Massachusetts, New Jersey and New York, prohibit health insurance carriers from denying health insurance coverage to individuals based on their health status. It has been our experience that substantially fewer health insurance carriers offer plans in the individual and family health insurance market in states with guaranteed issue requirements compared to other states. Moreover, the health insurance

carriers that do offer individual and family plans in these states typically charge substantially increased premiums and/or pay reduced commissions to agents. We believe that limited choice and high premiums result in less demand for individual and family health insurance plans which, when coupled with reduced commissions to agents, results in substantially less revenue for us in these states. Although we currently do not expect a substantial number of states to adopt guaranteed issue requirements for the individual and family market, our business, operating results and financial condition would be harmed if the adoption of these requirements becomes more widespread.

We are subject to additional insurance regulatory risks, because we use the Internet as our distribution platform. In many cases, it is not clear how existing insurance laws and regulations apply to Internet-related health insurance advertisements and transactions. To the extent that new laws or regulations are adopted that conflict with the way we conduct our business, or to the extent that existing laws and regulations are interpreted adversely to us, our business, operating results and financial condition would be harmed.

Changes and developments in the structure of the health insurance system in the United States could harm our business

Our business depends upon the private sector of the United States health insurance system, its relative role in financing healthcare delivery and health insurance carriers' use of agents and brokers to market their products. Fundamental changes to this system or in the manner in which health insurance is distributed in the United States could reduce or eliminate the demand for private health insurance for individuals, families and small businesses or increase our competition, which would harm our business. Recently, there has been substantial national attention and debate regarding the fairest and most effective method of healthcare reimbursement. Some advocates promote a universal healthcare system that would be largely underwritten by the government. The adoption of state or federal laws that promote or establish a government-sponsored universal healthcare system could reduce or eliminate the number of individuals, families and small businesses seeking or permitted to purchase private health insurance or supplemental coverage, which would substantially reduce the demand for our service and harm our business, operating results and financial condition.

Risks Related to the Internet and Electronic Commerce

Our business is subject to online commerce security risks and if we are unable to safeguard the security and privacy of confidential data, our business will be harmed

Our service involves the collection and storage of confidential information of consumers and the transmission of this information to their chosen health insurance carriers. For example, we collect names, addresses, Social Security and credit card numbers, and information regarding the medical history of consumers in connection with their application for health insurance. We currently rely on encryption technology licensed from third parties to facilitate secure transmittal of confidential information. We incorporate a multi-level firewall infrastructure to help prevent unauthorized access to our systems and data and have implemented intrusion detection systems. While we have not to date experienced any security breaches of which we are aware, we cannot guarantee that we will not be subject to a security breach in the future. We may be required to expend significant capital and other resources to protect against security breaches or to alleviate problems caused by security breaches. Despite our implementation of security measures, techniques used to obtain unauthorized access or to sabotage systems change frequently. As a result, we may be unable to anticipate these techniques or to implement adequate preventative measures. Any compromise or perceived compromise of our security could damage our reputation and our relationship with our members, marketing partners and health insurance carriers, could reduce demand for our service and could subject us to significant liability as well as regulatory action, which would harm our business, operating results and financial condition.

Government regulation of the Internet could adversely affect our business

The laws governing general commerce on the Internet remain unsettled and it may take years to fully determine whether and how existing laws such as those governing intellectual property, privacy and taxation

apply to the Internet. In addition, the growth and development of the market for electronic commerce may prompt calls for more stringent consumer protection laws that may impose additional burdens on companies conducting business over the Internet. Any new laws or regulations or new interpretations of existing laws or regulations relating to the Internet could harm our business and we could be forced to incur substantial costs in order to comply with them, which would harm our business, operating results and financial condition.

Our business could be harmed if we are unable to correspond with our consumers by email

We use email to market our service to potential members and as the primary means of communicating with our existing members. The laws and regulations governing the use of email for marketing purposes continue to evolve and the growth and development of the market for commerce over the Internet may lead to the adoption of additional legislation. If new laws or regulations are adopted, or existing laws and regulations are interpreted, to impose additional restrictions on our ability to send email to our members or potential members, we may not be able to communicate with them in a cost-effective manner. In addition to legal restrictions on the use of email, Internet service providers and others attempt to block the transmission of unsolicited email, commonly known as “spam.” If an Internet service provider or software program identifies email from us as “spam,” we can be placed on a restricted list that will block our email to members or potential members who maintain email accounts with these Internet service providers or who use these software programs. If we are unable to communicate by email with our members and potential members as a result of legislation, blockage or otherwise, our business, operating results and financial condition would be harmed.

Consumers depend upon third-party service providers to access our website, and our business and operating results could be harmed as a result of technical difficulties experienced by these service providers

Consumers using our website depend upon Internet, online and other service providers for access to our website. Many of these service providers have experienced significant outages, delays and other difficulties in the past and could experience them in the future. Any significant interruption in access to our website or increase in our website’s response time as a result of these difficulties could damage our relationship with insurance carriers, marketing partners and existing and potential members and could harm our business, operating results and financial condition.

Risks Related to this Offering and Ownership of Our Common Stock

An active, liquid and orderly market for our common stock may not develop

Prior to this offering there has been no market for shares of our common stock. An active trading market for our common stock may never develop or be sustained, which could depress the market price of our common stock and could affect your ability to sell your shares. The initial public offering price will be determined through negotiations between us and the representatives of the underwriters and may bear no relationship to the price at which our common stock will trade following the completion of this offering. The trading price of our common stock following this offering is likely to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. In addition to the factors discussed in this “Risk Factors” section and elsewhere in this prospectus, these factors include:

- our operating performance and the operating performance of similar companies;
- the overall performance of the equity markets;
- announcements by us or our competitors of acquisitions, business plans or commercial relationships;
- threatened or actual litigation;
- changes in laws or regulations relating to the sale of health insurance;
- any major change in our board of directors or management;

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- publication of research reports about us, our competitors or our industry or positive or negative recommendations or withdrawal of research coverage by securities analysts;
- large volumes of sales of our shares of common stock by existing stockholders; and
- general political and economic conditions.

In addition, the stock market in general, and the market for Internet-related companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. These fluctuations may be even more pronounced in the trading market for our stock shortly following this offering. Securities class action litigation has often been instituted against companies following periods of volatility in the overall market and in the market price of a company's securities. This litigation, if instituted against us, could result in very substantial costs, divert our management's attention and resources and harm our business, operating results and financial condition.

Future sales of shares of our common stock by existing stockholders could depress the market price of our common stock

If our existing stockholders sell, or indicate an intent to sell, substantial amounts of our common stock in the public market after the 180-day contractual lock-up and other legal restrictions on resale discussed in this prospectus lapse, the trading price of our common stock could decline significantly and could decline below the initial public offering price. Based on shares outstanding as of December 31, 2005, upon completion of this offering, we will have outstanding approximately _____ shares of common stock, assuming no exercise of the underwriters' over-allotment option. Of these shares, only shares of common stock sold in this offering will be immediately freely tradable, without restriction, in the public market. Morgan Stanley & Co. Incorporated and Merrill Lynch may, in their sole discretion, permit our officers, directors, employees and current stockholders to sell shares prior to the expiration of the lock-up agreements.

After the lock-up agreements pertaining to this offering expire, an additional 31,553,654 shares will be eligible for sale in the public market, 24,195,045 of which are held by directors, executive officers and other affiliates and will be subject to volume limitations under Rule 144 under the Securities Act and various vesting agreements. In addition, the 10,773,819 shares subject to outstanding options under our 2005 Stock Plan and 1998 Stock Plan and the 4,000,000 shares reserved for future issuance under our 2006 Equity Incentive Plan will become eligible for sale in the public market in the future, subject to certain legal and contractual limitations. If these additional shares are sold, or if it is perceived that they will be sold, in the public market, the trading price of our common stock could decline substantially.

A limited number of stockholders will have the ability to influence the outcome of director elections and other matters requiring stockholder approval

After this offering, our directors, executive officers and their affiliated entities will beneficially own more than _____ percent of our outstanding common stock. These stockholders, if they act together, could exert substantial influence over matters requiring approval by our stockholders, including the election of directors, the amendment of our certificate of incorporation and bylaws and the approval of mergers or other business combination transactions. This concentration of ownership may discourage, delay or prevent a change in control of our company, which could deprive our stockholders of an opportunity to receive a premium for their stock as part of a sale of our company and might reduce our stock price. These actions may be taken even if they are opposed by other stockholders, including those who purchase shares in this offering.

Certain provisions in our charter documents and Delaware law could discourage takeover attempts and lead to management entrenchment

Our certificate of incorporation and bylaws contain provisions that could have the effect of delaying or preventing changes in control or changes in our management without the consent of our board of directors. These provisions include:

- a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- cumulative voting in the election of directors is prohibited, which limits the ability of minority stockholders to elect director candidates;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- the ability of our board of directors to determine to issue shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquiror;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- the requirement that a special meeting of stockholders may be called only by the chairman of the board of directors, the chief executive officer or the board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slates of directors or otherwise attempting to obtain control of us.

We are also subject to certain anti-takeover provisions under Delaware law. Under Delaware law, a corporation may, in general, not engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other things, the board of directors has approved the transaction.

You will experience immediate and substantial dilution

The initial public offering price will be substantially higher than the net tangible book value of each outstanding share of common stock immediately after this offering. If you purchase common stock in this offering, you will suffer immediate and substantial dilution. The dilution will be \$ _____ per share in the net tangible book value of the common stock from the expected initial public offering price. In addition, if outstanding options to purchase shares of our common stock are exercised, there could be further dilution. For more information refer to "Dilution."

Our management will have broad discretion over the use of the proceeds we receive in this offering and might not apply the proceeds in ways that increase the value of your investment

Our management will have broad discretion to use the net proceeds from this offering, and you will be relying on the judgment of our management regarding the application of these proceeds. Our management might not apply the net proceeds of this offering in ways that increase the value of your investment. We expect to use the net proceeds from this offering for working capital and other general corporate purposes, including the funding of our marketing activities and the costs of operating as a public company, as well as further investment

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in the development of our proprietary technologies. We may also use a portion of the net proceeds for the acquisition of businesses, products and technologies that we believe are complementary to our own, although we have no agreements or understandings with respect to any acquisition at this time. We have not allocated the net proceeds from this offering for any specific purposes. Until we use the net proceeds from this offering, we plan to invest them, and these investments may not yield a favorable rate of return. If we do not invest or apply the net proceeds from this offering in ways that enhance stockholder value, we may fail to achieve expected financial results, which could cause our stock price to decline.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. All statements other than statements of historical fact contained in this prospectus are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other comparable terminology. These statements are only current predictions and are subject to known and unknown risks, uncertainties, and other factors that may cause our or our industry’s actual results, levels of activity, performance, or achievements to be materially different from those anticipated by the forward-looking statements. These factors include, among other things, those listed under “Risk Factors” and elsewhere in this prospectus.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Except as required by law, we are under no duty to update or revise any of the forward-looking statements, whether as a result of new information, future events or otherwise, after the date of this prospectus.

This prospectus contains statistical data that we obtained from industry publications and reports generated by third parties. Although we believe that the publications and reports are reliable, we have not independently verified this statistical data.

USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of the _____ shares of common stock in this offering will be approximately \$ _____ at an assumed initial public offering price of \$ _____ per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses. If the underwriters' over-allotment option is exercised in full, we estimate that the net proceeds will be \$ _____.

The principal reasons for this offering are to obtain additional capital, to create a public market for our common stock and to facilitate our future access to public equity markets. We currently have no specific plans for the use of the net proceeds of this offering. We anticipate that we will use the net proceeds we receive from this offering, including any net proceeds we receive from the exercise of the underwriters' over-allotment option, for working capital and other general corporate purposes, including the funding of our marketing activities and the costs of operating as a public company, as well as further investment in the development of our proprietary technologies. We have not allocated any specific portion of the net proceeds to any particular purpose, and our management will have the discretion to allocate the proceeds as it determines. We may use a portion of the net proceeds for the acquisition of businesses, products and technologies that we believe are complementary to our own, although we have no agreements or understandings with respect to any acquisition at this time.

Pending our use of the net proceeds from this offering, we intend to invest the net proceeds of this offering in short-term, interest-bearing, investment-grade securities.

DIVIDEND POLICY

We have never declared or paid any dividends on our capital stock. We currently intend to retain any future earnings and do not intend to declare or pay cash dividends on our common stock in the foreseeable future. Any future determination to pay dividends will be, subject to applicable law, at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, contractual restrictions and capital requirements.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of December 31, 2005:

- on an actual basis;
- on a pro forma basis, giving effect to the conversion of all of our outstanding shares of preferred stock and Class A nonvoting common stock as of December 31, 2005 into an aggregate of 21,975,816 shares of common stock upon the closing of this offering; and
- on a pro forma as adjusted basis to give further effect to our receipt of the net proceeds from our sale of _____ shares of our common stock at an initial public offering price of \$ _____ per share, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this information together with “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” our consolidated financial statements and the notes to those statements appearing elsewhere in this prospectus.

	December 31, 2005		
	Actual	Pro Forma (unaudited)	Pro Forma As Adjusted (unaudited)
	(in thousands, except share and per share data)		
Cash and cash equivalents	\$ 9,415	\$ 9,415	\$
Other non-current liabilities	\$ 212	\$ 212	\$ 212
Convertible preferred stock; \$0.001 par value per share; 23,100,000 shares authorized, 20,576,271 shares issued and outstanding, actual; 23,100,000 shares authorized, no shares issued or outstanding, pro forma (unaudited); and 10,000,000 shares authorized, no shares issued or outstanding, pro forma as adjusted (unaudited)	86,319	—	—
Stockholders’ equity (deficit):			
Common stock; \$0.001 par value per share; 40,000,000 shares authorized, 9,577,838 shares issued and outstanding, actual; 40,000,000 shares authorized, 31,553,654 shares issued and outstanding, pro forma (unaudited); 100,000,000 shares authorized, _____ shares issued and outstanding, pro forma as adjusted (unaudited)	10	32	
Class A nonvoting common stock; \$0.001 par value per share; 1,600,000 shares authorized, 514,100 shares issued and outstanding, actual; no shares authorized, no shares issued or outstanding, pro forma and pro forma as adjusted (unaudited)	1	—	—
Additional paid-in capital	1,977	88,275	
Deferred stock-based compensation	(62)	(62)	(62)
Accumulated deficit	(80,132)	(80,132)	(80,132)
Accumulated other comprehensive income	25	25	25
Total stockholders’ equity (deficit)	(78,181)	8,138	
Total capitalization	\$ 8,350	\$ 8,350	\$

The number of shares of common stock issued and outstanding actual, pro forma and pro forma as adjusted in the table above is based on 31,553,654 shares of our common stock outstanding as of December 31, 2005, and excludes:

- 10,773,819 shares of common stock issuable upon exercise of outstanding options as of December 31, 2005 with a weighted average exercise price of \$1.52 per share;
- 4,000,000 shares of common stock to be initially reserved for issuance under our 2006 Equity Incentive Plan; and
- an additional 759,080 shares of common stock reserved as of December 31, 2005 for issuance under our other equity compensation plans, which will not be available for issuance after this offering.

DILUTION

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

The net tangible book value of our common stock as of December 31, 2005 was a deficit of \$78.2 million, or \$(8.16) per share. Net tangible book value per share represents the amount of stockholders' deficit divided by 9,577,838 shares of common stock outstanding at that date. The pro forma net tangible book value of our common stock as of December 31, 2005 was \$8.1 million, or approximately \$0.26 per share. Pro forma net tangible book value gives effect to the conversion of all shares of outstanding preferred stock and Class A nonvoting common stock into 21,975,816 shares of common stock upon the closing of this offering.

Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of common stock in this offering and the pro forma net tangible book value per share of common stock immediately after completion of this offering. After giving effect to our sale of shares of common stock in this offering, and after deducting estimated underwriting discounts and commissions and estimated offering expenses, our pro forma net tangible book value as of December 31, 2005 would have been \$ _____ per share. This represents an immediate increase in net tangible book value of \$ _____ per share to existing stockholders and an immediate dilution in net tangible book value of \$ _____ per share to purchasers of common stock in this offering, as illustrated in the following table:

Assumed initial public offering price per share	
Net tangible book value per share as of December 31, 2005	\$ _____
Increase per share attributable to new investors	
Pro forma net tangible book value per share at December 31, 2005 after giving effect to the offering	
Dilution per share to new investors	\$ _____

Assuming the exercise in full of the underwriters' over-allotment option, our pro forma net tangible book value at December 31, 2005 would have been approximately \$ _____ per share, representing an immediate increase in the pro forma net tangible book value of \$ _____ per share to our existing stockholders and an immediate decrease in net tangible book value of \$ _____ per share to new investors.

The following table summarizes, on a pro forma basis, as of December 31, 2005, the difference between the number of shares of common stock purchased from us, the total consideration paid to us and the average price per share paid by existing stockholders and by new investors at an assumed initial public offering price of \$ _____ per share, before deducting estimated underwriting discounts and commissions and estimated offering expenses.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders	31,553,654	%	\$87,444,845	%	\$ 2.77
New investors					
Total		<u>100.0%</u>	<u>\$</u>	<u>100.0%</u>	

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The discussion and the tables above assume no exercise of stock options outstanding on December 31, 2005 and no issuance of shares reserved for future issuance under our equity compensation plans. In addition, the numbers set forth in the table above assume the conversion as of December 31, 2005 of all outstanding shares of our preferred stock and Class A nonvoting common stock into shares of our common stock. As of December 31, 2005, there were:

- 10,773,819 shares of common stock issuable upon exercise of outstanding options with a weighted average exercise price of \$1.52 per share;
- 4,000,000 shares of common stock to be initially reserved for issuance under our 2006 Equity Incentive Plan; and
- an additional 759,080 shares of common stock reserved for issuance under our other equity compensation plans, which will not be available for issuance after this offering.

If the underwriters' over-allotment option is exercised in full, the following will occur:

- the percentage of shares of common stock held by existing stockholders will decrease to approximately % of the total number of shares of our common stock outstanding after this offering; and
- the number of shares held by new investors will be increased to or approximately % of the total number of shares of our common stock outstanding after this offering.

SELECTED CONSOLIDATED FINANCIAL DATA

The consolidated statements of operations data for the years ended December 31, 2003, 2004 and 2005, and the consolidated balance sheet data at December 31, 2004 and 2005 are derived from our audited consolidated financial statements included in this prospectus. The consolidated statements of operations data for the years ended December 31, 2001 and 2002, and the consolidated balance sheet data at December 31, 2001, 2002 and 2003 are derived from our audited consolidated financial statements not included in this prospectus. The historical results are not necessarily indicative of the results to be expected in future periods.

The following data should be read together with our consolidated financial statements and accompanying notes and the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in this prospectus.

	Year Ended December 31,				
	2001	2002	2003	2004	2005
	(in thousands, except per share information)				
Revenue:					
Commission	\$ 9,166	\$ 16,500	\$ 21,868	\$ 29,783	\$ 41,237
License and other	121	80	368	432	515
Total revenue	9,287	16,580	22,236	30,215	41,752
Operating costs and expenses:					
Cost of revenue	103	542	600	447	614
Marketing and advertising (1)	10,384	7,472	7,002	12,732	17,786
Customer care and enrollment (1)	6,905	5,906	6,185	7,577	8,822
Technology and content (1)	7,293	6,668	6,595	7,461	8,054
General and administrative (1)	5,791	5,644	5,123	5,385	7,108
Total operating costs and expenses	30,476	26,232	25,505	33,602	42,384
Loss from operations	(21,189)	(9,652)	(3,269)	(3,387)	(632)
Other income, net	1,422	6	74	60	239
Loss before provision for income taxes	(19,767)	(9,646)	(3,195)	(3,327)	(393)
Provision for income taxes	—	—	—	—	21
Net loss	<u>\$(19,767)</u>	<u>\$(9,646)</u>	<u>\$(3,195)</u>	<u>\$(3,327)</u>	<u>\$(414)</u>
Net loss per common share:					
Basic – common stock and Class A common stock	\$ (2.34)	\$ (1.09)	\$ (0.37)	\$ (0.37)	\$ (0.04)
Diluted – common stock	\$ (2.34)	\$ (1.09)	\$ (0.37)	\$ (0.37)	\$ (0.04)
Diluted – Class A common stock	—	—	—	—	\$ (0.04)
Weighted-average number of shares used in per share amounts:					
Basic – common stock and Class A common stock	8,458	8,857	8,662	8,946	9,322
Diluted – common stock	8,458	8,857	8,662	8,946	9,322
Diluted – Class A common stock	—	—	—	—	1
(1) Includes stock-based compensation as follows:					
Marketing and advertising	\$ —	\$ —	\$ 49	\$ 59	\$ 97
Customer care and enrollment	—	—	25	7	6
Technology and content	—	—	9	14	62
General and administrative	269	68	9	19	26
Total	<u>\$ 269</u>	<u>\$ 68</u>	<u>\$ 92</u>	<u>\$ 99</u>	<u>\$ 191</u>

	As of December 31,				
	2001	2002	2003	2004	2005
	(in thousands)				
Consolidated Balance Sheet Data:					
Cash, cash equivalents and short-term investments	\$ 23,933	\$ 14,343	\$ 10,646	\$ 8,707	\$ 9,415
Working capital	19,946	10,588	8,149	4,797	3,636
Total assets	28,523	18,152	14,620	12,898	15,165
Other non-current liabilities	270	63	17	59	212
Convertible preferred stock	86,305	86,351	86,422	86,370	86,319
Accumulated deficit	(63,550)	(73,196)	(76,391)	(79,718)	(80,132)
Total stockholders' deficit	(62,859)	(72,383)	(75,453)	(78,396)	(78,181)

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

The following discussion and analysis should be read in conjunction with our audited consolidated financial statements and the related notes that appear elsewhere in this prospectus. This discussion contains forward-looking statements reflecting our current expectations that involve risks and uncertainties. Actual results may differ materially from those discussed in these forward-looking statements due to a number of factors, including those set forth in the section entitled "Risk Factors" and elsewhere in this prospectus.

Overview

We are the leading online source of health insurance for individuals, families and small businesses. Our ecommerce platform enables individuals, families and small businesses to research, analyze, compare and purchase health insurance products that best meet their needs. Our technology also enables us to communicate electronically with our insurance carrier partners and process consumers' health insurance applications online. As a result, we simplify and streamline the complex and traditionally paper-intensive health insurance sales and purchasing process.

Since our incorporation in November 1997 we have spent more than \$45 million on technology and content related to our ecommerce platform. We have also invested significant time and resources in obtaining licenses to sell health insurance in all 50 states and the District of Columbia, developing diverse and successful member acquisition programs and establishing relationships with over 140 health insurance carriers, enabling us to offer more than 5,000 health insurance products online. Our first online transaction relating to the sale of a health insurance policy was completed during the fourth quarter of 1998.

Our financial model is characterized by recurring revenue, an average member life that exceeds two years and health insurance pricing that is set by each health insurance carrier and approved by state regulators. We generate revenue primarily from commissions we receive from health insurance carriers whose policies are purchased through us by individuals, families and small businesses. We typically receive commission payments on a monthly basis for as long as a policy remains active. As a result, much of our revenue for a given financial reporting period relates to policies that we sold prior to the beginning of the period and is recurring in nature. Because health insurance pricing is set by the carrier and approved by state regulators, health insurance pricing is fixed. We, therefore, are not generally subject to negotiation or discounting of prices by health insurance carriers or our competitors.

Sources of Revenue

Revenue

We generate substantially all of our revenue from commissions paid to us by health insurance carriers whose health insurance policies we have sold. Commission revenue represented 98.3%, 98.6% and 98.8% of our total revenue in 2003, 2004 and 2005. The remainder of our revenue is primarily attributable to licensing arrangements related to our technology and carrier sponsorship advertising on our website. Our commission revenue grew from \$21.9 million in 2003 to \$29.8 million in 2004 and \$41.2 million in 2005, principally as a result of our penetration of the individual, family and small business health insurance markets and corresponding growth in our membership. We estimate that as of December 31, 2005 we had more than 275,000 members. We define a member as an individual currently covered by an insurance product for which we are entitled to receive compensation.

We believe that there is significant opportunity to expand our share of the individual, family and small business health insurance markets and thereby increase our revenue. For example, our share of the individual and family health insurance market as of December 31, 2005 represented less than 2% of the total market of

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17 million individuals in the United States who directly purchased their health insurance coverage. Historically, our revenue and business have been more significantly affected by the rate of growth in the number of consumers using the Internet to research and purchase health insurance than by the rate at which the health insurance industry has grown. We expect that the rate of online adoption will continue to be a primary driver of our revenue.

Our commission revenue generally represents a percentage of the insurance premium a member has paid to his or her insurance carrier and, to a lesser extent, commission override payments that insurance carriers pay us for achieving sales volume thresholds or other objectives. Commission rates vary by carrier and by the type of plan purchased by a member. Commission rates also can vary based upon the amount of time that the policy has been active, with commission rates for individual and family policies typically being higher in the first twelve months of the policy. Individuals, families and small businesses purchasing health insurance through us typically pay their premiums on a monthly basis. Insurance carriers typically pay us our commissions monthly, after they receive the premium payment from the member. We continue to receive the commission payment from the relevant insurance carrier until the health insurance policy is cancelled or we otherwise do not remain the agent on the policy. As a result, the majority of our revenue is recurring in nature and grows in correlation with the growth we experience in our membership base. At the beginning of an accounting period, we have visibility with respect to the majority of our revenue for that accounting period since revenue for that accounting period is primarily attributable to policies previously purchased by our members.

The commission that we receive per member for a given period depends upon both the premium amount and the commission rate applicable to the member's policy. In the past two years, our commission earned per member per month has increased on average more than 6% per year. This is the result of both inflation in premiums and the mix of health insurance products our members chose to purchase.

We recognize commission revenue when the commission is reported to us by a carrier, which occurs through our receipt of a cash payment and a commission statement. We report commission revenue net of an allowance for future forfeiture amounts payable to our carriers due to policy cancellations. Commission override payments, which are recognized on the same basis as premium commissions, are generally reported to us in a more irregular pattern than premium commissions. As a result, our revenue for a particular quarter could be higher or lower than expectations due to the timing of the reporting of commission override payments.

Revenue attributable to individual and family product offerings represented more than 80% of our total revenue in 2005. We define individual and family product offerings as major medical individual and family health insurance plans, which does not include small business, short-term major medical, stand-alone dental, life and student health insurance product offerings.

Member Acquisition

An important factor in our revenue growth is the growth of our member base. Our marketing initiatives are an important component of our strategy to grow our member base and are focused on three primary member acquisition channels: direct, marketing partners and online advertising. Our marketing initiatives are designed to attract consumers to complete an online application for health insurance on our ecommerce platform.

Direct. Our direct member acquisition channel consists of consumers who access our website addresses (www.ehealth.com and www.ehealthinsurance.com) either directly or through unpaid (natural) search listings on major Internet search engines and directories. For the year ended December 31, 2005, applications submitted through us for individual and family health insurance products from our direct channel constituted approximately 40% of all individual and family health insurance applications submitted on our website. Submitted applications from this channel increased by 19% in 2005 over 2004. We expect our direct channel will continue to be our most cost-effective channel.

Marketing Partners. Our marketing partner member acquisition channel consists of consumers who access our website through a network of financial services and other companies. Growth in our marketing partner channel depends upon our expanding joint marketing programs with existing partners and adding new partners to our network. For the year ended December 31, 2005, applications submitted through us for individual and family health insurance products for which we paid fees to our marketing partners constituted approximately 34% of all individual and family health insurance applications submitted on our website. Submitted applications for individual and family health insurance products in our marketing partner channel increased by 73% in 2005 over 2004. Our marketing partner channel is the primary driver of our small business member acquisition.

Online Advertising. Our online advertising channel consists of consumers who access our website through paid keyword search advertising from leading search engines such as Google, MSN and Yahoo!, as well as various Internet marketing programs such as banner advertising, email marketing and an integrated partnership with MSN. For the year ended December 31, 2005, applications submitted through us for individual and family health insurance products from our online advertising channel constituted approximately 26% of all individual and family health insurance applications submitted on our website. Submitted applications from this channel increased by 18% in 2005 over 2004.

Operating Costs and Expenses

Cost of Revenue

Cost of revenue consists primarily of payments related to health insurance policies sold to members who were referred to our website by marketing partners with whom we have revenue-sharing arrangements. In order to enter into a revenue-sharing arrangement, these marketing partners must be licensed to sell health insurance in the state where the policy is sold. Costs related to revenue-sharing arrangements are expensed as the related revenue is recognized.

Marketing and Advertising

Marketing and advertising expenses consist primarily of member acquisition expenses associated with our direct, marketing partner and online advertising channels, in addition to compensation and other expenses related to marketing, business development, public relations and carrier relations personnel who support our offerings. Our direct channel expenses primarily consist of direct mail, television and radio advertising and associated costs.

We generally compensate our marketing partners by paying a one-time fee each time a consumer referral from a partner results in a submitted health insurance application on our ecommerce platform, regardless of whether the consumer's application is approved by the health insurance carrier. We recognize these expenditures in the period when a marketing partner's referral results in the submission of a health insurance application on our website. The number of health insurance applications submitted through our ecommerce platform has generally increased in our first quarter compared to our fourth quarter and in our third quarter compared to our second quarter. Conversely, we have generally experienced a decline in submitted applications in our second quarter compared to our first quarter and in our fourth quarter compared to our third quarter. Since a significant portion of our marketing and advertising expenses are driven by the number of health insurance applications submitted on our ecommerce platform, those expenses generally have increased or decreased in conjunction with these seasonal patterns. In addition, because the total volume of submitted applications that we receive from our marketing partners is largely outside of our control, particularly during any short-term period, we could incur expenses in excess of the amounts we had planned in periods of rapid growth in the volume of submitted applications from marketing partner referrals. Accordingly, an unanticipated increase in submitted applications resulting from marketing partner referrals could cause our net income to be lower than our expectation since the revenue to be derived from such applications will not be recognized until future periods.

Paid keyword search advertising on search engines represents the majority of expenses in our online advertising channel. We incur expenses associated with search engine advertising in the period in which the consumer clicks on the advertisement. We actively manage our paid keyword search advertising expense, taking into account the productivity and relative cost of paid keyword search compared to other marketing channels to control the amount of expense incurred during a given period.

We believe the cost of acquiring new members will continue to fluctuate based upon the mix of health insurance applications submitted through our three marketing channels, the mix of marketing partners referring consumers to our website, the overall trend in costs of online marketing including banner ads and keywords purchased by us, as well as the amounts we pay new marketing partners to refer consumers to our website. We expect marketing and advertising expenses to continue to increase in 2006.

Customer Care and Enrollment

Customer care and enrollment expenses consist of compensation and related expenses for personnel engaged in pre-sales assistance to applicants who call our customer care center and enrollment personnel who assist applicants during the underwriting process. We expect customer care and enrollment expenses to grow in future periods.

Technology and Content

Technology and content expenses consist primarily of compensation and related expenses for personnel associated with developing and enhancing our website technology as well as maintaining our website. A portion of our technology and content group is located at our wholly-owned subsidiary in China, where technology development costs are generally lower. Our technology and content expenses incurred in China totaled \$0.7 million in 2005. We expect our technology and content expenses to increase at a faster rate in 2006 than in the prior two years due to our increased focus on technology development, including the enhancement of our ecommerce platform.

General and Administrative

General and administrative expenses consist primarily of compensation and related expenses for staff working in our finance, legal, human resources, facilities and internal information technology departments. These expenses also include fees paid for outside professional services, mainly for audit, tax, legal and information technology consulting. We expect our general and administrative expenses to increase significantly during 2006 due to the increased costs associated with operating as a public company and the costs necessary to support the expected growth in our business.

Critical Accounting Policies

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates, judgments and assumptions that affect the reported amount of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates, including those related to the useful lives of long-lived assets including property and equipment, fair value of investments, fair value of intangible assets, allowances for commission forfeitures payable to carriers, fair value of our common stock for the purpose of determining stock-based compensation and income taxes, among others. We base our estimates of the carrying value of certain assets and liabilities on historical experience and on various other assumptions that we believe to be reasonable. In many cases, we could reasonably have used different accounting policies and estimates. In some cases, changes in the accounting estimates are reasonably likely to occur from period to period. Accordingly, actual results may differ materially from these estimates.

We believe the following critical accounting policies affect our more significant judgments used in the preparation of our consolidated financial statements.

Revenue Recognition

We recognize revenue for our services using the criteria set forth in Staff Accounting Bulletin No. 104, *Revenue Recognition* (SAB 104). SAB 104 states that revenue is recognized when each of the following four criteria is met: persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the seller's price to the buyer is fixed or determinable; and collectibility is reasonably assured.

We determine that there is persuasive evidence of an arrangement when we have a commission agreement with a health insurance carrier and a carrier reports to us that it has approved an application submitted through our ecommerce platform. Our services are complete when a carrier has approved an application. Commissions are deemed fixed or determinable and collectibility is reasonably assured when commission amounts have been reported to us by a carrier. We recognize commission override revenue when reported to us by a carrier based on the actual attainment of predetermined target sales levels or other objectives as determined by the carrier.

We recognize commission revenue when our commission is reported to us by a health insurance carrier, net of an allowance for future forfeiture amounts payable to carriers due to policy cancellations. Commissions are reported to us by a cash payment and commission statement. We generally receive these communications simultaneously. In rare instances when we receive the cash payment and commission statement separately and in different accounting periods, we recognize revenue in the period that we receive the first communication, provided we receive the second communication corroborating the amount reported in the first communication within ten business days. If the second corroborating communication is not received within ten business days, we recognize revenue in the period the second communication is received. We use the data in the commission statement to identify the members for which we are receiving a commission payment and the amount received for each member, and to estimate our allowance for forfeitures.

Certain commission amounts are subject to forfeiture in circumstances where a member has prepaid his or her premium for a future period of coverage and subsequently cancels his or her policy before the completion of that period. We record an allowance for these forfeitures based on historical cancellation experience using data provided on commission statements. The allowance for forfeitures totaled \$0.2 million at each of December 31, 2004 and 2005. Commission override revenue, which we recognize on the same basis as premium commissions, is generally reported to us in a more irregular pattern than premium commissions. As a result, our revenues for a particular quarter could be higher or lower than expectations due to the timing of the reporting of commission override revenue to us.

We also evaluate the criteria outlined in Emerging Issues Task Force (EITF) Issue No. 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent*, in determining whether it is appropriate to record the gross amount of the insurance premiums from our transactions or the net amount earned as commissions. We are not obligated with respect to the insurance coverage sold through our ecommerce platform. As a result, we recognize the net amount of compensation earned as the agent in the transaction.

We rely on health insurance carriers to report accurately and in a timely manner the amount of commissions earned by us, and we calculate our commission revenues, prepare our financial reports, projections and budgets, and direct our marketing and other operating efforts based on the reports we receive from them. It is often difficult for us to independently determine whether or not carriers are reporting all commissions due to us, primarily because the majority of our members who terminate their policies do so by discontinuing their premium payments to the carrier instead of by informing us of the cancellation. This results in our having to identify underpayment or non-payment of commissions on a policy and following up with a carrier to obtain an explanation and/or request correction of the amount of commissions paid to us. To the extent that carriers understate or fail to report the amount of commissions due to us, we will not collect and recognize revenue to which we are entitled, which would adversely affect our operating results and financial condition.

We defer revenue amounts that have been reported to us related to transactions where our services are complete, but where we cannot currently estimate the allowance for future forfeitures related to those amounts. Substantially all deferred revenue at December 31, 2005, totaling \$0.5 million, related to a single health insurance carrier that, effective January 2005, changed its basis for calculating and reporting commission amounts from a percentage of the premium it collected to a percentage of the premium it billed. Since this was the first carrier to calculate and report commission amounts on this basis, we did not have sufficient historical forfeiture experience to estimate and record an appropriate allowance for forfeitures as commission amounts were reported to us by the carrier. Accordingly, all commission amounts reported to us by the carrier in 2005 were deferred. We expect to have sufficient experience to estimate an allowance for forfeitures for this carrier in 2006, at which time all amounts previously deferred will be recorded as revenue, net of an allowance for forfeitures.

Internal-use Software and Website Development Costs

We account for internal-use software and website development costs in accordance with the guidance set forth in Statement of Position No. 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use*, and EITF Issue No. 00-2, *Accounting for Web Site Development Costs*. We capitalize costs of materials, consultants and compensation and related expenses of employees who devote time to the development of internal-use software; however, we expense as incurred all website development costs for new features and functionalities since it is not probable that they will result in additional functionality until they are both developed and tested with confirmation that they are more effective than the current set of features and functionalities on our website. Our judgment is required in determining the point at which various projects enter the states at which costs may be capitalized, in assessing the ongoing value of the capitalized costs and in determining the estimated useful lives over which the costs are amortized, which is generally three years. The net book value of capitalized internal-use software totaled approximately \$0.2 million as of December 31, 2004 and \$0.1 million as of December 31, 2005.

Stock-Based Compensation

We account for stock option grants in accordance with Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25), and comply with the disclosure provisions of Statement of Financial Accounting Standards (SFAS) No. 123, *Accounting for Stock Based Compensation* (SFAS 123), as amended by SFAS No. 148, *Accounting for Stock Based Compensation—Transition and Disclosure* (SFAS 148). Under APB 25, deferred stock-based compensation expense is recorded for the intrinsic value of options (the difference between the deemed fair value of our common stock and the option exercise price) at the grant date and is amortized ratably over the option's vesting period.

We account for equity instruments issued to non-employees in accordance with SFAS 123, EITF Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring or in Conjunction with Selling, Goods or Services*, and the Financial Accounting Standards Board (FASB) Financial Interpretation (FIN) No. 44, *Accounting for Certain Transactions Involving Stock Compensation* (FIN 44), which is an interpretation of APB 25. All transactions in which equity instruments are issued in consideration for the receipt of goods or services are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date of the fair value of the equity instrument issued is the earlier of the date on which the counterparty's performance is complete or the date on which it is probable that performance will occur.

The accounting for and disclosure of employee and non-employee equity instruments, primarily stock options, restricted common stock and Class A nonvoting common stock, and preferred and common stock warrants, requires judgment by management on a number of assumptions, including the fair value of the underlying instrument, the expected term of the outstanding instrument and the instrument's volatility. Changes in key assumptions will significantly impact the valuation of such instruments. Because there is no public market for our stock, for periods prior to the second quarter of 2005, our board of directors determined the fair value of

our common stock based upon internal valuation analyses prepared by management, which considered sales of our common stock to unrelated independent third parties. Beginning in the second quarter of 2005, our board of directors determined the fair value of our common stock based upon contemporaneous valuations by an unrelated valuation specialist. The contemporaneous valuations used the probability-weighted expected return method.

Determining the fair value of our common stock requires us to make complex and subjective judgments involving estimates of revenues, earnings, assumed market growth rates and estimated costs as well as appropriate probabilities of future events and discount rates. These estimates are consistent with the plans and estimates that we use to manage our business. There is inherent uncertainty in making these estimates.

Deferred stock-based compensation based on outstanding stock options at December 31, 2005 was approximately \$62,000. We expect to record aggregate amortization of stock-based compensation expense of \$38,000 and \$24,000 during 2006 and 2007 from these outstanding options, subject to their continued vesting. This amortization will be allocated among marketing and advertising expenses, customer care and enrollment expenses, technology and content expenses and general and administrative expenses, based upon the employee's job function.

In December 2004, the FASB issued SFAS No. 123R, *Share-Based Payment* (SFAS 123R). SFAS 123R requires measurement of all employee stock-based compensation awards using a fair value method and the recording of such expense in the consolidated financial statements. The adoption of SFAS 123R will require additional accounting related to the income tax effects, and additional disclosure regarding the cash flow effects, resulting from share-based payment arrangements. We adopted SFAS 123R on January 1, 2006. As permitted, we will continue to account for the portion of awards outstanding on or before December 31, 2005 using the provisions of APB 25 and its related interpretative guidance.

For awards after December 31, 2005, we will begin recognizing the expense associated with these awards in the income statement over the award's vesting period using the prospective method. Awards made or modified on or after January 1, 2006 will be valued using the Black-Scholes-Merton pricing model. Because the amount, terms and fair values of awards to be issued in the future are unknown, we are unable to predict the impact of the adoption of SFAS 123R on our consolidated financial statements. However, we expect that the impact could be material over time as the number of options issued and outstanding after January 1, 2006 increases.

Accounting for Income Taxes

We account for income taxes using the liability method as required by SFAS No. 109, *Accounting for Income Taxes* (SFAS 109). Under SFAS 109, deferred income taxes are determined based on the differences between the financial reporting and tax bases of assets and liabilities, using enacted statutory tax rates in effect for the year in which the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Historically, we have recorded a valuation allowance on our deferred tax assets, the majority of which relate to net operating loss tax carryforwards generated before we achieved profitability. Once we conclude that it is more likely than not that we will be able to realize the benefit of a significant portion of these deferred tax assets in the future, we will release a portion of the valuation allowance, which will result in a net tax benefit in our consolidated statements of operation.

Under certain provisions of the Internal Revenue Code of 1986, as amended, the availability of our domestic net operating losses and tax credit carryforwards are subject to limitation due to changes in ownership of more than 50% of the value of our stock. Our net operating losses and tax credit carryforwards were available without annual limitations as of December 31, 2004, based on an analysis performed as of that date. We have not performed an analysis of annual limitations of our domestic net operating loss and tax credit carryforwards subsequent to December 31, 2004.

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At December 31, 2005, we had net operating loss carryforwards of approximately \$73.6 million and tax credit carryforwards of approximately \$0.2 million for U.S. federal income tax purposes, which begin expiring in 2019. At December 31, 2005, we had net operating loss carryforwards of approximately \$43.2 million and tax credit carryforwards of approximately \$0.2 million for state income tax purposes, which begin expiring in 2007.

Our future effective income tax rate will depend on various factors, such as changes in our valuation allowance, pending or future tax law changes including rate changes and the tax benefit from research and development credits, potential limitations on the use of federal and state net operating losses and state and foreign taxes.

Results of Operations**Years Ended December 31, 2003, 2004 and 2005**

The following table sets forth our historical operating results as a percentage of revenue for the periods indicated:

	Year Ended December 31,		
	2003	2004	2005
Revenue:			
Commission	98.3%	98.6%	98.8%
Licensing and other	1.7	1.4	1.2
Total revenue	100.0	100.0	100.0
Operating costs and expenses:			
Cost of revenue	2.7	1.5	1.5
Marketing and advertising	31.5	42.1	42.6
Customer care and enrollment	27.8	25.1	21.1
Technology and content	29.7	24.7	19.3
General and administrative	23.0	17.8	17.0
Total operating costs and expenses	114.7	111.2	101.5
Loss from operations	(14.7)	(11.2)	(1.5)
Other income, net	0.3	0.2	0.6
Loss before provision for income taxes	(14.4)	(11.0)	(0.9)
Provision for income taxes	0.0	0.0	0.1
Net loss	(14.4)%	(11.0)%	(1.0)%

Revenue

	Year Ended December 31,		
	2003	2004	2005
	(in thousands, except percentages)		
Commission	\$21,868	\$29,783	\$41,237
<i>Percentage of total revenue</i>	98%	99%	99%
Licensing and other	368	432	515
<i>Percentage of total revenue</i>	2%	1%	1%
Total revenue	<u>\$22,236</u>	<u>\$30,215</u>	<u>\$41,752</u>

Revenue increased by \$11.5 million, or 38%, from 2004 to 2005 due to an increase in commission revenue resulting primarily from an increase in our membership and, to a lesser extent, an increase in the commission

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earned per member. Our estimated membership increased from 212,000 at December 31, 2004 to 275,000 at December 31, 2005.

Revenue increased by \$8.0 million, or 36%, from 2003 to 2004 due to an increase in commission revenue resulting primarily from an increase in our membership and, to a lesser extent, an increase in the commission earned per member. Our estimated membership increased from 162,000 at December 31, 2003 to 212,000 at December 31, 2004.

The following table shows the estimated number of our members as of the end of each period indicated:

	2003	2004	2005
March 31	139,000	173,000	228,000
June 30	147,000	185,000	241,000
September 30	156,000	201,000	258,000
December 31	162,000	212,000	278,000

Operating Costs and Expenses*Cost of Revenue*

	Year Ended December 31,		
	2003	2004	2005
Cost of revenue	\$ 600	\$ 447	\$ 614
<i>Percentage of total revenue</i>	3%	1%	1%

Cost of revenue increased \$0.2 million, or 37%, from 2004 to 2005 commensurate with the increase in revenue of 38%. As a percentage of total revenue, these costs remained relatively stable at 1% for both 2005 and 2004.

Cost of revenue declined \$0.2 million, or 26%, from 2003 to 2004 primarily due to a decline in revenue-sharing expense resulting from the conversion of our largest revenue-sharing partner at that time to a compensation structure based on a one-time fee when its consumer referrals resulted in a submitted health insurance application on our website, regardless of whether those applications were ultimately approved. The conversion took place during the third quarter of 2003. As a percentage of total revenue, cost of revenue declined from 3% in 2003 to 1% in 2004.

Marketing and Advertising

	Year Ended December 31,		
	2003	2004	2005
Marketing and advertising	\$7,002	\$12,732	\$17,786
<i>Percentage of total revenue</i>	31%	42%	43%

Marketing and advertising expenses increased by \$5.1 million, or 40%, from 2004 to 2005. This was primarily due to a \$4.7 million increase in advertising expense driven by significant growth in marketing partner channel expenses and, to a lesser extent, growth in expenses related to our online advertising channel. Additionally, we had a \$0.9 million increase in compensation and related expenses as a result of increased headcount and a \$0.5 million increase due to additional publicity and public relations campaigns during 2005. These increases were partially offset by a decrease of \$1.2 million in spending on certain offline advertising initiatives in 2005 as compared to 2004. As a percentage of total revenue, these expenses remained stable when compared with 2004. Our cost of acquiring a new member, which we define as total marketing and advertising

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expenses for a period divided by the number of members included on applications for individual and family product offerings submitted during the period, increased 7% from \$47.33 in 2004 to \$50.62 in 2005.

Marketing and advertising expenses increased by \$5.7 million, or 82%, from 2003 to 2004. This was primarily due to a \$4.2 million increase in expenses driven by significant growth in our online advertising channel expenses and, to a lesser extent, increases in marketing partner channel expenses. The increase in marketing and advertising expenses was also due to an increase of \$1.2 million in spending in our direct channel. As a percentage of total revenue, marketing and advertising expenses increased from 31% in 2003 to 42% in 2004. The cost of acquiring new members increased 37% from \$34.50 in 2003 to \$47.33 in 2004 primarily due to an increase in television and radio advertising expenses in 2004.

Customer Care and Enrollment

	Year Ended December 31,		
	2003	2004	2005
Customer care and enrollment	\$ 6,185	\$ 7,577	\$ 8,822
<i>Percentage of total revenue</i>	28%	25%	21%

Customer care and enrollment expenses increased by \$1.2 million, or 16%, from 2004 to 2005. This was due to higher compensation and related expenses associated with increased headcount necessary to service the increased volume of submitted applications through our website. Customer care and enrollment expenses were 21% of total revenue in 2005, a decrease from 25% in 2004 as a result of economies of scale achieved in our customer care and enrollment operations in 2005.

Customer care and enrollment expenses increased by \$1.4 million, or 23%, from 2003 to 2004. This was due primarily to higher compensation and related expenses associated with increased headcount. Customer care and enrollment expenses were 25% of total revenue, down from 28% in 2003 as a result of economies of scale achieved in our customer care and enrollment operations in 2004.

Technology and Content

	Year Ended December 31,		
	2003	2004	2005
Technology and content	\$ 6,595	\$ 7,461	\$ 8,054
<i>Percentage of total revenue</i>	30%	25%	19%

Technology and content expenses increased by \$0.6 million, or 8%, from 2004 to 2005, due primarily to higher compensation and related expenses associated with increased headcount. Technology and content expenses decreased from 25% of total revenue in 2004 to 19% in 2005 as a result of economies of scale achieved in our technology and content operations in 2005.

Technology and content expenses increased by \$0.9 million, or 13%, from 2003 to 2004, due primarily to increased compensation and related expenses associated with increased headcount. Technology and content expenses decreased from 30% of total revenue in 2003 to 25% in 2004 as a result of economies of scale achieved in our technology and content operations in 2004.

[Table of Contents](#)[Index to Financial Statements](#)*General and Administrative*

	Year Ended December 31,		
	2003	2004	2005
General and administrative	\$ 5,123	\$ 5,385	\$ 7,108
<i>Percentage of total revenue</i>	23%	18%	17%

General and administrative expenses increased by \$1.7 million, or 32%, from 2004 to 2005. The largest portion of this increase, \$0.8 million, related to increased compensation and related expenses associated with increased headcount in our finance and legal departments. Expenses for outside professional services associated with our accounting, legal and internal information technology departments increased by \$0.7 million during 2005 due to growth in our operations and process improvements in preparation for future operation as a public company. As a percentage of our total revenue, general and administrative expenses remained relatively stable compared to 2004.

General and administrative expenses increased by \$0.3 million, or 5%, from 2003 to 2004. This increase in expenses was primarily due to higher compensation and related expenses associated with increased headcount, as well as moving expenses for the relocation of both of our U.S. facilities during the year. These items were offset in part by a net reduction in outside professional service expenses during 2004. At 18% of our total revenue, general and administrative expenses decreased from 23% in 2003 as a result of our revenue growing at a higher rate than general and administrative expenses in 2004.

Other Income, Net

	Year Ended December 31,		
	2003	2004	2005
Other income, net	\$ 74	\$ 60	\$ 239
<i>Percentage of total revenue</i>	— %	— %	1%

Other income, net primarily consists of interest income earned on cash and cash equivalent balances, offset by administrative bank fees and interest expense on our capital lease obligations. Other income, net increased by \$0.2 million, or 298%, from 2004 to 2005. This increase was due primarily to a rise in the average 30-day yield paid on our cash balances, combined with an increase in our combined cash and cash equivalents balances. We experienced a \$14,000, or 19%, decrease in other income, net from 2003 to 2004. This was due primarily to a reduction in our combined cash, cash equivalents and short-term investment balances.

Provision for Income Taxes

	Year Ended December 31,		
	2003	2004	2005
Provision for income taxes	\$ —	\$ —	\$ 21
<i>Effective tax rate</i>	— %	— %	5%

We recorded a provision for income taxes in 2005 attributable to federal alternative minimum taxes currently payable due to limits on the amount of net operating losses that may be applied against income earned in 2005 under current tax regulations. In 2003 and 2004, no provision for income taxes was recorded due to our net loss position. At December 31, 2005, we maintained a full valuation allowance against our deferred tax assets based on the determination that it was more likely than not that the deferred tax assets would not be realized.

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Our future effective income tax rate will depend on various factors, such as changes in our valuation allowance, pending or future tax law changes including rate changes and the tax benefit from research and development credits, potential limitations on the use of federal and state net operating loss carryforwards and state and foreign taxes.

Quarterly Results of Operations

The following table presents our unaudited quarterly consolidated results of operations and our unaudited quarterly consolidated results of operations as a percentage of revenue for the eight quarters ended December 31, 2005. The unaudited quarterly consolidated information has been prepared on the same basis as our audited consolidated financial statements. You should read the following tables presenting our quarterly consolidated results of operations in conjunction with our audited consolidated financial statements and the related notes included elsewhere in this prospectus. These tables include all adjustments, consisting only of normal recurring adjustments, that we consider necessary for the fair presentation of our consolidated operating results for the quarters presented. The operating results for any quarter are not necessarily indicative of the operating results for any future period.

	Quarter Ended							
	Mar. 31, 2004	Jun. 30, 2004	Sep. 30, 2004	Dec. 31, 2004	Mar. 31, 2005	Jun. 30, 2005	Sep. 30, 2005	Dec. 31, 2005
	(unaudited) (in thousands)							
Revenue:								
Commission	\$ 6,410	\$ 7,141	\$ 7,834	\$ 8,398	\$ 8,924	\$ 10,116	\$ 10,726	\$ 11,471
License and other	112	105	121	94	76	85	118	236
Total revenue	6,522	7,246	7,955	8,492	9,000	10,201	10,844	11,707
Operating costs and expenses:								
Cost of revenue	96	125	113	113	120	158	163	173
Marketing and advertising (1)	2,810	3,156	3,269	3,497	3,774	4,237	4,967	4,808
Customer care and enrollment (1)	1,758	1,805	2,017	1,997	1,996	2,176	2,229	2,421
Technology and content (1)	1,754	1,841	1,918	1,948	1,870	1,955	2,091	2,138
General and administrative (1)	1,270	1,376	1,286	1,453	1,562	1,655	1,871	2,020
Total operating costs and expenses	7,688	8,303	8,603	9,008	9,322	10,181	11,321	11,560
Income (loss) from operations	(1,166)	(1,057)	(648)	(516)	(322)	20	(477)	147
Other income, net	13	6	16	25	40	53	49	97
Income (loss) before provision for income taxes	(1,153)	(1,051)	(632)	(491)	(282)	73	(428)	244
Provision for income taxes	—	—	—	—	—	—	—	21
Net income (loss)	<u>\$(1,153)</u>	<u>\$(1,051)</u>	<u>\$ (632)</u>	<u>\$ (491)</u>	<u>\$ (282)</u>	<u>\$ 73</u>	<u>\$ (428)</u>	<u>\$ 223</u>

(1) Includes stock-based compensation as follows:

Marketing and advertising	\$ 22	\$ 4	\$ 4	\$ 29	\$ 5	\$ 88	\$ 3	\$ 1
Customer care and enrollment	1	2	2	2	2	2	1	1
Technology and content	4	4	3	3	12	14	18	18
General and administrative	4	5	5	5	5	5	8	8
Total	<u>\$ 31</u>	<u>\$ 15</u>	<u>\$ 14</u>	<u>\$ 39</u>	<u>\$ 24</u>	<u>\$ 109</u>	<u>\$ 30</u>	<u>\$ 28</u>

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	Quarter Ended							
	Mar. 31, 2004	Jun. 30, 2004	Sep. 30, 2004	Dec. 31, 2004	Mar. 31, 2005	Jun. 30, 2005	Sep. 30, 2005	Dec. 31, 2005
Revenue:								
Commission	98.3%	98.6%	98.5%	98.9%	99.2%	99.2%	98.9%	98.0%
Licensing and other	1.7	1.4	1.5	1.1	0.8	0.8	1.1	2.0
Total revenue	100.0							
Operating costs and expenses:								
Cost of revenue	1.5	1.7	1.4	1.3	1.3	1.5	1.5	1.5
Marketing and advertising	43.1	43.6	41.1	41.2	41.9	41.6	45.8	41.1
Customer care and enrollment	27.0	24.9	25.4	23.5	22.2	21.3	20.6	20.7
Technology and content	26.9	25.4	24.1	22.9	20.8	19.2	19.3	18.2
General and administrative	19.5	19.0	16.2	17.1	17.4	16.2	17.2	17.2
Total operating costs and expenses	117.9	114.6	108.1	106.1	103.6	99.8	104.4	98.7
Income (loss) from operations	(17.9)	(14.6)	(8.1)	(6.1)	(3.6)	0.2	(4.4)	1.3
Other income, net	0.2	0.1	0.2	0.3	0.4	0.5	0.5	0.8
Income (loss) before provision for income taxes	(17.7)	(14.5)	(7.9)	(5.8)	(3.1)	0.7	(3.9)	2.1
Provision for income taxes	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
Net income (loss)	(17.7)%	(14.5)%	(7.9)%	(5.8)%	(3.1)%	0.7%	(3.9)%	1.9%

Our revenue increased each quarter for the periods presented. We reported net income for the first time in the second quarter of 2005 and again in the fourth quarter of 2005. In the third quarter of 2005, we incurred a net loss of \$0.4 million primarily due to a significant increase in marketing and advertising expenses resulting from an increase in applications for individual and family products submitted by consumers referred to us from our marketing partners.

Liquidity and Capital Resources

The following table presents a summary of our cash flows for the years ended December 31, 2003, 2004 and 2005:

	Year Ended December 31,		
	2003	2004	2005
	(in thousands)		
Net cash provided by (used in) operating activities	\$ (2,988)	\$ (599)	\$ 2,617
Net cash provided by (used in) investing activities	\$ (876)	\$ 5,447	\$ (1,239)
Net cash provided by (used in) financing activities	\$ 91	\$ 215	\$ (682)

Since inception, we have financed our operations primarily through private sales of equity and internally generated funds. At December 31, 2005, our cash and cash equivalents totaled \$9.4 million. Cash equivalents are comprised primarily of highly liquid financial instruments with an original maturity of three months or less from the date of purchase.

Operating Activities

Cash provided by (used in) operating activities primarily consists of net income (loss), adjusted for certain non-cash items including depreciation and amortization, stock-based compensation and the effect of changes in working capital and other activities. Our operating activities generated cash of \$2.6 million in 2005, due to a net loss of \$0.4 million, \$1.5 million in adjustments for non-cash items and \$1.5 million provided by changes in working capital and other activities. Non-cash adjustments to net loss included \$1.1 million of depreciation and

amortization and \$0.2 million of stock-based compensation expense. Working capital and other activities included an increase in accrued compensation of \$0.6 million primarily related to increased headcount, an increase in other current liabilities of \$0.2 million and \$0.5 million in deferred commission revenue.

Cash used in operating activities of \$0.6 million in 2004 was due to a net loss of \$3.3 million, offset by \$1.6 million in adjustments for non-cash items and \$1.1 million provided by changes in working capital and other activities. Non-cash adjustments to net loss included \$1.5 million of depreciation and amortization. Working capital and other activities included an increase in accrued compensation of \$0.5 million primarily related to increased headcount and an increase in accrued marketing expenses of \$0.4 million.

Cash used in operating activities of \$3.0 million in 2003 was due to a net loss of \$3.2 million and changes in working capital and other activities totaling \$1.0 million, offset by \$1.2 million in adjustments for non-cash items. Non-cash adjustments to net loss included \$1.2 million of depreciation and amortization. Working capital and other activities included a \$0.8 million decrease in other current liabilities, primarily related to a payment issued in connection with a legal settlement that we had accrued in prior years.

Investing Activities

Our investing activities primarily consist of purchases, sales and maturities of short-term investments, as well as capital expenditures associated with computer equipment and software to enhance our website and to support our growth. Short-term investments generally consist of highly liquid securities that we intend to hold for more than three months, but less than one year. These investments are carried at fair value with unrealized gains and losses, net of taxes, reported as a component of stockholders' equity. Cash used in investing activities of \$1.2 million in 2005 was primarily attributable to capital expenditures. Cash provided by investing activities of \$5.4 million in 2004 was primarily attributable to the sale of short-term investments totaling \$7.0 million, offset by \$1.6 million in capital expenditures. Cash used in investing activities of \$0.9 million in 2003 was primarily attributable to capital expenditures. We expect capital expenditures to increase in 2006 compared to 2005.

Financing Activities

Cash used in financing activities of \$0.7 million in 2005 was primarily due to \$1.0 million of costs incurred in connection with this offering, less proceeds received from the issuance of common stock pursuant to stock option exercises of \$0.4 million. Cash provided by financing activities of \$0.2 million in 2004 was primarily attributable to proceeds received from the issuance of common stock pursuant to stock option exercises. Cash provided by financing activities in 2003 of \$0.1 million was primarily due to proceeds received from the issuance of common stock pursuant to stock option exercises and the issuance of shares of our Series C preferred stock in connection with the exercise of a preferred stock warrant.

Future Needs

We believe that cash generated from operations and our current cash, cash equivalents and investments will be sufficient to fund our operations for at least the next 12 months. Our future capital requirements will depend on many factors, including our level of investment in technology and advertising initiatives. Although we are currently not a party to any agreement or letter of intent with respect to investments in, or acquisitions of, complementary businesses, products or technologies, we may enter into these types of arrangements in the future, which could also require us to seek additional equity or debt financing. We currently do not have any bank debt, line of credit facilities or other borrowing arrangements. In the event that additional financing is required, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, operating results and financial condition will likely be harmed.

Contractual Obligations and Commitments

The following table presents a summary of our contractual obligations and commitments as of December 31, 2005:

	1 Year	2 Years	Payment Due Within		5 Years	Total
			3 Years	4 Years		
	(in thousands)					
Capital lease obligations	\$ 12	\$ 18	\$ —	\$ —	\$ —	\$ 30
Operating lease obligations	1,281	1,124	1,149	933	265	4,752
Service obligations	145	175	210	250	—	780
Total	<u>\$ 1,438</u>	<u>\$ 1,317</u>	<u>\$ 1,359</u>	<u>\$ 1,183</u>	<u>\$ 265</u>	<u>\$ 5,562</u>

Capital Lease Obligation

As of December 31, 2005, we had one capital lease obligation related to office equipment, which expires in December 2007.

Operating Lease Obligations

In August 2004, we signed a lease agreement for our headquarters in Mountain View, California. This facility is leased under a non-cancelable operating lease that expires in 2009, with a renewal option at fair market value for an additional five-year period. In December 2004, we moved our customer care center from Folsom, California to Gold River, California and entered into a non-cancelable sixty-five month lease which expires in 2010. We also lease other facilities in the United States and China under non-cancelable operating leases that range in terms from one to two years. Certain of these leases have free or escalating rent payment provisions. We recognize rent expense on our operating leases on a straight-line basis over the terms of the leases. In addition, we lease equipment under operating leases that range in terms from three to five years, the latest of which expires in January 2009.

Service Obligations

In November 2005, we entered into an agreement with a third-party service provider to provide certain information services for our website. The agreement provides for escalating monthly payments through December 2009. We recognize expense under the agreement on a straight-line basis over the term of the agreement.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements, investments in special purpose entities or undisclosed borrowings or debt. Additionally, we are not a party to any derivative contracts or synthetic leases.

Quantitative and Qualitative Disclosures About Market Risk**Interest Rate Sensitivity**

As of December 31, 2005, we had cash and cash equivalents of \$9.4 million, which consisted primarily of highly liquid money market instruments with original maturities of three months or less. Because of the short-term nature of these instruments, a sudden change in market interest rates would not be expected to have a material impact on our financial condition or results of operations.

The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk. Some of the securities in which we invest may be subject to market risk. This means

that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. To minimize this risk in the future, we intend to maintain our portfolio of cash equivalents and short-term investments in a variety of securities, including commercial paper, money market funds, debt securities and certificates of deposit. We do not use financial instruments for trading or other speculative purposes, nor do we use leveraged financial instruments.

Foreign Currency Exchange Risk

To date, all of our revenue has been derived from transactions denominated in United States Dollars. We have exposure to adverse changes in exchange rates associated with operating expenses of our foreign operations, which are denominated in Chinese Renminbi, but we believe this exposure to be limited. We have not engaged in any foreign currency hedging or other derivative transactions to date.

Recent Accounting Pronouncements

In December 2004, the FASB issued SFAS No. 123R, *Share-Based Payment* (SFAS 123R). SFAS 123R requires measurement of all employee stock-based compensation awards using a fair value method and the recording of such expense in the consolidated financial statements. The adoption of SFAS 123R will require additional accounting related to the income tax effects, and additional disclosure regarding the cash flow effects, resulting from share-based payment arrangements. We adopted SFAS 123R on January 1, 2006. As permitted, we will continue to account for the portion of awards outstanding on or before December 31, 2005 using the provisions of APB 25 and its related interpretative guidance.

For awards after December 31, 2005, we will begin recognizing the expense associated with these awards in the income statement over the award's vesting period using the prospective method. Awards made or modified on or after January 1, 2006 will be valued using the Black-Scholes-Merton pricing model. Because the amount, terms and fair values of awards to be issued in the future are unknown, we are unable to predict the impact of the adoption of SFAS 123R on our consolidated financial statements. However, we expect that the impact could be material over time as the number of options issued and outstanding after January 1, 2006 increases.

In September 2005, the EITF issued EITF 05-06, *Determining the Amortization Period for Leasehold Improvements after Lease Inception or Acquired in a Business Combination* (EITF 05-06). EITF 05-06 requires that leasehold improvements acquired in a business combination be capitalized over the shorter of the useful life of the assets or a term that includes required lease periods and renewals that are deemed to be reasonably assured at the date of acquisition. EITF 05-06 also requires leasehold improvements that are placed in service significantly after and not contemplated at or near the beginning of the lease term should be amortized over the shorter of the useful life of the assets or a term that includes required lease periods and renewals that are deemed to be reasonably assured (as defined in paragraph 5 of Statement 13, *Accounting for Leases*) at the date the leasehold improvements are purchased. EITF 05-06 is effective for leasehold improvements that are purchased or acquired in reporting periods beginning after June 29, 2005. Early adoption of the consensus is permitted in periods for which financial statements have not been issued. We do not expect the adoption of EITF 05-06 to have a material effect on our consolidated financial position or results of operations.

BUSINESS

Overview

We are the leading online source of health insurance for individuals, families and small businesses. We are licensed to market and sell health insurance in all 50 states and the District of Columbia. We have invested significant time and resources in building a scalable, proprietary ecommerce platform, and we have developed partnerships with over 140 health insurance carriers, enabling us to offer more than 5,000 health insurance products online. Our ecommerce platform can be accessed directly through our website addresses (www.ehealth.com and www.ehealthinsurance.com) as well as through our broad network of marketing partners. We organize and present voluminous and complex health insurance information in a user-friendly format and enable consumers to choose from a wide variety of health insurance products. Our platform enables individuals, families and small businesses to research, analyze, compare and purchase health insurance products that best meet their needs. Our technology also enables us to communicate electronically with our insurance carrier partners and process consumers' health insurance applications online. As a result, we simplify and streamline the complex and traditionally paper-intensive health insurance sales and purchasing process.

Industry Background

The Internet has emerged as a highly efficient and cost-effective medium that enables millions of consumers and businesses to research, compare, select and purchase products and services online. The growth of ecommerce has been driven by increased awareness of the product selection and information available online, the convenience of shopping online, continued improvement in network infrastructure and payment security and growing consumer access to high-speed Internet connections. Ecommerce offers the potential to streamline complex processes, lower costs and improve productivity. The Internet has revolutionized the distribution of many products and services of large and complex industries, including brokerage, banking and auction services. We believe the Internet is also transforming the distribution of health insurance.

Health Insurance Industry

The private health insurance market is large and growing. Aggregate private health insurance premiums in the United States were estimated by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to be \$658 billion in 2004, and have increased consistently over time, largely unaffected by economic cycles. The private health insurance market consists of three primary segments: large employers, small businesses (businesses with fewer than 100 employees) and the individual and family market (direct purchasers of health insurance). Large employers and small businesses have experienced substantial health insurance premium inflation in recent years and, as a consequence, are increasingly seeking to reduce the costs associated with providing health insurance to their employees. Actions taken by employers include offering fewer benefits to employees, reducing or eliminating dependent coverage, increasing employees' health insurance premium contributions, increasing plan deductibles, and eliminating health insurance coverage altogether. A 2005 survey by the Kaiser Family Foundation found that from 2001 to May 2005, the percentage of large and small business employees receiving health insurance benefits from their employers dropped from 69% to 60%. Typically, the only options for individuals who lose coverage are to obtain health insurance in the individual and family market, attempt to qualify for government-subsidized benefits or remain uninsured.

The individual and family segment is a well-established and significant component of the private health insurance market. According to the U.S. Census Bureau, approximately 17 million Americans directly purchased their health insurance coverage from an individual or family health insurance plan in 2004. Many of these individuals are among the 10 million self-employed whose occupations range from gardeners, electricians and plumbers to physicians and attorneys. We believe that the individual and family market will continue to grow as a result of the increasing number of self-employed individuals, growing awareness of the availability and affordability of individual and family health plans and rising health benefit cost pressures in the employer

segments. Recognizing this market opportunity, many large insurance companies including Aetna, Humana and UnitedHealthcare have begun to offer health insurance products in the individual and family market.

The uninsured represent another significant growth opportunity for the individual and family markets. The U.S. Census Bureau estimates that in 2004 over 45 million Americans did not have health insurance. According to the U.S. Census Bureau, approximately 16 million of the uninsured population are members of families with annual incomes of \$50,000 or more, including more than 8 million with annual incomes of \$75,000 or more. In addition, the National Center for Policy Analysis reported that households with annual incomes of \$50,000 or more accounted for approximately 90% of the increase in the number of uninsured over the ten years prior to 2004. Based on these statistics, we believe that there is a large population of uninsured individuals who can afford to obtain health insurance in the individual and family market.

Small business health insurance is also a large segment of the private health insurance market. Small businesses employ more than half of the private sector workforce and represent 99% of all businesses in America, according to a 2004 report by the U.S. Small Business Administration Office of Advocacy. The Employee Benefits Research Institute estimated that in 2003 small businesses provided health insurance benefits to 28 million Americans. Furthermore, statistics and small business surveys indicate that many small businesses are currently not providing health insurance to their employees because they are unaware of the availability of affordable health insurance products. According to a report released in May 2005 by the National Federation of Independent Business Research Foundation and Wells Fargo Bank, 66% of small businesses surveyed in 2004 stated that the rising cost of health insurance was a “critical problem,” as compared to 47% of small businesses surveyed in 2000. This same survey found that since 1986, healthcare costs have remained the number one “critical problem” for small businesses. We believe that these statistics suggest that a large number of small businesses would provide health insurance benefits to their employees if made aware of affordable, high-quality health insurance options.

The large size of the existing individual, family and small business health insurance markets, combined with the growing number of self-employed individuals and small businesses, the large and increasing number of uninsured and declining health benefits offered by employers, create a significant opportunity to provide health insurance to individuals, families and small businesses.

Traditional Distribution of Health Insurance to Individuals, Families and Small Businesses

The process of selling and purchasing individual, family and small business health insurance is highly localized and has not changed significantly in over 50 years. Individual, family and small business health insurance has historically been sold by independent insurance agents and, to a much lesser degree, directly by insurance companies. Most of these agents are self-employed or part of small agencies, and they typically service only their local communities. In addition, many of these agents sell health insurance from a limited number of insurance carriers (in some cases only one), resulting in a reduced selection of products for the consumer.

Large brokers such as Aon Insurance Services, Arthur J. Gallagher & Co., Marsh, Inc. and Willis Group Limited as well as many regional brokers and agencies, have not historically addressed the individual, family and small business markets. Instead, they have primarily limited their marketing and sales efforts to large or mid-sized employers, where they can amortize the significant documentation and distribution costs over a large number of plan participants and often charge their clients a broker’s fee. We believe that the lack of attention provided to the individual, family and small business health insurance markets by these agencies has left these markets underserved and highly fragmented.

The purchase and sale of health insurance has historically been a complex, time-consuming and paper-intensive process. Health insurance terminology, insurance plan types (e.g., HMO, PPO, POS indemnity plans) and provisions are often confusing and difficult to understand. Each plan is unique, offering different coverage, premiums, co-payment requirements and deductibles, among other provisions. In addition, different kinds of care

are covered at different levels within a particular insurance plan, from outpatient care or lab and x-ray work to inpatient care related to emergencies and hospitalization. Other services such as maternity, in-home or mental healthcare can all be covered at different rates by different plans. This complexity can make it difficult to make informed health insurance decisions. In addition, the human error that arises from traditional paper-intensive distribution has historically resulted in a high number of incomplete and inaccurate applications being submitted to health insurance carriers. Incomplete and inaccurate paper applications often result in back-and-forth communications, delay and additional cost.

Extensive state government regulation further complicates the health insurance industry and has made the traditional distribution of health insurance on a national basis difficult. State insurance regulators require that carriers and agents be licensed by each state in which they sell and adhere to sales, documentation and administration practices specific to that state. Federal laws govern how carriers and agents collect and use personal health and financial information. These regulations result in high costs of nationwide market entry and high continuing costs associated with ongoing regulatory compliance.

Pricing must also meet state regulatory requirements and, once health insurance pricing is set by the carrier and approved by state regulators, it is fixed and not generally subject to negotiation or discounting by health insurance companies or agents. As a result, the profitability of distributing a particular health insurance product is determined primarily by the costs of marketing, selling and administering that particular product. We believe that the set pricing of health insurance products creates significant competitive advantages for a business with a more efficient distribution process.

For the individual, family and small business health insurance markets, the Internet's convenient, information-rich and interactive nature offers both the opportunity to provide consumers with more organized information and a broader choice of products than are typically available from traditional health insurance distribution channels. The Internet also offers a means of providing up-to-date health insurance information and products 24 hours a day, seven days a week, and reduces the cost and time associated with marketing, selling, underwriting and administering health insurance products. According to a November 2004 survey by the Pew Internet and American Life Project, over 30% of all Internet users have already searched online for information on health insurance. We believe that individuals, families and small businesses will rapidly adopt a new health insurance distribution medium that harnesses the power of the Internet to address the weaknesses in the current distribution channels.

Our Solution

We are the leading online source of health insurance for individuals, families and small businesses. We are licensed to market and sell health insurance in all 50 states and the District of Columbia. We have invested significant time and resources in building a scalable, proprietary ecommerce platform, and we have developed partnerships with over 140 health insurance carriers as of December 31, 2005, enabling us to offer more than 5,000 health insurance products online. Our ecommerce platform can be accessed directly through our website addresses (www.ehealth.com and www.ehealthinsurance.com) as well as through our broad network of marketing partners. We organize and present voluminous and complex health insurance information in a user-friendly format and enable consumers to choose from a wide variety of health insurance products. Our platform enables individuals, families and small businesses to research, analyze, compare and purchase health insurance products that best meet their needs. Our technology also enables us to communicate electronically with our insurance carrier partners and process consumers' health insurance applications online. As a result, we simplify and streamline the complex and traditionally paper-intensive health insurance sales and purchasing process. We estimate that as of December 31, 2005, we had more than 275,000 members. We define a member as an individual currently covered by an insurance product for which we are entitled to receive compensation.

We believe that our ecommerce platform provides our health insurance carrier partners access to new and profitable business. For example, more than 40% of our members were uninsured prior to obtaining health

insurance through us, according to an October 2005 survey of our members. We are a leading sales originator for many of the nation's leading carriers, including Aetna, Humana, Kaiser Permanente, PacifiCare, Unicare, UnitedHealthcare and a number of leading BlueCross BlueShield carriers. We also enable carriers to reduce their processing costs, expand into new markets and gather and utilize relevant market data.

We serve as a trusted resource for objective information relating to health insurance and its affordability. Beginning in 2002, we have published several reports, including *The Cost and Benefits of Individual Health Insurance Plans*, *Trends in Health Savings Accounts* and *The Most Affordable Cities for Health Insurance*. We take an active role in health insurance reform by working with government policymakers and legislators to make health insurance more accessible and affordable. We believe that these activities provide greater awareness of the availability and affordability of health insurance and enhance our brand recognition among our members, marketing partners and carrier partners.

Our financial model is characterized by recurring revenue, an average member life that exceeds two years and health insurance pricing that is set by each carrier and approved by state regulators. We generate revenue primarily from commissions we receive from health insurance carriers whose policies are purchased through us by individuals, families and small businesses. We typically receive commission payments on a monthly basis for as long as a policy remains active. As a result, much of our revenue for a given financial reporting period relates to policies that we sold prior to the beginning of the period and is recurring in nature. Because health insurance pricing is set by the carrier and approved by state regulators, health insurance pricing is fixed. We, therefore, are not generally subject to negotiation or discounting of prices by health insurance carriers or our competitors.

Our Strategy

Our objective is to continue to strengthen our position as the leading online distribution platform for health insurance sold to individuals, families and small businesses.

Key elements of our strategy are to:

Increase Our Brand Awareness. We believe that building greater awareness of our brand is critical for our continued growth. A significant percentage of our website traffic is direct, and we intend to grow our direct website traffic by strengthening our brand awareness through a variety of marketing and public relations efforts that highlight our company as a leading source of objective health insurance information and affordable health insurance plans for individuals, families and small businesses.

Offer the Best Consumer Experience. We believe that providing the best consumer experience increases market adoption of our services, builds our brand awareness, drives word-of-mouth referrals and improves our visitor-to-member conversion rates. We intend to continue to further develop an online experience that empowers consumers with the knowledge, choice and services they need to select and purchase health insurance plans that best meet their needs. We also intend to continue to offer a wide selection of health insurance products, including tax-advantaged products such as Health Savings Account-eligible health plans that make health insurance more affordable and accessible for consumers.

Extend Our Technology Leadership. We believe that our technology infrastructure and online platform give us a significant competitive advantage for the distribution of individual, family and small business health insurance. For example, our Electronic Processing Interchange and instant membership features reduce the time between application and enrollment. To extend our leadership position, we plan to continue to enhance our platform and its key capabilities to increase functionality, reliability, scalability and performance. In addition, we intend to continue to explore new ways to leverage and enhance our technology, including the licensing of our technology to carriers, enabling them to market and sell their products online, the introduction of new products and services, and our entry into new markets.

Broaden Our Carrier Network. We intend to continue to add new health insurance carriers to our ecommerce platform and expand our existing carrier relationships. We seek to deepen our technology integration with our carrier partners, allowing us to further streamline the sales process and increase revenue opportunities for us and our carrier partners. In addition, we intend to work closely with our carrier partners to help them more efficiently utilize our ecommerce platform to access previously underserved markets.

Expand Our Network of Marketing Partners and Other Member Acquisition Programs. We believe that a balanced member acquisition program is critical to the success of our business. We plan to continue to develop and expand our marketing relationships with banking, insurance, mortgage and other services and association partners. We expect to expand our joint marketing programs with these partners to drive awareness of our online platform to their customer and member bases. We also plan to continue our investments in other member acquisition sources such as paid search and other forms of online advertising.

Continue Our Public Policy and Legislative Assistance and Support. We plan to continue to serve as a resource regarding the health insurance market to legislative and public policy organizations, without regard to political affiliation, as well as serve as an advocate for affordable and accessible health insurance. As a result of the studies conducted and reports published by us, we have become a trusted authority in the health insurance industry and among key decision makers in the government. We believe these efforts contribute a valuable public service, increase our brand awareness and allow us to work more effectively with our marketing and carrier partners.

Our Platform and Services

Our ecommerce platform organizes and presents voluminous and complex health insurance information in an unbiased and objective format and empowers individuals, families and small businesses to research, analyze, compare and purchase a wide variety of health insurance products. As of December 31, 2005, we offered more than 5,000 health insurance plans from over 140 health insurance carriers, representing the largest health insurance product portfolio available online. The products we offer include major medical health insurance coverage such as preferred provider organization, health maintenance organization and indemnity plans, short-term medical insurance, student health insurance and ancillary products such as dental, vision and life insurance.

Key elements of our platform include:

Online Rate Quoting and Comprehensive Plan Information. Our ecommerce platform instantly provides consumers online rate quotes and comprehensive plan benefit information from a large number of health insurance carriers. After entering a minimal amount of relevant information on our website, such as zip code, gender, age, smoker or non-smoker and student status, the consumer instantly receives a comprehensive list of applicable health insurance products and benefit information in an easy-to-understand format. This information includes each plan's rates, benefits and features, as well as the financial stability ratings of the health insurance carrier. The list also highlights sponsored plans (plans that our carriers pay us for preferred placement on our website) and our best sellers (the most popular plans in the consumer's market). The consumer can sort through the quoted plans based on price, health insurance carrier, deductible amount, or search the list of quoted plans to obtain a subset based on various consumer preferences.

Plan Comparison and Recommendations. Our ecommerce platform enables consumers to compare and contrast health insurance plans in a side-by-side format based on plan characteristics such as price, plan type, deductible amount, co-payment amount and in-network and out-of-network benefits. To further assist consumers in choosing a health insurance plan that best meets their needs, our platform can provide consumers with personalized recommendations. Our automated recommendation capability presents a short series of questions and recommends up to four health insurance plans based on the consumer's input.

Online Application and Enrollment Forms. Our online application process offers our consumers significant improvements over the traditional, paper-intensive application process. It employs dynamic business

logic to help individuals and families complete application and enrollment forms correctly in real-time. This reduces delay resulting from application rework, a significant problem with traditional health insurance distribution, where incomplete applications are mailed back and forth between the consumer, the traditional agent and the carrier. We further simplify the enrollment process by accepting electronic signature and electronic payment from our consumers. Approximately 80% of our individual, family and short-term applications in 2005 were submitted online with no communication with a sales representative in our customer care center. Additionally, more than 50% of our applications in 2005 were completed using our electronic payment and signature technology.

Electronic Processing Interchange. Our Electronic Processing Interchange (EPI) technology integrates our online application process with health insurance carriers' technology systems, enabling us to electronically deliver our consumers' applications to health insurance carriers. This expedites the application process by eliminating manual delivery and reducing the need for data entry and human review. Through EPI, we also receive automatic alerts and data feeds from carriers, such as notification of underwriting approval or a request from a carrier for a consumer's medical records for underwriting purposes, which we then relay electronically to the consumer. These features of our service help prevent applications from becoming delayed or rejected through inactivity of the consumer or the carrier. EPI accelerates the application process; while the traditional paper-intensive application required approximately 44 days to be approved in 2005, EPI helped to reduce that time by at least 50% in 2005. One of our carriers has also implemented instant membership, a technology that allows our applicants to be approved immediately upon their online submission of the application and to obtain health insurance coverage the following day.

Customer Care Center. At any step of the application process, consumers can obtain help from one of our licensed sales and customer service representatives through email, web-based chat or our toll-free telephone number. Our customer care center, which is divided into three general areas consisting of customer care, enrollment and customer service, had over 120 employees, 53 of whom were licensed agents, as of December 31, 2005. To promote unbiased carrier and plan recommendations, our representatives are compensated irrespective of the health insurance plan we sell. Our representatives use our proprietary consumer relationship management system to provide high-quality service to a much larger number of consumers than a local agent can service using traditional sales methods. Our system, which establishes a work queue protocol for each consumer request, enables our representatives to track each application, obtain real-time updates from the carrier, transmit information to the carrier, automatically generate and send emails specific to each consumer and carrier and cross-sell the consumer additional products and services.

We service the special needs of small businesses through our customer care center. Small businesses often do not have dedicated human resources personnel to design and administer a benefits program for their employees. To assist our small business members, we maintain a dedicated staff of small business customer service specialists. These agents are licensed in multiple jurisdictions so that, at any time, we have expertise available to small businesses in all 50 states and the District of Columbia. We also offer our small business members access to an online enrollment center so that their employees have the tools they need to better self-manage their health plan coverage. Because of the knowledge and expertise we have gained from working with hundreds of thousands of members, we believe that we offer our small business members a high level of service and expertise.

Carrier Relationships

As of December 31, 2005, we sold health insurance products for over 140 health insurance carriers, including large national carriers such as Aetna, Humana and UnitedHealthcare, over 35 BlueCross BlueShield carriers, and well-established regional carriers such as Golden Rule, Health Net, Kaiser Permanente, PacifiCare and Unicare.

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We offer substantial benefits to health insurance carriers, including:

Increased New Sales. A primary benefit that we offer health insurance carriers is the substantial new business that we bring them. Since a significant percentage of our new members were uninsured when they obtained health insurance through us, we believe we are capturing new markets for carriers rather than simply moving market share from one carrier distribution channel to another carrier distribution channel, or from one carrier to another carrier.

Efficient Access to New Members and Markets. Our ecommerce platform enables health insurance carriers to efficiently provide their products to new consumers, including the fragmented and geographically dispersed individual, family and small business markets. Through our ecommerce platform, carriers can more cost-effectively reach a larger number of potential consumers than they can using traditional distribution channels. In addition, our ability to efficiently distribute health insurance products nationwide allows carriers to quickly enter new regions and introduce new products. Our platform also allows carriers to quickly and cost-effectively test new health insurance products and prices in existing and new markets.

Reduced Costs. Our ecommerce platform significantly reduces the costs associated with traditional paper-intensive distribution that is otherwise borne by our carrier partners. Our carrier partners save significant time and expense because our platform reduces the labor involved in reviewing, correcting and reworking applications. Our EPI technology also reduces and often eliminates the need for data entry, paper-intensive communication and human interaction during the sales process.

Access to Relevant and Timely Market Data. As a provider of a broad variety of health insurance plans in all 50 states and the District of Columbia, we are a unique source of market data for our carrier partners. We collect, aggregate and report on market trends regarding plan features, pricing, demand and consumer demographics, allowing our carrier partners to quickly react to changing market conditions and optimize their business processes. With our data, carriers can better design plan benefits and pricing to meet consumers' needs.

We derive commission revenue under separate agreements with several health insurance carriers that are owned by WellPoint, as well as health insurance carriers owned by UnitedHealthcare. The carriers owned by WellPoint and UnitedHealthcare represented 23% and 22% of our total revenue in 2005. Our contract with Golden Rule Insurance Company, which is owned by UnitedHealthcare, represented 17% of our total revenue in 2005, and our contract with Blue Cross of California and Unicare, which are owned by WellPoint, represented 15% of our total revenue in 2005.

Marketing

Our marketing strategy is to continue to build a large and loyal member base by providing superior value to our members. We focus on building brand awareness, increasing website visitors and converting visitors into buyers. Our marketing initiatives are varied and numerous. They include:

Direct Marketing. We attract new consumers through paid search advertising and unpaid (natural) search listings on leading search engines such as Google, MSN and Yahoo!. Our other Internet marketing programs include banner advertising, email marketing and a partnership with leading online portal MSN pursuant to which we are the exclusive provider of online individual and family health insurance purchasing services on MSN. We utilize print marketing campaigns, direct response advertising and viral marketing initiatives to increase website visitors. We also use site design, unique content, proprietary segmentation and decision-making tools to increase the relevance and appeal of our service.

Partner Marketing. We have established a pay-for-performance network, comprised of hundreds of partners that drive consumers to our ecommerce platform. These partners fall into three general categories:

- Financial and online services partners in industries such as banking, insurance, mortgage, association and other financial services, including Aetna, Aon, Bank of America, Cargill, Countrywide, Esurance,

Gallagher, Insurance.com, LowerMyBills, NFIB, Paychex, Sallie Mae, Sovereign Bank, UnitedHealthcare, Wells Fargo, Willis and Zurich.

- Affiliate programs, including Commission Junction and our own established affiliate program. By aggregating hundreds of website publishers, both small and large, through our affiliate programs, we broadly promote our brand and services over the Internet.
- Online advertisers and content providers that are specialists in paid and unpaid (natural) search, as well as specialists in other types of Internet marketing. We have established relationships with advertisers who, through keyword search and other strategies, identify consumers seeking health insurance on the Internet.

Many of our partners agree to an initial two-year term contract that contains an automatic renewal clause for subsequent one-year periods. In addition, many of our partners are contractually required to promote our services on an exclusive basis. We generally compensate our partners for their consumer referrals on a submitted health insurance application basis. If a partner is a licensed agent, we may share a percentage of the revenue we earn from the carrier for each member referred by that partner.

Public Relations. We manage a broad and comprehensive public relations program that generates awareness and credibility among uninsured and insured individuals, families and small businesses nationwide. We have received national coverage in publications such as Business Week, CBS MarketWatch, Forbes, Kiplinger's Personal Finance and Time, as well as numerous daily newspapers including The New York Times, USA Today and The Wall Street Journal. We have also received coverage on local and national TV and radio in major U.S. cities. Beginning in 2002, we have published several reports each year, including *The Cost and Benefits of Individual Health Insurance Plans*, *Trends in Health Savings Accounts* and *The Most Affordable Cities for Health Insurance*.

Government Relations. We serve as a trusted source of unbiased information about health insurance to government officials and policy makers. Our executives have met with members of Congress and their staffs, with the White House and with other federal agencies. For example, our executives have testified before Congress to support initiatives for the affordability and accessibility of health insurance. In addition, we were the only health insurance industry company asked to speak at the White House Economic Conference in December 2004. We have also taken an active role in the debate over new health insurance legislation in Washington, D.C., including Health Savings Account legislation. Some examples of legislation on which we are currently working with members of Congress include bills that would provide a tax credit for health insurance premiums, a tax credit for small business Health Savings Accounts and tax deductibility for individuals that buy health insurance coverage. We promote laws that make health insurance accessible and affordable.

Technology

Since our inception in 1997, we have invested significant financial and human resources in building a unique and scalable, proprietary ecommerce platform. We were the first to bring to consumers several technologies that have streamlined the complex and traditionally paper-intensive health insurance sales process. These technologies include:

Universal Quoting Engine. Our proprietary quoting engine aggregates and unifies health insurance policy quotes from a large number of health insurance carriers. Because each carrier's quoting algorithm is unique and there is no industry standard algorithm among carriers, we utilize our proprietary rate entry and management tools and datagate system to unify the rates for each carrier's health insurance plans. This technology allows for rapid implementation of quoting services and direct comparison of different plans.

Plan Comparison and Selection Tools. We offer online comparison and recommendation tools that distill voluminous health insurance information and enable consumers to select health insurance plans that best meet their particular needs. Our patent-pending compare-and-choose functionality presents benefit information in an

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easy-to-understand format and highlights certain plans based on various criteria. We also provide consumers with a patent-pending recommendation tool that dynamically interacts with the consumer and presents an unbiased list of recommended plans.

Application Designer Tool and Runtime Engine. Health insurance applications vary widely by carrier and state. Our proprietary graphical application designer tool allows us to capture each application's unique business rules and build a corresponding online application in XML format that can be instantly deployed to our website. Our XML-based application runtime engine is the underlying infrastructure of our online application process. Based on the metadata created through the application designer tool, the runtime engine dynamically generates carrier-specific online pages and screen flow controls, and checks and enforces business rules and application underwriting logic.

Online Application Process. Our online applications substantially streamline the traditional, paper-intensive health insurance application process. Because each carrier and each plan require different information, our online applications are dynamic and request only the information required in the particular circumstance. Our system also checks each answer to each question and immediately notifies the applicant of any missing information. This real-time process prevents reworks from the health insurance carrier, a serious problem in the paper-intensive insurance process where weeks are lost as incomplete applications are mailed back and forth between carriers, agents and applicants. Approximately 80% of our individual, family and short-term applications in 2005 were submitted online with no communication with a sales representative in our customer care center.

Electronic Processing Interchange. We have developed a patent-pending Electronic Processing Interchange (EPI) technology to simplify the enrollment process and better integrate our technology systems with those of the health insurance carriers whose plans we offer. To implement EPI, we build and host a proprietary extranet that supports both real-time and batch interfaces for carriers. EPI enables carriers to search, retrieve, print, download and update consumers' health insurance applications. Carriers can upload enrollment files in XML format through our extranet. EPI also utilizes XML delivery of status files from health insurance carrier systems to ours, allowing us to monitor and track the status and progress of each application. We then provide this real-time information to our consumers through their private accounts on our website as well as through automatically generated emails.

Our EPI technology leverages eSign and ePayment to enable consumers to complete the entire health insurance purchasing process online. We take advantage of the Electronic Signatures in Global and National Commerce Act of 2000 by permitting applicants to apply for health insurance without the need to print, physically sign and mail the application. We believe that we were the first to apply eSign and ePayment to the distribution of health insurance. More than 50% of our applications in 2005 were completed using our electronic payment and signature technology.

Through EPI, we also offer consumers the opportunity to obtain coverage instantly from one carrier without any underwriting delay. With instant membership, at the end of the online application process, we send the application file to the carrier and receive an approval number that we automatically relay to the applicant. Applicants who apply using instant membership can be immediately approved by a carrier and enjoy health insurance coverage the next day.

As of December 31, 2005, approximately 85% of the individual and family plan carriers represented on our website had implemented all or a portion of our EPI technology, and in 2005 approximately 68% of the consumers applying for individual and family health insurance products applied using our EPI technology when we made it available.

Application Archival. Our online sales process necessitates the collection of online application data and translation of this data without modification to a fixed version of the application. Each time an online application

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is submitted on our website, our proprietary archival system collects and merges the application data with a PDF template. The system then creates, encrypts and securely stores the resulting application form. This process ensures that the application generated, stored and reviewed by the consumer at the time of submission is secure and unchangeable.

Datagate for Electronic Interchange. Our proprietary datagate system facilitates electronic data interchange with our carrier partners. The types of data transferred include applications, rates and benefits, underwriting statuses and membership information. Our system supports many different methods of communication that are implemented based on the partner's capabilities and preferences, including HTTPS, web services and FTP.

Back Office Systems. Our proprietary back office customer relationship management system enables us to provide a full range of customer service tasks in an efficient, highly scalable and personalized manner. Using these tools, we can track each consumer throughout the application process, obtain real-time updates from the carrier, generate automated emails specific to each consumer and access a cross-sell engine and dashboard to identify and track cross-sell opportunities. Our auto-email system is feature-rich with HTML capability, customizable merge tags, granular segmentation and tracking capability.

Partner Tools. We support our marketing partners with different customization features. Our partner registration and management tool quickly configures partner portals with various customization options, including branding, email capture, product offering and customized content such as articles and links. We also support partner reporting extranets that provide partners with up-to-date information on the performance of their portals, resources for online marketing and search optimization and the ability to generate customized reports.

Modular Architecture and Deployment Process. Our system is comprised of four major areas: front office, back office, datagate and various services. Each area is deployed independently into different hosting servers to ensure maximum availability. We release our software periodically (typically weekly) using a vigorous release process that integrates scheduled changes from multiple development code branches into several testing and staging environments. We have developed various deployment tools and regression testing scripts to ensure the quality of our releases.

Security. We seek to offer our website visitors, members and insurance carrier partners industry-leading levels of reliability and security. Our ecommerce platform has been designed to handle large and expanding volumes of visitor traffic, health insurance quote requests and health insurance applications. We believe the facilities supporting this platform have ample bandwidth capacity and power and backbone redundancy to support the current and anticipated near-term growth of our business. We rely in part on third-party vendors, including data center and bandwidth providers, to support our ecommerce platform. We use third-party encryption technology to facilitate the secure transmittal of confidential information. Additionally, we incorporate a multi-level firewall infrastructure to help prevent unauthorized access to our systems and data, and have implemented intrusion detection systems.

Technology and Content

We have a large and experienced technology and content team consisting of 103 full-time employees as of December 31, 2005 located in our Mountain View headquarters and in our technology center in Xiamen, China. We also operate a separate technology center with Xiamen University where researchers from the University work with us on various ecommerce research projects. We spent \$6.6 million, \$7.5 million, and \$8.1 million in 2003, 2004 and 2005 to fund our technology and content activities during those periods. Ongoing enhancements to the features and functionality of our ecommerce platform are critical to maintain our technological leadership position in the industry. Our technology and content team was responsible for the initial development of our ecommerce platform and website user interface as well as the creation of the features and functionality we offer to consumers. These features include our EPI, online rate quoting engine, plan comparison tool and instant membership technology.

Current initiatives include development of technology that collects and analyzes consumer behavior and, based on this data, dynamically modifies the consumer's online experience. We are also seeking to extend our real-time underwriting and instant membership technology to more carriers and to develop new tools that further improve our platform's ability to dynamically search for plans and benefits.

Government Regulation and Compliance

Government Regulation. We distribute health insurance products in all 50 states and in the District of Columbia through agency licenses held by us as is required by each state's insurance department (in the case of the state of Florida, we conduct insurance business under the individual license of one of our employees, as required by Florida law). The health insurance industry is heavily regulated. Each state and the District of Columbia has its own rules and regulations pertaining to the offer and sale of health insurance products, typically administered by its Department of Insurance. State insurance departments have broad administrative powers relating to, among other things:

- regulating premium prices;
- granting and revoking licenses to transact insurance business;
- approving individuals and entities to which commissions can be paid;
- regulating advertising, marketing and trade practices;
- monitoring broker and agent conduct; and
- imposing continuing education requirements.

We are required to maintain valid life and/or health agency and/or agent licenses in each jurisdiction in which we transact health insurance business. As of December 31, 2005, we and our employees held a total of over 1,000 agency and individual agent licenses in the 50 states and in the District of Columbia. We have a dedicated licensing group that is responsible for maintaining these licenses and serving as an accredited continuing education provider for our licensed employees. We monitor the regulatory compliance of our sales, marketing and advertising practices and the related activities of our employees.

We have also received a non-business-transacting (Bei An) Internet Content Provider (ICP) registration from the Ministry of Information Industry in China and a business-ancillary (Jian Ye) insurance agency license from the China Insurance Regulatory Commission (CIRC). At this time, we do not have a definitive plan as to when or whether we will market and sell insurance online in China.

Carrier Requirements. We are required to be appointed by a carrier in order to transact business on the carrier's behalf, typically through an agency contract. As of December 31, 2005, we had relationships with over 140 carriers. Our licensing group is responsible for maintaining our appointments with these carriers.

Privacy and Privacy Laws. We are subject to state and federal laws and regulations that require us to maintain the privacy of personal information that we collect from consumers. Because consumers place a high priority on our ability to maintain the privacy, security and integrity of personal information they provide to us, we have our information privacy practices certified annually by an independent, non-profit organization dedicated to promoting Internet information privacy. We have also engaged a private risk management organization to assess the effectiveness of our internal security, information and technology controls relating to the electronic submission of health insurance applications through our platform. We have also appointed a privacy officer to monitor our compliance with federal and state laws related to privacy, including the Gramm-Leach-Bliley Act's and the Health Insurance Portability & Accountability Act's privacy and security rules.

Intellectual Property

We rely on a combination of patent, trademark, copyright and trade secret laws in the United States and other jurisdictions as well as confidentiality procedures and contractual provisions to protect our proprietary technology and our brand.

Trademarks. Our four registered trademarks in the U.S. are eHealth, eHealthInsurance.com, eHealthSystems and Online Anytime. Our eHealth and eHealthInsurance.com marks have reached incontestability status with the U.S. Patent and Trademark Office, which means the marks have been in use for over five years and, with certain limited exceptions, no third party can contest the validity of the marks or our ownership of them. While we have not yet had to resort to litigation, we have successfully enforced our rights against cybersquatters (entities using our marks in their domain names) and typosquatters (entities using misspellings of our trademarks in their domain names). In response to our cease and desist letters, cybersquatters and typosquatters have generally assigned the domain names to us.

Published and Pending Patents. Our published and pending patent applications relate to the technology and business processes underlying our core product offerings such as EPI, Fast Quote, Recommendation Tool and Compare and Choose functionality. Our EPI system streamlines the enrollment process by seamlessly integrating our technology systems with those of the health insurance carriers whose plans we offer. The EPI patent application was published May 1, 2003.

Our Fast Quote system simplifies the search for health insurance quotes on the Internet. Using Fast Quote, a potential consumer, who has already provided a minimum of personal data (i.e., birth date, gender, zip code and tobacco use) on a website other than ours, can merely click on a link on that website and immediately be transferred to our Quote Page. This page is prepopulated with the consumer's information, enabling the consumer to quickly review, compare and apply for a health plan. The Fast Quote patent application was filed on April 12, 2005.

Our Recommendation Tool provides guidance as to which product will best suit a consumer's needs. This tool dynamically interacts with the consumer, asking a series of questions, each subsequent question based on the consumer's previous answer, and filters out all of the available health plans until it can present an unbiased recommendation of one to four health insurance plans. The Recommendation Tool patent application was filed on June 27, 2005.

Our Compare and Choose functionality presents voluminous health insurance information in an easy-to-understand format and helps consumers choose between numerous available plans. For example, it provides mouse-over icons that identify and explain the key benefits in each plan. It also recommends plans to users by identifying sponsored plans (plans for which our carriers pay us to feature on our website), best sellers (top selling insurance plans in the consumer's state for certain categories of applicants), top 25 plans (plans we choose to highlight) and featured plans (plans that are new or plans that have been identified in a previous period as best sellers). The Compare and Choose patent application was filed on November 1, 2005.

Copyrights. Our website is a registered copyright in the United States. In China, we have registered computer software copyrights for an internally developed software system and for a project management tool.

We also incorporate a number of third-party software products into our application server pursuant to relevant licenses. Some of this software is proprietary and some is open source. We use third-party software to, among other things, enhance our XML architecture, generate PDF versions of health insurance applications and improve our graphical layout. These functions are peripheral in nature, we are not substantially dependent upon these third-party software licenses and we believe the licensed software is generally replaceable, by either licensing or purchasing similar software from another vendor or building the software function ourselves.

Competition

The market for selling insurance products is highly competitive and the sale of health insurance over the Internet is new and rapidly evolving. We compete with individuals and entities that offer and sell health insurance products utilizing traditional distribution channels, as well as the Internet. Our current or potential competitors include:

Traditional local insurance agents. There are tens of thousands of local insurance agents across the United States who sell health insurance products in their communities. We believe that the vast majority of these local agents offer health insurance without significantly utilizing the Internet or technology other than simple desktop applications such as word processing and spreadsheet programs. Some traditional insurance agents, however, utilize general agents that offer online quoting services and other tools to obtain quotes from multiple carriers and prepare electronic benefit proposals to share with their potential customers. These general agents typically offer their services only for the small and mid-sized group markets (not the individual and family markets) and operate in only one or a few states. Additionally, some local agents use the Internet to acquire new consumer referrals from companies that have expertise in Internet marketing. These “lead aggregator” companies utilize keyword search, primarily paid keyword search listings on Google, MSN and Yahoo! and other forms of Internet advertising, to drive Internet traffic to the lead aggregator’s site. The lead aggregator then collects and sells consumer information to health insurance agents and, to a lesser extent, to health insurance carriers, both of whom endeavor to close the referrals through traditional offline sales methods.

Health insurance carriers’ “direct-to-member” sales. Some health insurance carriers directly market and sell their plans to consumers through call centers and their own websites. Although we offer health insurance plans for many of these carriers, they also compete with us by offering their products directly to consumers. Most of these carriers have superior brand recognition, extensive marketing budgets and significant financial resources to influence consumer preferences for searching and buying health insurance online. In addition, some carriers, which we choose not to represent, offer non-comprehensive health insurance at lower rates than the comprehensive major medical health insurance that we generally offer. The carriers we choose to represent, however, do not have a competitive price advantage over us. Because individual and family plan health insurance prices are regulated in all U.S. jurisdictions, a consumer is entitled to pay the same price for a particular plan, whether the consumer purchased the plan directly from one of our carrier partners or from us. Additionally, we have entered into marketing partnerships with some of our carrier partners, such as Aetna and UnitedHealthcare, and these carriers refer consumers to us from states they do not service.

Online agents. There are a number of agents that operate websites and provide a limited online shopping experience for consumers interested in purchasing health insurance (e.g., online quoting of health insurance product prices). Most of these online agents operate in only one or very few states, and some represent only one or a limited number of health insurance carriers. Some online agents also sell non-health insurance products such as auto insurance, life insurance and home insurance. We are the leading online source of health insurance products to individuals, families and small businesses and the only online source that is nationwide. We believe our ecommerce platform provides individuals, families and small businesses with the most comprehensive choice of affordable health insurance products. Additionally, we have entered into marketing partnerships with some online agencies and these agents refer consumers to us from states they do not service.

National insurance brokers. Although insurance brokers such as Aon Insurance Services, Arthur J. Gallagher & Co., Marsh, Inc. and Willis Group Limited have traditionally not focused on the individual, family and small business market, they may enter our markets and could compete with us. These large agencies have existing relationships with many of our carrier partners, are licensed nationwide and have large customer bases and significant financial, technical and marketing resources to compete in our markets. Some of these large agencies and financial services companies, such as Aon, Arthur J. Gallagher and Willis, have partnered with us in order to offer our services to their customer and member bases.

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We believe the principal factors that determine our competitive advantage in the online distribution of health insurance include the following:

- health insurance plan selection;
- quality of website content and website tools;
- strength of carrier relationships and depth of technology integration with carriers;
- high-quality, unbiased customer service;
- brand awareness and reputation;
- strength of marketing partnerships; and
- proven capabilities measured in years of delivering sales and creating and using reliable technology.

The price of a particular health insurance policy is not a competitive factor because a consumer is entitled to pay the same price for a particular individual and family plan, whether the consumer purchased the plan directly from a carrier, from us or from another agent.

Facilities

Our headquarters are located in Mountain View, California and we operate a customer care center in Gold River, California. Our wholly-owned subsidiary eHealth China, Inc. maintains an office in Xiamen, China. All of our facilities are leased. We may require additional space as our business expands.

Employees

As of December 31, 2005, we had 292 employees. None of our employees is represented by a labor union. We have not experienced any work stoppages and consider our employee relations to be good.

Legal Proceedings

We are not a party to any material legal proceedings. However, we may become involved in litigation from time to time in the ordinary course of our business.

MANAGEMENT

Executive Officers, Directors and Key Employees

The following table sets forth our executive officers, directors and key employees, their ages and the positions they held as of December 31, 2005.

<u>Name</u>	<u>Age</u>	<u>Position</u>
<i>Executive Officers:</i>		
Gary L. Lauer	52	Chairman of the Board of Directors, President and Chief Executive Officer
Robert L. Fahlman	47	Senior Vice President, Carrier Relations and Chief Operating Officer
Stuart M. Huizinga	43	Senior Vice President and Chief Financial Officer
Bruce A. Telkamp	38	Senior Vice President, Business Development, General Counsel and Secretary
Dr. Sheldon X. Wang	46	Senior Vice President and Chief Technology Officer
<i>Other Directors:</i>		
Michael D. Goldberg	48	Director
Joseph S. Lacob	49	Director
Kathleen D. LaPorte	44	Director
Jack L. Oliver III	36	Director
Christopher J. Schaep	42	Director
<i>Key Employees:</i>		
Sam C. Gibbs	48	Senior Vice President and General Manager of Small Business
Robert S. Hurley	46	Vice President, Strategic Initiatives

Gary L. Lauer. Chairman of the Board of Directors, President and Chief Executive Officer. Gary Lauer has served as our president and chief executive officer since December 1999, and as chairman of our board of directors since March 2002. Prior to joining us, Mr. Lauer was the chairman and chief executive officer of MetaCreations Corporation. Prior to MetaCreations, Mr. Lauer spent more than nine years at Silicon Graphics, Inc., a computing technology company, where he was a member of the senior executive team. Mr. Lauer started his career at IBM in sales and marketing management. Mr. Lauer holds a B.S. degree in finance and marketing from the University of Southern California Business School.

Robert L. Fahlman. Senior Vice President, Carrier Relations and Chief Operating Officer. Robert Fahlman has served as our senior vice president, carrier relations and chief operating officer since March 2000. Mr. Fahlman previously served as chief executive officer of Omni Health Care, a California health plan and health insurance company, and vice president of field operations at Healtheon Corporation, a healthcare Internet company now known as WebMD. Mr. Fahlman also previously served as a vice president at FHP and senior vice president at TakeCare Health Plan, two California managed healthcare plans. Mr. Fahlman holds a B.S. degree in business administration from Portland State University.

Stuart M. Huizinga. Senior Vice President and Chief Financial Officer. Stuart Huizinga has served as our senior vice president and chief financial officer since May 2000. Previously, Mr. Huizinga was a partner at Arthur Andersen LLP, an accounting firm. Mr. Huizinga holds a B.S. degree in business administration from San Jose State University and is a Certified Public Accountant in the state of California.

Bruce A. Telkamp. Senior Vice President, Business Development, General Counsel and Secretary. Bruce Telkamp has served as our senior vice president, business development since February 2004 and as our general counsel and secretary since May 2000. Previously, Mr. Telkamp was the vice president of business development and general counsel of MetaCreations Corporation. Prior to MetaCreations, Mr. Telkamp was an attorney with

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the law firm of Wilson Sonsini Goodrich & Rosati in Palo Alto, California. Mr. Telkamp holds a B.A. degree in economics with honors from the University of California, Los Angeles and a J.D. degree with honors from the University of California, Hastings.

Dr. Sheldon X. Wang. Senior Vice President and Chief Technology Officer. Dr. Sheldon Wang has served as our senior vice president and chief technology officer since August 1999. Previously, Dr. Wang was senior vice president of research and development at Eclipsys Corporation, formerly known as HealthVISION, a provider of integrated healthcare enterprise information-technology solutions. Dr. Wang holds a B.S. degree in physics from the Fuzhou University of China, an M.S. degree in physics from Idaho State University and a Ph.D. in medical informatics from the University of Utah.

Michael D. Goldberg. Director. Michael Goldberg has served as a director since June 1999. In January 2005, Mr. Goldberg joined Mohr Davidow Ventures, a venture capital firm, as a general partner. From October 2000 to December 2004, Mr. Goldberg served as a managing director of Jasper Capital, a management and financial consultancy business. In 1995, Mr. Goldberg founded OnCare, Inc., an oncology practice management company, and served as its chairman until August 2001 and as its chief executive officer until March 1999. Mr. Goldberg previously served as president and chief executive officer of Axion, Inc., a cancer-focused healthcare service company, and as a partner at Sevin Rosen Funds, a venture capital firm. Mr. Goldberg serves on the board of directors of Genomic Health, Inc. Mr. Goldberg holds a B.A. in philosophy from Brandeis University and an M.B.A. from the Stanford Graduate School of Business.

Joseph S. Lacob. Director. Joseph Lacob has served as a director since April 1999. Since 1987, Mr. Lacob has been a partner at Kleiner Perkins Caufield & Byers, a venture capital firm. Mr. Lacob serves on the board of directors of Align Technology, Inc. Mr. Lacob holds a B.S. in biological sciences from the University of California, Irvine, a Master's in Public Health from the University of California, Los Angeles and an M.B.A. from the Stanford Graduate School of Business.

Kathleen D. LaPorte. Director. Kathleen LaPorte has served as a director since December 2000. Ms. LaPorte has been a founding managing director of New Leaf Venture Partners, LLC since July 2005. From 1994 to July 2005, Ms. LaPorte was a general partner of the Sprout Group, a venture capital firm. Ms. LaPorte serves on the boards of directors of VNUS Medical, Adeza Biomedical and ISTA Pharmaceuticals. Ms. LaPorte holds a B.S. from Yale University and an M.B.A. from the Stanford Graduate School of Business.

Jack L. Oliver, III. Director. Jack Oliver has served as a director since December 2005. Since March 2005, Mr. Oliver has acted as chairman of Bryan Cave Strategies LLC, a government relations subsidiary of Bryan Cave LLP. Since August 2005, Mr. Oliver has been a senior advisor for Lehman Brothers with a focus on Lehman Brothers' global client relationship management and private management businesses. Prior to his work at Bryan Cave Strategies, Mr. Oliver served on various political campaigns including those for the candidacies of Senator Jack Danforth, Senator Kit Bond, Senator John Ashcroft and Congressman Jim Talent. He is also a former deputy chairman of the Republican National Committee and was national finance director for President George Walker Bush's presidential campaign. Mr. Oliver holds a B.A. degree in political science and communications from Vanderbilt University and a J.D. from the University of Missouri School of Law.

Christopher J. Schaepe. Director. Christopher Schaepe has served as a director since April 1999. Mr. Schaepe is a founding partner of Lightspeed Venture Partners, an early-stage technology venture capital firm, and has served as a general partner at Lightspeed since 2000. Previously, Mr. Schaepe was a general partner at Weiss, Peck & Greer Venture Partners, which he joined in 1991. Mr. Schaepe also previously served in corporate finance and capital markets roles at Goldman Sachs & Co. after working as a software engineer at IBM. Mr. Schaepe holds B.S. and M.S. degrees in computer science and electrical engineering from the Massachusetts Institute of Technology and an M.B.A. from the Stanford Graduate School of Business.

Sam C. Gibbs. Senior Vice President and General Manager of Small Business. Sam Gibbs has served as our senior vice president since September 2000. Since November 2004, Mr. Gibbs has served as general manager

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of our small business products and services business. Mr. Gibbs previously served as the general manager of our technology licensing business from December 2001 to November 2004 and as general manager of product management from September 2000 to December 2001. Mr. Gibbs previously was a vice president and general manager for Rand, an engineering services company. Mr. Gibbs was a founder, president and chief executive officer of AVCOM Systems, Inc., an engineering services and systems integration company, which was acquired by Rand Worldwide. Mr. Gibbs holds a B.S. degree in aeronautical engineering technology from Arizona State University.

Robert S. Hurley. Vice President of Strategic Initiatives. Robert Hurley has served as our vice president since April 1999. Since October 2003, Mr. Hurley has been responsible for our public and government relations efforts and has been instrumental in the Health Savings Account-related aspects of our business. From April 1999 to September 2003, Mr. Hurley was responsible for our sales and sales support functions. Mr. Hurley served as an associate vice president of sales and operations for the consumer business segment at Health Net, Inc., a managed healthcare company, and in various leadership roles at Foundation Health, a California health plan. Mr. Hurley holds a B.A. degree in law and society from the University of California, Santa Barbara.

Board of Directors

Our board of directors is currently composed of six members, including five non-employee members and our current chairman, president and chief executive officer Mr. Lauer. Upon completion of this offering, our certificate of incorporation will provide for a classified board of directors consisting of three classes of directors, each serving staggered three-year terms. As a result, a portion of our board of directors will be elected each year. To implement the classified structure, prior to the consummation of the offering, two of the nominees to the board of directors will be appointed to one-year terms, two will be appointed to two-year terms and two will be appointed to three-year terms. Thereafter, directors will be elected for three-year terms. Our Class I directors, whose terms will expire at the 2007 annual meeting of stockholders, are expected to be Mr. Goldberg and Ms. LaPorte. Our Class II directors, whose terms will expire at the 2008 annual meeting of stockholders, are expected to be Messrs. Lacob and Schaepe. Our Class III directors, whose terms will expire at the 2009 annual meeting of stockholders, are expected to be Messrs. Lauer and Oliver.

Pursuant to a voting agreement originally entered into in April 1999 and most recently amended in May 2005 between us and certain of our stockholders, Ms. LaPorte and Messrs. Lacob, Lauer and Schaepe were each elected to serve as members of our board of directors. The voting agreement and all rights thereunder will automatically terminate upon completion of this offering, and members previously elected to our board of directors pursuant to the voting agreement will continue to serve as directors until their successors are duly elected by holders of our common stock or until their earlier resignation or removal.

Committees of the Board of Directors

Our board of directors currently has three committees: an audit committee, a compensation committee and a nominating and corporate governance committee.

Audit Committee. The members of our audit committee are Messrs. Goldberg and Schaepe. Mr. Goldberg is the chairperson of the audit committee. Our board of directors has determined that each member of our audit committee meets the requirements for independence under the requirements of the Nasdaq National Market, the New York Stock Exchange and the Securities and Exchange Commission. At least one member of our audit committee must be an "audit committee financial expert" as defined in the Securities and Exchange Commission rules. In order to comply with this requirement, we intend, prior to the closing of this offering, to add to the audit committee an independent director who is qualified to be an audit committee financial expert.

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Among other duties, our audit committee:

- appoints a firm to serve as independent accountant to audit our financial statements;
- discusses the scope and results of the audit with the independent accountant and reviews with management and the independent accountant our interim and year-end operating results;
- considers the adequacy of our internal accounting controls and audit procedures;
- approves (or, as permitted, pre-approves) all audit and non-audit services to be performed by the independent accountant; and
- issues the report that the SEC requires in our annual proxy statement.

The audit committee has the sole and direct responsibility for appointing, evaluating and retaining our independent auditors and for overseeing their work. All audit services and all non-audit services, other than de minimis non-audit services, to be provided to us by our independent auditors must be approved in advance by our audit committee.

Compensation Committee. The members of our compensation committee are Mr. Goldberg and Ms. LaPorte. Mr. Goldberg is the chairperson of the compensation committee. Our board of directors has determined that each member of our compensation committee meets the applicable requirements for independence under the current requirements of the Nasdaq National Market and the New York Stock Exchange. The purpose of our compensation committee is to assist our board of directors in determining the compensation of our executive officers and directors.

Among other duties, our compensation committee:

- reviews and recommends approval of the compensation of our executive officers and directors;
- administers our stock incentive plans;
- reviews and makes recommendations to our board with respect to incentive compensation and equity plans; and
- issues any report that the Securities and Exchange Commission requires the compensation committee to include in our annual proxy statement.

Nominating and Corporate Governance Committee. The members of our nominating and corporate governance committee are Messrs. Schaepe and Oliver. Mr. Schaepe is the chairperson of the nominating and corporate governance committee. Our board of directors has determined that each member of our nominating and corporate governance committee meets the applicable requirements for independence under the current requirements of the Nasdaq National Market and the New York Stock Exchange.

Among other duties, our nominating and corporate governance committee:

- identifies, evaluates and recommends nominees to our board of directors and committees of our board of directors;
- conducts searches for appropriate directors and evaluates the performance of our board of directors and of individual directors; and
- reviews developments in corporate governance practices and makes recommendations to the board concerning corporate governance matters.

Director Compensation

Certain of our non-employee directors have received options to purchase shares of our common stock under our 1998 Stock Plan and 2005 Stock Plan in connection with their service as members of our board of directors. In

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June 1999, we granted options to purchase 75,000 shares of common stock at an exercise price of \$0.25 per share to Mr. Goldberg. In September 2003, we granted options to purchase 75,000 shares of common stock at an exercise price of \$1.00 per share to Mr. Goldberg. In December 2005, we granted options to purchase 50,000 shares of common stock to Mr. Oliver at an exercise price of \$4.40 per share. These options vest over four years at a rate of 25% after one year and 1/48th per month thereafter, so long as the holder continues to serve as a director.

Effective upon the closing of this offering, our non-employee directors will receive \$12,000 annually and \$2,500 per meeting and will be entitled to reimbursement of business, travel and other related expenses incurred in connection with their attendance at meetings of the board of directors and committee meetings. The chairperson of our audit committee will receive \$10,000 annually, paid in quarterly installments, and the chairperson of our compensation committee and our nominating and corporate governance committee will each receive \$3,000 annually. In addition, our 2006 Equity Incentive Plan provides for the automatic grant of options to our non-employee directors. See “Equity Benefit Plans—2006 Equity Incentive Plan—Automatic Option Grant Program.”

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee is an officer or employee of us. None of our executive officers serves 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.

Executive Compensation

The following table provides information regarding the compensation of our chief executive officer and the four other most highly compensated executive officers during 2005. We refer to these individuals elsewhere in this prospectus as our “named executive officers.”

Summary Compensation Table

Name and Principal Position	Annual Compensation		Long-Term Compensation Awards Securities Underlying Options	All Other Compensation (\$)
	Salary (\$)	Bonus (\$)		
Gary L. Lauer <i>Chairman of the Board of Directors, President and Chief Executive Officer</i>	\$298,077	\$150,000	200,000	\$ 97,429(1)
Robert L. Fahlman <i>Senior Vice President, Carrier Relations and Chief Operating Officer</i>	199,038	100,000	175,000	—
Stuart M. Huizinga <i>Senior Vice President and Chief Financial Officer</i>	190,000	50,000	50,000	—
Bruce A. Telkamp <i>Senior Vice President, Business Development, General Counsel and Secretary</i>	185,000	92,500	175,000	—
Dr. Sheldon X. Wang <i>Senior Vice President and Chief Technology Officer</i>	220,000	110,000	200,000	33,407(2)

(1) Consists of \$23,525 for apartment rental, \$8,380 for car lease, \$20,940 for airfare and \$44,584 for payment of taxes associated with these benefits.

(2) Consists of \$18,120 for apartment rental and \$15,287 for payment of taxes associated with this benefit.

Option Grants in Last Fiscal Year

The following table provides information regarding stock options granted during 2005 to each of our named executive officers. The figures representing percentages of total options granted to employees in 2005 are based on a total of 2,240,300 shares of common stock subject to options granted to our employees during 2005.

The exercise price of each option granted was equal to the fair value of our common stock as valued by our board of directors on the date of grant. The shares subject to each option listed in the table generally vest as follows: upon the completion of 12 months of service, 25% of the shares become vested and, upon the completion of each of the next 36 months of service, 1/48th of the shares become vested. Options may vest on an accelerated basis as described below in “Management—Severance and Change in Control Arrangements.”

The potential realizable value is calculated based on the ten-year term of the option at the time of grant. Stock price appreciation of 5% and 10% is assumed according to rules promulgated by the Securities and Exchange Commission and does not represent our estimate or prediction of our stock price performance. The potential realizable value at 5% and 10% appreciation is calculated by assuming that an initial offering price of \$ appreciates at the indicated rate for the entire term of the option and that the option is exercised at the exercise price and sold on the last day of its term at the appreciated price.

Name	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
	Number of Securities Underlying Options Granted (#)	Percent of Total Options Granted To Employees In fiscal Year	Exercise Price (\$/Sh)	Expiration Date	5% (\$)	10% (\$)
Gary L. Lauer	200,000	8.9%	\$ 4.40	12/14/2015		
Robert L. Fahlman	175,000	7.8%	4.40	12/14/2015		
Stuart M. Huizinga	50,000	2.2%	4.40	12/14/2015		
Bruce A. Telkamp	175,000	7.8%	4.40	12/14/2015		
Dr. Sheldon X. Wang	200,000	8.9%	4.40	12/14/2015		

2005 Stock Option Values

The following table provides information concerning the number of unexercised stock options held as of December 31, 2005, by each of our named executive officers. No stock options were exercised by our named executive officers in 2005. The value of unexercised in-the-money options at December 31, 2005 is based on an assumed initial offering price of \$ per share, less the per share exercise price, multiplied by the number of shares subject to the stock options.

Name	Number of Securities Underlying Unexercised Options at December 31, 2005		Value of Unexercised In-the-Money Options at December 31, 2005	
	Vested	Unvested	Vested	Unvested
Gary L. Lauer	3,100,000	700,000		
Robert L. Fahlman	443,604	223,438		
Stuart M. Huizinga	549,166	70,834		
Bruce A. Telkamp	460,416	214,584		
Dr. Sheldon X. Wang	710,416	239,584		

All options granted to our named executive officers were granted under our 1998 Stock Plan or 2005 Stock Plan. Stock options granted under these plans generally are immediately exercisable. All shares subject to stock options that are exercised early are subject to repurchase by us at the original exercise price. This repurchase right lapses over time pursuant to the vesting schedule of the stock option, which requires that the optionee continue to be a service provider to us.

Employment Agreements and Change of Control Arrangements

We entered into an offer letter in November 1999 with Mr. Lauer, chairman of our board of directors and our president and chief executive officer, which provides that, if we terminate Mr. Lauer without cause, he receives the following severance benefits for a 12-month period following his employment termination: (a) payment of his monthly base salary; (b) payment of his monthly COBRA health insurance premiums; and (c) a cash payment equal to any contributions made by us for any employee benefits (other than health benefits) that he was receiving before termination. In the case of an option granted to Mr. Lauer in May 2003, upon a change in control, Mr. Lauer immediately becomes vested in 50% of the remaining unvested shares subject to the option. If Mr. Lauer is terminated without cause following the change in control, he becomes vested in any remaining unvested shares subject to this option grant, provided that he signs a general release of claims.

We entered into an offer letter in May 2000 with Mr. Huizinga, our senior vice president and chief financial officer, which provides that, if we terminate Mr. Huizinga without cause, he will receive his monthly base salary for a six-month period following his employment termination.

We entered into a letter agreement in August 2000 with Mr. Telkamp, our senior vice president, business development, general counsel and secretary, which provides that, if he is involuntarily terminated without cause, he will receive his monthly base salary for a six-month period following his employment termination and all bonuses to which he would have been entitled during that period. In addition, we agreed in the letter agreement that all future option grants made to Mr. Telkamp would become fully vested if Mr. Telkamp is involuntarily terminated within 12 months following a change in control. However, for all option grants received by Mr. Telkamp as of December 31, 2005, the vesting acceleration provision of the letter agreement was superseded by the applicable stock option agreements, such that none of the options currently held by Mr. Telkamp are subject to this vesting acceleration provision.

We entered into a letter agreement in August 2000 with Dr. Wang, our senior vice president and chief technology officer, which provides that if Dr. Wang is involuntarily terminated without cause, he will receive his monthly base salary and monthly health insurance benefits for a six-month period following his employment termination.

Our 2006 Equity Incentive Plan will become effective upon the effective date of the registration statement related to this offering. The board of directors or its compensation committee, as plan administrator of the 2006 Equity Incentive Plan, has the authority to provide for accelerated vesting of the shares of common stock subject to outstanding options held by our named executive officers and any other person in connection with certain changes in our control.

Equity Benefit Plans

1998 Stock Plan and 2005 Stock Plan

Our 1998 Stock Plan was adopted by our board of directors in October 1998 and approved by our stockholders in November 1998. Our 2005 Stock Plan was adopted by our board of directors and approved by our stockholders in June 2005. The provisions of the 1998 Stock Plan and the 2005 Stock Plan are substantially the same. We will not grant any additional awards under our 1998 Stock Plan or our 2005 Stock Plan following this offering. However, the options granted under the 1998 Stock Plan and 2005 Stock Plan that are outstanding after the effective date of this offering will continue to be governed by their existing terms.

Share Reserve. A total of 13,900,000 shares of our common stock are reserved for issuance under our 1998 Stock Plan and 2005 Stock Plan. As of December 31, 2005, options to purchase an aggregate of 10,773,819 shares of our common stock were outstanding under the 1998 Stock Plan and 2005 Stock Plan, no shares were available for future grant under our 1998 Stock Plan and 623,343 shares were available for grant under our 2005 Stock Plan. In the event that shares subject to options granted under our 1998 Stock Plan are canceled, forfeited

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or repurchased by us, they become available for grant under the 2005 Stock Plan, subject to our discontinuing to make additional grants under the 2005 Stock Plan following this offering.

Administration. Prior to this offering, our board of directors administered the 1998 Stock Plan and 2005 Stock Plan. After this offering, our board of directors or our compensation committee will administer the 1998 Stock Plan and 2005 Stock Plan. The administrator has complete discretion to make all decisions relating to our 1998 Stock Plan and 2005 Stock Plan.

Eligibility. Employees, non-employee members of our board of directors and consultants are eligible to participate in our 1998 Stock Plan and 2005 Stock Plan.

Types of Awards. Our 1998 Stock Plan and 2005 Stock Plan provide for incentive and nonstatutory stock options to purchase shares of our common stock and awards of restricted shares of our common stock. The exercise price for incentive stock options and nonstatutory stock options granted under the 1998 Stock Plan and 2005 Stock Plan may not be less than 100% and 85%, respectively, of the fair value of our common stock on the option grant date. Optionees may pay the exercise price by using cash, shares of common stock that the optionee already owns, a full-recourse promissory note, an immediate sale of the option shares through a broker designated by us, or a loan from a broker designated by us, secured by the option shares. In most cases, our options vest over a four-year period following the date of grant and generally expire 10 years after they are granted, unless the optionee ceases service with us. Restricted shares may be awarded under the 1998 Stock Plan and 2005 Stock Plan in return for cash, a full-recourse promissory note, services already provided to us, and, in the case of treasury shares only, services to be provided to us in the future. Restricted shares vest at the times determined by our board of directors.

Change in Control. If we are merged or consolidated with another company, an option granted under the 1998 Stock Plan or 2005 Stock Plan will be subject to the terms of the merger or consolidation agreement, which may provide that the option continues, is assumed or substituted, or is canceled without payment of any consideration.

Amendments or Termination. Our board of directors may amend or terminate the 1998 Stock Plan and 2005 Stock Plan at any time. If our board of directors amends either of these plans, it does not need to seek stockholder approval of the amendment unless the number of shares reserved under the plans increases or the class of persons eligible for the grant of incentive stock options materially changes. The 1998 Stock Plan and 2005 Stock Plan will automatically terminate 10 years after each plan's adoption by our board of directors.

2004 Stock Plan for eHealth China

Our 2004 Stock Plan for eHealth China was adopted by our board of directors in November 2004 and approved by our stockholders in January 2005. No further awards will be made under our 2004 Stock Plan for eHealth China after the effective date of this offering. The awards granted under the 2004 Stock Plan for eHealth China that are outstanding after the effective date of this offering will continue to be governed by their existing terms.

Share Reserve. A total of 1,600,000 shares of our Class A nonvoting common stock are reserved for issuance under the 2004 Stock Plan for eHealth China. As of December 31, 2005, 514,100 shares of Class A nonvoting common stock were outstanding under the 2004 Stock Plan for eHealth China and 1,085,900 shares of Class A nonvoting common stock were available for grant. Each share of Class A nonvoting common stock will automatically be converted into one-eighth (0.125) of a share of our common stock as of the effective date of this offering.

Administration. Prior to this offering, our board of directors administered the 2004 Stock Plan for eHealth China and after this offering, our board of directors or our compensation committee will administer the 2004 Stock Plan for eHealth China. The administrator has complete discretion to make all decisions relating to the 2004 Stock Plan for eHealth China.

Eligibility. Employees, non-employee members of the board of directors and consultants of us and certain of our subsidiaries, including our subsidiary in China, are eligible to participate in our 2004 Stock Plan for eHealth China, although as of December 31, 2005, we had only granted awards under the 2004 Stock Plan for eHealth China to employees of our subsidiary in China.

Types of Awards. Our 2004 Stock Plan for eHealth China provides for incentive and nonstatutory stock options to purchase shares of our Class A nonvoting common stock and awards of restricted shares of our Class A nonvoting common stock. The exercise price for incentive stock options and nonstatutory stock options granted under the 2004 Stock Plan for eHealth China may not be less than 100% and 85%, respectively, of the fair value of our common stock on the option grant date. Optionees may pay the exercise price by using cash, shares of Class A nonvoting common stock that the optionee already owns, a full-recourse promissory note, an immediate sale of the option shares through a broker designated by us, or a loan from a broker designated by us, secured by the option shares. To date, we have only awarded restricted shares to employees of eHealth China, which vest over a four-year period following the date of grant.

Amendments or Termination. Our board of directors may amend or terminate the 2004 Stock Plan for eHealth China at any time. If our board of directors amends the plan, it does not need to seek stockholder approval of the amendment unless the number of shares reserved under the plan increases or the class of persons eligible for the grant of incentive stock options materially changes. The 2004 Stock Plan for eHealth China will automatically terminate 10 years after its adoption by our board of directors.

2006 Equity Incentive Plan

Our 2006 Equity Incentive Plan was adopted by our board of directors in April 2006. We anticipate that our stockholders will approve the 2006 Equity Incentive Plan prior to this offering and that the 2006 Equity Incentive Plan will become effective upon the effective date of the registration statement related to this offering.

Share Reserve. We have reserved 4,000,000 shares of our common stock for issuance under the 2006 Equity Incentive Plan. In general, if options or shares awarded under the 2006 Equity Incentive Plan are forfeited or repurchased, those options or shares will again become available for grant or award under the 2006 Equity Incentive Plan. In addition, on January 1 of each year, starting in 2007, the number of shares reserved under the 2006 Equity Incentive Plan will automatically increase by the lowest of (a) 3,000,000 shares, (b) 4% of the total number of shares of our common stock then outstanding or (c) a lower number determined by our board of directors or its compensation committee.

Administration. The board of directors or the compensation committee of our board of directors administers the 2006 Equity Incentive Plan. The administrator has the complete discretion to make all decisions relating to our 2006 Equity Incentive Plan.

Eligibility. Employees, non-employee members of our board of directors and consultants of our company and our subsidiaries are eligible to participate in our 2006 Equity Incentive Plan.

Types of Awards. Our 2006 Equity Incentive Plan provides for the following types of awards:

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

Vesting. Awards granted under our 2006 Equity Incentive Plan vest at the times determined by the administrator. In most cases, our awards will vest over a four-year period following the date of grant. Awards

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generally expire 10 years after they are granted and generally expire earlier if the participant's service terminates earlier.

Stock Options. The exercise price for all options granted under the 2006 Equity Incentive Plan may not be less than 100% of the fair value of our common stock on the option grant date. A stock option agreement may provide that a new option will be granted automatically to an optionee when he or she exercises a prior option and pays the exercise price with shares of our common stock already owned by such optionee. Optionees may pay the exercise price by using cash, shares of common stock that the optionee already owns or an immediate sale of the option shares through a broker designated by us. No participant may receive stock options under the 2006 Equity Incentive Plan covering more than 500,000 shares in one fiscal year, except that a newly hired employee may receive stock options covering up to 1,000,000 shares in the first year of employment.

Stock Appreciation Rights. A participant who exercises a stock appreciation right receives not more than the increase in value of our common stock over the base price. The base price for stock appreciation rights granted under the 2006 Equity Incentive Plan will not be less than 100% of the fair value of our common stock on the date of grant. The settlement value of the stock appreciation right may be paid in cash or shares of common stock or a combination of both. No participant may receive stock appreciation rights under the 2006 Equity Incentive Plan covering more than 500,000 shares in one fiscal year, except that a newly hired employee may receive awards covering up to 1,000,000 shares in the first year of employment.

Restricted Shares and Stock Units. Restricted shares and stock units vest at the times or upon satisfaction of the conditions determined by the administrator. No cash consideration is required of the award recipients. Settlement of vested stock units may be made in the form of cash, shares of common stock or a combination of both. No participant may receive restricted shares or stock units with performance-based vesting under the 2006 Equity Incentive Plan covering more than 500,000 shares in any fiscal year.

Adjustments. If there is a subdivision of our outstanding shares of common stock, a dividend declared in stock or a combination or consolidation of our outstanding shares of common stock into a lesser number of shares, corresponding adjustments will be automatically made in each of the following: (a) the number of shares of common stock available for future awards under the 2006 Equity Incentive Plan; (b) any limitation on the maximum number of shares of common stock that may be subject to awards in a fiscal year; (c) the number of shares of common stock covered by each outstanding option or stock appreciation right, as well as the exercise price under each such award; (d) the number of shares of common stock covered by the options to be granted under the automatic option grant program described below; and (e) the number of stock units included in any prior award that has not yet been settled.

Merger or Consolidation. If we are merged or consolidated with another company, an option or other award granted under the 2006 Equity Incentive Plan will be subject to the terms of the merger or consolidation agreement, which shall provide for one or more of the following: that the option or award continues, is assumed or substituted; becomes fully vested and exercisable, followed by its cancellation; or is cancelled for a cash payment equal to the spread that exists on the closing date of the merger or consolidation. A stock unit may also be cancelled for a payment equal to the fair value of the shares of our common stock subject to the stock unit as of the closing date.

Automatic Option Grant Program. As part of the 2006 Equity Incentive Plan, our board of directors approved a program of automatic option grants for non-employee directors on the terms specified below:

- Each non-employee director who first joins our board of directors on or after the effective date of this offering will receive an initial option for 50,000 shares of our common stock. The initial grant of this option will occur when the director takes office. A director who previously was employed by us is not eligible for this grant.
- Each non-employee director will receive an option to purchase 12,500 shares of our common stock on the date of each annual stockholders' meeting, starting in the year 2007. However, a new director will

not receive the initial grant and an annual grant in the same calendar year. A non-employee director who previously was employed by eHealth is eligible for these grants.

- Provided that the director continues in service with us, 25% of each option grant vests one year after the date of grant, and the balance vests in equal monthly installments over the following 36 months.
- Options granted to non-employee directors under the 2006 Equity Incentive Plan will become fully vested upon a change in control of us.
- The exercise price of each non-employee director's option will be equal to the fair value of our common stock on the option grant date. To the extent permitted by applicable law, a director may pay the exercise price by using cash, shares of common stock that the director already owns or an immediate sale of the option shares through a broker designated by us.
- The non-employee director's options have a 10-year term. However, they expire 12 months after the director leaves our board of directors due to death or disability or three months after the director leaves our board for any other reason.
- The administrator may change the number of shares subject to the non-employee directors' options, may change the terms of the options and may grant different awards that have an equivalent value to the options described above, as determined by the administrator on the date of grant.

Amendments or Termination. Our board of directors may amend or terminate the 2006 Equity Incentive Plan at any time. If the board of directors amends the plan, it does not need to seek stockholder approval of the amendment unless applicable law requires it. The 2006 Equity Incentive Plan will terminate on the tenth anniversary of its adoption date, unless our board of directors decides to terminate the plan earlier.

401(k) Retirement and Deferred Savings Plan

We maintain a retirement and deferred savings plan, which is intended to qualify under Sections 401(a) and 401(k) of the Internal Revenue Code. This plan allows each participant to contribute up to 100% of his or her pre-tax compensation, up to a statutory limit, which is \$15,000 (or \$20,000 for employees over 50 years of age) in calendar year 2006. Under the plan, each participant is fully vested in his or her own contributions. In April 2006, we began matching 25% of each participant's contribution each pay period, up to a maximum of 1% of the employee's salary during that period. Our matching contributions vest one-third for each of the first three years of service. The plan also permits us to make discretionary profit-sharing contributions, but we have not made such contributions to date.

Limitation of Liability and Indemnification of Officers and Directors

Upon the closing of this offering, we will adopt and file a new certificate of incorporation and will amend and restate our bylaws. Our new certificate of incorporation and bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law, as it now exists or may in the future be amended, against all expenses and liabilities reasonably incurred in connection with their service for or on our behalf. Our bylaws provide that we shall advance the expenses incurred by a director or officer in advance of the final disposition of an action or proceeding, 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 action in that capacity, regardless of whether Delaware law would otherwise permit indemnification. In addition, the new certificate of incorporation provides that our directors will not be personally liable for monetary damages to us for breaches of their fiduciary duty as directors, unless they violated their duty of loyalty to us or our stockholders, acted in bad faith, knowingly or intentionally violated the law, authorized illegal dividends or redemptions or derived an improper personal benefit from their action as directors. We maintain liability insurance which insures our directors and officers against certain losses under certain circumstances.

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In addition, we have entered into indemnification agreements with each of our directors and officers. These agreements provide for indemnification for related expenses including attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. At present, we are not aware of any pending or threatened litigation or proceeding involving any of our directors, officers, employees or agents in which indemnification would be required or permitted. We believe provisions in our new amended and restated certificate of incorporation and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

The limitation of liability and indemnification provisions in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Furthermore, 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 as required by these indemnification provisions. At present, we are not aware of any 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

We describe below 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 \$60,000; and
- A director, executive officer, holder of more than 5% of our common stock or any member of their immediate family had or will have a direct or indirect material interest.

We also describe below certain other transactions with our directors, executive officers and stockholders.

Amended and Restated Investors' Rights Agreement

We have granted registration rights to holders of our preferred stock pursuant to an investors' rights agreement. See "Description of Capital Stock—Registration Rights."

Voting Agreement

Pursuant to a voting agreement originally entered into in April 1999 and most recently amended in May 2005 by and among us and certain of our stockholders, Joseph S. Lacob, Kathleen D. LaPorte, Gary L. Lauer and Christopher J. Schaepe were each elected to serve as members of our board of directors. Mr. Lauer was initially selected as representative of our common stock, Messrs. Lacob and Schaepe were initially selected as representatives of our Series A preferred stock, as designated by Kleiner Perkins Caufield & Byers and Lightspeed Venture Partners, respectively, and Ms. LaPorte was initially selected as representative of our Series C preferred stock, as designated by the Sprout Group. The voting agreement and all rights thereunder will automatically terminate upon completion of this offering.

Board Compensation

We pay our non-employee directors for board meeting attendance, and certain of our non-employee directors have received options to purchase shares of our common stock. For more information regarding these arrangements, see "Management—Director Compensation."

Employment Agreements

We have entered into offer letters or employment related agreements with each of Messrs. Lauer, Huizinga and Telkamp and Dr. Wang. For more information regarding these arrangements, see "Management—Employment Agreements and Change of Control Arrangements."

Indemnification Agreements

We have entered into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or executive officer.

Stock Option Grants

We have granted options to purchase shares of our common stock to our directors and executive officers. See "Management—Director Compensation," "Management—Option Grants in Last Fiscal Year" and "Management—2005 Stock Option Values."

PRINCIPAL STOCKHOLDERS

The following table sets forth certain information known to us regarding beneficial ownership of our common stock as of December 31, 2005, as adjusted to reflect the sale of shares of common stock offered by us in this offering, for:

- each person known by us to be the beneficial owner of more than 5% of our common stock;
- our named executive officers;
- each of our directors; and
- all executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Except as noted by footnote, and subject to community property laws where applicable, we believe based on the information provided to us that the persons and entities named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them.

The table lists applicable percentage ownership based on 31,553,654 shares of common stock outstanding as of December 31, 2005, and also lists applicable percentage ownership based on _____ shares of common stock assumed to be outstanding after the closing of the offering. Options to purchase shares of our common stock that are exercisable within 60 days of December 31, 2005, are deemed to be beneficially owned by the persons holding these options for the purpose of computing percentage ownership of that person, but are not treated as outstanding for the purpose of computing any other person's ownership percentage.

<u>Name and Address of Beneficial Owner (1)</u>	<u>Number of Shares Beneficially Owned</u>	<u>Percentage of Shares Beneficially Owned</u>	
		<u>Before Offering</u>	<u>After Offering</u>
5% Stockholders			
Entities affiliated with Sprout Group (2) 3000 Sand Hill Road Building 3, Suite 170 Menlo Park, CA 94025	6,222,874	19.7%	%
Vipool M. Patel (3)	5,235,053	16.6	
Entities affiliated with Kleiner Perkins Caufield & Byers (4) 2750 Sand Hill Road Menlo Park, CA 94025	5,030,492	15.9	
Entities affiliated with QuestMark Partners (5) One South Street Suite 800 Baltimore, MD 21202	3,487,966	11.1	
Entities affiliated with Weiss, Peck & Greer Venture Partners (6)	3,348,955	10.6	

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<u>Name and Address of Beneficial Owner (1)</u>	<u>Number of Shares Beneficially Owned</u>	<u>Percentage of Shares Beneficially Owned</u>	
		<u>Before Offering</u>	<u>After Offering</u>
Executive Officers and Directors			
Gary L. Lauer (7)	3,800,000	10.8	
Robert L. Fahlman (8)	675,000	2.1	
Stuart M. Huizinga (9)	620,000	1.9	
Bruce A. Telkamp (10)	675,000	2.1	
Dr. Sheldon X. Wang (11)	1,100,000	3.4	
Michael D. Goldberg (12)	150,000	*	
Joseph S. Lacob (4) 2750 Sand Hill Road Menlo Park, CA 94025	4,105,864	13.0	
Kathleen D. LaPorte (2) 3000 Sand Hill Road Building 3, Suite 170 Menlo Park, CA 94025	6,222,874	19.7	
Jack L. Oliver III (13)	50,000	*	
Christopher J. Schaepe (6) c/o Lightspeed Venture Partners 2200 Sand Hill Road Menlo Park, CA 94025	3,348,955	10.6	
All executive officers and directors as a group (10 persons) (14)	21,672,693	56.5	

* Represents beneficial ownership of less than one percent of our outstanding common stock.

- (1) Unless otherwise indicated, the address for each beneficial owner is c/o eHealth, Inc., 440 East Middlefield Road, Mountain View, CA 94043.
- (2) Includes 4,211,051 shares held of record by Sprout Capital IX, L.P., 1,467,824 shares held of record by Sprout Capital VIII, L.P., 55,944 shares held of record by DLJ Capital Corporation, 370,815 shares held of record by DLJ ESC II, L.P., 29,170 shares held of record by Sprout Entrepreneurs' Fund, L.P. and 88,070 shares held of record by Sprout Venture Capital, L.P. Ms. LaPorte, one of our directors, was a general partner of the Sprout Group funds until July 15, 2005, and is currently a managing director of New Leaf Venture Partners, L.L.C. New Leaf Venture Partners, L.L.C. has entered into an agreement with the Sprout Group division of Credit Suisse First Boston Private Equity, Inc. whereby New Leaf Venture Partners, L.L.C. provides investment advisory services to the Sprout Group funds. Ms. LaPorte disclaims beneficial ownership of any of the shares held by the aforementioned entities, except to the extent of her pecuniary interest therein.
- (3) Includes 4,085,053 shares held in a trust for the benefit of Mr. Patel and his family. Also includes 1,150,000 shares held of record by the Vipool M. Patel & Sharon L. Patel, Co-Trustees of the Patel 1999 Children's Trust U/A/D 10/30/99, of which Mr. Patel is a trustee. Mr. Patel disclaims beneficial ownership of such shares held of record by the Vipool M. Patel & Sharon L. Patel, Co-Trustees of the Patel 1999 Children's Trust U/A/D 10/30/99.
- (4) Includes 3,910,706 shares beneficially owned by Kleiner Perkins Caufield & Byers IX-A, L.P., 120,731 shares beneficially owned by Kleiner Perkins Caufield & Byers IX-B, L.P. and 74,427 shares beneficially owned by Joseph Lacob. Excludes, in the case of Joseph Lacob, 924,628 shares held by other entities affiliated with Kleiner Perkins Caufield & Byers as to which Mr. Lacob does not have voting or dispositive

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power. Jacob Ventures, LLC, whose manager is Joseph Jacob, is a manager of the general partners of the Kleiner Perkins Caufield & Byers funds and has shared voting and investment power over these shares. Shares are held for convenience in the name of "KPCB Holdings, Inc. as nominee" for the account of entities affiliated with Kleiner Perkins Caufield & Byers and others. KPCB Holdings, Inc. has no voting, dispositive or pecuniary interest in any such shares. Mr. Jacob disclaims beneficial ownership of any of the shares held by the aforementioned entities, except to the extent of his pecuniary interest therein.

- (5) Includes 2,963,075 shares held of record by QuestMark Partners, L.P., and 524,891 shares held of record by QuestMark Partners Side Fund, L.P.
- (6) Includes 718,016 shares held of record by WPG Enterprise Fund III, LLC, 821,137 shares held of record by Weiss, Peck & Greer Venture Associates IV, LLC, 103,508 shares held of record by Weiss, Peck & Greer Venture Associates IV Cayman, LP, 31,814 shares held of record by WPG Information Sciences Entrepreneur Fund, LP, 1,339,586 shares held of record by Weiss, Peck & Greer Venture Associates V, LLC, 11,219 shares held of record by Weiss, Peck & Greer Venture Associates V-A, LLC, 274,948 shares held of record by Weiss, Peck & Greer Venture Associates V Cayman, LP, 30,140 shares held of record by WPG Information Sciences Entrepreneur Fund II, LLC and 18,587 shares held of record by WPG Information Sciences Entrepreneur Fund II-A, LLC. WPG VC Fund Adviser, LLC is the fund investment advisory member of WPG Enterprise Fund III, LLC, Weiss, Peck & Greer Venture Associates IV, LLC, Weiss, Peck & Greer Venture Associates IV Cayman, LP and is the general partner of WPG Information Sciences Entrepreneur Fund, LP. WPG VC Fund Adviser II, LLC is the fund investment advisory member of Weiss, Peck & Greer Venture Associates V, LLC, Weiss, Peck & Greer Venture Associates V-A, LLC, Weiss, Peck & Greer Venture Associates V Cayman, LP, WPG Information Sciences Entrepreneur Fund II, LLC and WPG Information Sciences Entrepreneur Fund II-A, LLC. Mr. Schaepe, one of our directors, is a managing member of WPG VC Fund Adviser, LLC and WPG VC Fund Adviser II, LLC. Mr. Schaepe disclaims beneficial ownership of any of the shares held by the aforementioned entities, except to the extent of his pecuniary interest therein.
- (7) Includes 3,800,000 shares issuable upon exercise of stock options. As of December 31, 2005, 700,000 of such shares were unvested.
- (8) Includes 7,958 shares of common stock and 667,042 shares issuable upon exercise of stock options. As of December 31, 2005, 223,438 of such shares were unvested.
- (9) Includes 620,000 shares issuable upon exercise of stock options. As of December 31, 2005, 70,834 of such shares were unvested.
- (10) Includes 675,000 shares issuable upon exercise of stock options. As of December 31, 2005, 214,584 of such shares were unvested.
- (11) Includes 150,000 shares of common stock and 950,000 shares issuable upon exercise of stock options. As of December 31, 2005, 239,584 of such shares were unvested.
- (12) Includes 75,000 shares of common stock and 75,000 shares issuable upon exercise of stock options. As of December 31, 2005, 29,688 of such shares were unvested.
- (13) Includes 50,000 shares issuable upon exercise of stock options. As of December 31, 2005, 50,000 of such shares are were unvested.
- (14) Includes an aggregate of 6,837,042 shares issuable upon exercise of stock options. As of December 31, 2005, an aggregate of 1,528,128 of such shares are were unvested.

DESCRIPTION OF CAPITAL STOCK

General

The following is a summary of the rights of our common stock and preferred stock and related provisions of our certificate of incorporation and bylaws as they will be in effect upon the closing of this offering. For more detailed information, please see our certificate of incorporation, bylaws and Investors' Rights Agreement, filed as exhibits to the registration statement of which this prospectus forms a part.

Upon completion of this offering, our authorized capital stock will consist of 110,000,000 shares, par value of \$0.001 per share, of which:

- 100,000,000 shares will be designated as common stock, and
- 10,000,000 shares will be designated as preferred stock.

At December 31, 2005, we had outstanding 31,553,654 shares of common stock held of record by 311 stockholders, assuming the automatic conversion into common stock of each outstanding share of preferred stock and Class A nonvoting common stock immediately prior to the completion of the offering. Upon completion of this offering, there will be _____ shares of our common stock outstanding, or _____ shares if the underwriters exercise their over-allotment option in full.

Common Stock

On all matters submitted to our stockholders for vote, our common stockholders are entitled to one vote per share, voting together as a single class, and do not have cumulative voting rights. Accordingly, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose. Subject to preferences that may apply to any shares of preferred stock outstanding, the holders of common stock are entitled to share equally in any dividends that our board of directors may determine to issue from time to time. Upon our liquidation, dissolution or winding-up, the holders of common stock shall be entitled to share equally all assets remaining after the payment of any liabilities and the liquidation preferences on any outstanding preferred stock. Holders of common stock have no preemptive or conversion rights or other subscription rights and there are no redemption or sinking funds provisions applicable to the common stock.

Preferred Stock

The board of directors will have the authority, without any action by the stockholders, to issue from time to time the preferred stock in one or more series and to fix the number of shares, designations, preferences, powers, and rights and the qualification, limitations or restrictions thereof. The preferences, powers, rights and restrictions of different series of preferred stock may differ with respect to dividend rates, amounts payable on liquidation, voting rights, conversion rights, redemption provisions, sinking fund provisions and other matters. The issuance of preferred stock could decrease the amount of earnings and assets available for distribution to holders of common stock or adversely affect the rights and powers, including voting rights, of the holders of common stock, and may have the effect of delaying, deferring or preventing a change in control of our company. The existence of authorized but unissued preferred stock may enable the board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise. For example, if in the due exercise of its fiduciary obligations, the board of directors were to determine that a takeover proposal was not in the best interests of our stockholders, the board of directors could cause shares of preferred stock to be issued without stockholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer, stockholder or stockholder group.

Registration Rights

The holders of 21,901,533 shares of common stock, or the registrable securities, are entitled to have their shares registered by us under the Securities Act under the terms of an agreement between us and the holders of these registrable securities. Subject to limitations specified in the agreement, these registration rights include the following:

- The holders of at least 35% of the then outstanding registrable securities may require, on two occasions beginning six months after the date of this prospectus, that we use our best efforts to register the registrable securities for public resale, provided that the proposed aggregate selling price is at least \$7,500,000.
- If we register any common stock, either for our own account or for the account of other security holders, the holders of registrable securities are entitled to include their shares of common stock in the registration, subject to the ability of the underwriters to limit the number of shares included in the offering in view of market conditions.
- The holders of at least 500,000 shares of the then outstanding registrable securities may require us on two occasions in any twelve month period to register all or a portion of their registrable securities on Form S-3 when use of that form becomes available to us, provided that the proposed aggregate selling price is at least \$2,000,000.

We will bear all registration expenses other than underwriting discounts and commissions. All registration rights pertaining to common stock terminate on the date five years following the closing of this offering, or, with respect to each holder of registrable securities holding two percent (2%) or less of the outstanding capital stock of the company, such earlier time at which all registrable securities held by such holder (and any affiliate of the holder with whom such holder must aggregate its sales under Rule 144) can be sold in a single transaction without registration in compliance with Rule 144. We anticipate that these registration rights will be waived with respect to this offering.

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

Certain provisions of Delaware law, our certificate of incorporation and bylaws could make more difficult our acquisition by a third party and the removal of our incumbent officers and directors. These provisions, summarized below, are expected to discourage coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of us to first negotiate with us. We believe that the benefits of increased protection of our ability to negotiate with the proponent of an unfriendly or unsolicited acquisition proposal outweigh the disadvantages of discouraging such proposals because, among other things, negotiation could result in an improvement of their terms.

Undesignated Preferred Stock

Our board of directors has the ability to issue preferred stock with voting or other rights or preference that could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Stockholder Meetings

Our charter documents provide that a special meeting of stockholders may be called only by our chairman of the board of directors, chief executive officer or by a resolution adopted by a majority of our board 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 the board of directors or a committee of the board of directors.

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Elimination of Stockholder Action by Written Consent

Our amended and restated certificate of incorporation eliminates the right of stockholders to act by written consent without a meeting.

Election and Removal of Directors

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. For more information on the classified board, see “Management—Board of Directors.” In addition, directors may be removed from office by our stockholders only 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 for stockholders to replace a majority of directors.

Amendment of Charter Provisions

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock, would require approval by holders of at least 66²/₃% of our then outstanding common stock.

Delaware Anti-Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits persons deemed “interested stockholders” from engaging in a “business combination” with a Delaware corporation for three years following the date these persons become interested stockholders. Generally, 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 voting stock. Generally, a “business combination” includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors.

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

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is .

Listing

We intend to apply for the quotation of our common stock on the Nasdaq National Market or the New York Stock Exchange under a ticker symbol to be determined.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no market for our common stock. Future sales of substantial amounts of our common stock in the public market could adversely affect prevailing market prices from time to time. Further, since only a limited number of shares will be available for sale shortly after this offering because of certain contractual and legal restrictions on resale described below, sales of substantial amounts of our common stock in the public market after the restrictions lapse could adversely affect the prevailing market price and our ability to raise equity capital in the future.

Sales of Restricted Shares

Upon completion of this offering, we will have outstanding an aggregate of _____ shares of common stock, assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options after December 31, 2005. Of these shares, the _____ shares sold in this offering will be freely tradable without restrictions or further registration under the Securities Act, unless one or more of our existing affiliates as that term is defined in Rule 144 under the Securities Act purchases such shares.

The remaining 31,553,654 shares of our common stock held by existing stockholders as of December 31, 2005 are restricted shares or are restricted by the contractual provisions described below. Restricted shares may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 144 or Rule 701 of the Securities Act, which are summarized below. Of these restricted shares, 4,908,176 shares will be available for resale in the public market in reliance on Rule 144(k), all of which shares are restricted by the terms of the lock-up agreements described below. An additional 24,195,045 shares will be available for resale in the public market in reliance on Rule 144, all of which shares are restricted by the terms of the lock-up agreements. The remaining 2,450,433 shares become eligible for resale in the public market at various dates thereafter, all of which shares are restricted by the terms of the lock-up agreements. The table below sets forth the approximate number of shares eligible for future sale:

<u>Date</u>	<u>Number of Shares</u>
On the date of this prospectus	—
Between 90 and 180 days after the date of this prospectus	—
At various times beginning more than 180 days after the date of this prospectus	31,553,654

In addition, as of December 31, 2005, options to purchase a total of 10,773,819 shares of common stock were outstanding, all of which options are exercisable, of which options to purchase 7,479,571 shares are no longer subject to vesting or restricted by our right of repurchase. All of such options are restricted by the terms of the lock-up agreements.

Rule 144

Under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a stockholder who has beneficially owned restricted shares for at least one year and has complied with the requirements described below would be entitled to sell, upon the expiration of the lock-up agreements described below, some of that stockholder's shares within any three-month period. That number of shares cannot exceed the greater of one percent of the number of shares of our common stock then outstanding, which will equal approximately _____ shares immediately after this offering, or the average weekly trading volume of our common stock on the Nasdaq National Market or the New York Stock Exchange, as applicable, during the four calendar weeks preceding the filing of a notice on Form 144 reporting the sale. Sales under Rule 144 are also restricted by manner of sale provisions, notice requirements and the availability of current public information about us. Rule 144 also provides that our affiliates who are selling shares of our common stock that are not restricted shares must nonetheless comply with the same restrictions applicable to restricted shares with the exception of the holding period requirement.

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Under Rule 144(k), a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years is entitled to sell those shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. Accordingly, these shares may be sold without restriction immediately upon the expiration of the lock-up agreements described below.

Rule 701

Rule 701 provides that the shares of common stock acquired upon the exercise of currently outstanding options or other rights granted under our equity plans may be resold, to the extent not restricted by the terms of the lock-up agreements, by persons, other than affiliates, beginning 90 days after the date of this prospectus, restricted only by the manner of sale provisions of Rule 144, and by affiliates in accordance with Rule 144, without compliance with its one-year minimum holding period.

Registration Statements

We intend to file one or more registration statements on Form S-8 under the Securities Act following this offering to register all shares of our common stock which have been issued or are issuable upon exercise of outstanding stock options or other rights granted under our equity plans. These registration statements are expected to become effective upon filing. Shares covered by these registration statements will thereupon be eligible for sale in the public market, upon the expiration or release from the terms of the lock-up agreements, to the extent applicable, or subject in certain cases to vesting of such shares.

Lock-up Agreements

All stockholders and option holders have agreed with us not to sell or otherwise dispose of, directly or indirectly, any shares of our common stock (or any security convertible into or exchangeable or exercisable for common stock) for a period of 180 days from the date of this prospectus. In addition, except for sales of common stock by us in this offering, we and our executive officers, directors and substantially all of our stockholders and optionholders have agreed with the underwriters not to sell or otherwise dispose of, directly or indirectly, any shares of our common stock (or any security convertible into or exchangeable or exercisable for common stock) without the prior written consent of both Morgan Stanley & Co. Incorporated and Merrill Lynch for a period of 180 days from the date of this prospectus. This agreement is subject to certain exceptions. See “Underwriters.”

Registration Rights

After this offering, the holders of approximately 21,901,533 shares of common stock will be entitled to rights to cause us to register the sale of those shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares, other than shares purchased by our affiliates, becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. See “Description of Capital Stock—Registration Rights.”

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following is a general discussion of the material U.S. federal income and estate tax consequences of the ownership and disposition of common stock by a beneficial owner that is a “non-U.S. holder”, other than a non-U.S. holder that owns, or has owned, actually or constructively, more than 5% of the company’s common stock. A “non-U.S. holder” is a person or entity that, for U.S. federal income tax purposes, is a:

- non-resident alien individual, other than certain former citizens and residents of the United States subject to tax as expatriates;
- foreign corporation; or
- foreign estate or trust.

A “non-U.S. holder” does not include an individual who is present in the United States for 183 days or more in the taxable year of disposition and is not otherwise a resident of the United States for U.S. federal income tax purposes. Such an individual is urged to consult his or her own tax advisor regarding the U.S. federal income tax consequences of the sale, exchange or other disposition of common stock.

This discussion is based on the Internal Revenue Code of 1986, as amended (the “Code”), and administrative pronouncements, judicial decisions and final, temporary and proposed Treasury Regulations, changes to any which subsequent to the date of this prospectus may affect the tax consequences described herein. This discussion does not address all aspects of U.S. federal income and estate taxation that may be relevant to non-U.S. holders in light of their particular circumstances such as non-U.S. holders subject to special tax treatment under U.S. federal tax laws (including partnerships or other pass-through entities, “controlled foreign corporations,” “passive foreign investment companies,” banks and insurance companies, dealers in securities, holders of securities held as part of a “straddle,” “hedge,” “conversion transaction” or other risk-reduction transaction, non-U.S. holders that do not hold our common stock as a capital asset and persons who hold or receive common stock as compensation). In addition, this discussion does not address any tax consequences arising under the laws of any state, local or foreign jurisdiction.

We have not requested a ruling from the Internal Revenue Service (“IRS”) in connection with the tax consequences described herein. Accordingly, the discussion below neither binds the IRS nor precludes it from adopting a contrary position.

IN VIEW OF THE FOREGOING AND BECAUSE THE FOLLOWING DISCUSSION IS INTENDED AS A GENERAL SUMMARY ONLY, YOU ARE URGED TO CONSULT YOUR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES OF THE OWNERSHIP OR DISPOSITION OF OUR STOCK, INCLUDING THE APPLICABLE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES, IN LIGHT OF YOUR OWN PARTICULAR TAX SITUATIONS.

Dividends

As discussed under “Dividend Policy” above, the company does not currently expect to pay dividends. In the event that the company does pay dividends, dividends paid to a non-U.S. holder of common stock generally will be subject to withholding tax at 30% rate or a reduced rate specified by an applicable income tax treaty. In order to obtain a reduced rate of withholding, a non-U.S. holder will be required to provide an IRS Form W-8BEN certifying its entitlement to benefits under a treaty.

The withholding tax does not apply to dividends paid to a non-U.S. holder who provides a Form W-8ECI, certifying that the dividends are effectively connected with the non-U.S. holder’s conduct of a trade or business within the United States. Instead, the effectively connected dividends will be subject to regular U.S. income tax as if the non-U.S. holder were a U.S. resident, subject to an applicable income tax treaty providing otherwise. A non-U.S. corporation receiving effectively connected dividends may also be subject to an additional “branch profits tax” imposed at a rate of 30% (or a lower treaty rate).

Gain on Disposition of Common Stock

A non-U.S. holder generally will not be subject to U.S. federal income tax on gain realized on a sale or other disposition of common stock unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States, subject to an applicable treaty providing otherwise,
- the company is or has been a U.S. real property holding corporation, as defined below, at any time within the five-year period preceding the disposition or the non-U.S. holder's holding period, whichever period is shorter, and its common stock has ceased to be traded on an established securities market prior to the beginning of the calendar year in which the sale or disposition occurs.

In general, we would be a U.S. real property holding corporation if interests in U.S. real estate comprised the majority of our assets. The company believes that it is not, and does not anticipate becoming, a U.S. real property holding corporation.

Information Reporting Requirements and Backup Withholding

Information returns will be filed with the IRS in connection with payments of dividends and the proceeds from a sale or other disposition of common stock. A non-U.S. holder may have to comply with certification procedures to establish that it is not a United States person in order to avoid information reporting and backup withholding tax requirements. The certification procedures required to claim a reduced rate of withholding under a treaty will satisfy the certification requirements necessary to avoid the backup withholding tax as well. The amount of any backup withholding from a payment to a non-U.S. holder will be allowed as a credit against such holder's U.S. federal income tax liability and may entitle such holder to a refund, provided that the required information is furnished to the IRS.

Federal Estate Tax

Individual non-U.S. holders and entities the property of which is potentially includible in such an individual's gross estate for U.S. federal estate tax purposes (for example, a trust funded by such an individual and with respect to which the individual has retained certain interests or powers), should note that, absent an applicable treaty benefit, the common stock will be treated as U.S. situs property subject to U.S. federal estate tax.

UNDERWRITERS

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. Incorporated, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Thomas Weisel Partners LLC and JMP Securities LLC are acting as representatives, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

<u>Name</u>	<u>Number of Shares</u>
Morgan Stanley & Co. Incorporated	
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Thomas Weisel Partners LLC	
JMP Securities LLC	
Total	

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 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 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 \$ _____ per 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 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 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. If the underwriters’ option is exercised in full, the total price to the public would be \$ _____, the total underwriters’ discounts and commissions would be \$ _____ and total proceeds to us would be \$ _____.

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.

We and all of our directors and officers and holders of substantially all of our outstanding stock have agreed that, without the prior written consent of both Morgan Stanley & Co. Incorporated and Merrill Lynch, 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

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directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock; or

- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of our common stock,

whether any transaction described above is to be settled by delivery of our common stock or such other securities, in cash or otherwise.

The restrictions described in the immediately preceding paragraph do not apply to:

- the sale of shares to the underwriters;
- the issuance by us of shares of common stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus of which the underwriters have been advised in writing;
- the issuance by us of shares or options to purchase shares of our common stock, or the repurchase by us of unvested shares upon termination of service of an employee, director, consultant or other service provider, pursuant to our equity benefit plans described in “Management—Executive Compensation—Employee Benefit Plans,” provided that the recipient of the shares is under an obligation not to sell the shares during the 180-day period;
- the filing by us of any registration statements on Form S-8 for the registration of shares of common stock issued pursuant to our equity benefit plans described in “Management—Executive Compensation—Employee Benefit Plans”;
- the issuance by us of shares of common stock in connection with the conversion of shares of preferred stock and Class A nonvoting common stock;
- transactions by any person other than us relating to shares of common stock or other securities acquired in open market transactions after the completion of the offering of the shares;
- the establishment of a trading plan pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, or the Exchange Act, provided that no transfers occur under such plan during the 180-day period;
- the issuance by us of shares of common stock in connection with any mergers or other acquisition transactions, provided that the total number of shares of common stock issued pursuant to the foregoing does not exceed 10% of the total number of shares of common stock outstanding immediately after this offering;
- transfers of shares as a gift or for no consideration;
- distributions of shares to partners, members or stockholders of the stockholder; or
- transfers to certain entities or persons affiliated with the stockholder,

provided that in the case of each of the last four transactions, each donee, distributee, transferee and recipient agrees to be subject to the restrictions described in the immediately preceding paragraph, and no filing under Section 16 of the Exchange Act is required in connection with these transactions.

In order to facilitate the offering of the 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

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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 the offering. In addition, to stabilize the price of the common stock, the underwriters may bid for, and purchase, shares of common stock in the open market. Finally, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the common stock in the offering, if the syndicate repurchases previously distributed common stock to cover syndicate short positions or 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 intend to apply to have our common stock approved for listing on _____ under the symbol “_____.”

Pursuant to the underwriting agreement, we and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

Pricing of the Offering

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representatives. Among the factors to be considered in determining the initial public offering price: will be our future prospects and those of our industry in general, sales, earnings and other financial 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.

Electronic Distribution

A prospectus in electronic format will be made available on the websites maintained by one or more of the underwriters of this offering. Other than the electronic prospectus, the information on the websites of the underwriters is not part of this prospectus. The underwriters may agree to allocate a number of shares to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated to underwriters that may make Internet distributions on the same basis as other allocations.

LEGAL MATTERS

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, Menlo Park, California, will pass upon the validity of the common stock offered by this prospectus. Members of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP participating in the consideration of legal matters related to the common stock offered by us in this offering are the beneficial owners of less than 1.0% of our outstanding shares of common stock. Wilson Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California, will pass upon certain legal matters for the underwriters.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements at December 31, 2005 and 2004, and for each of the three years in the period ended December 31, 2005, as set forth in their report. We have included our financial statements in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission (SEC), Washington, D.C. 20549, a registration statement on Form S-1 under the Securities Act of 1933, with respect to our common stock offered hereby. This prospectus, which forms part of the registration statement, does not contain all of the information set forth in the registration statement and the exhibits and schedules to the registration statement. Some items are omitted in accordance with the rules and regulations of the SEC. For further information about us and our common stock, we refer you to the registration statement and the exhibits and schedules to the registration statement filed as part of the registration statement. Statements contained in this prospectus as to the contents of any contract or other document filed as an exhibit are qualified in all respects by reference to the actual text of the exhibit. You may read and copy the registration statement, including the exhibits and schedules to the registration statement, at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. You can obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet site at <http://www.sec.gov>, from which you can electronically access the registration statement, including the exhibits and schedules thereto.

Upon completion of this offering, we will be subject to the information reporting requirements of the Securities Exchange Act of 1934 and we intend to file reports, proxy statements and other information with the SEC.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
eHealth, Inc.

We have audited the accompanying consolidated balance sheets of eHealth, Inc. as of December 31, 2004 and 2005, and the related consolidated statements of operations and comprehensive loss, convertible preferred stock and stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2005. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of eHealth, Inc. at December 31, 2004 and 2005, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2005, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

Palo Alto, California
March 10, 2006

EHEALTH, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share information)

	<u>December 31,</u>		Pro Forma Stockholders' Equity at December 31, 2005 (unaudited)
	<u>2004</u>	<u>2005</u>	
Assets			
Current assets:			
Cash and cash equivalents	\$ 8,707	\$ 9,415	
Accounts receivable	32	128	
Prepaid expenses and other current assets	<u>923</u>	<u>908</u>	
Total current assets	9,662	10,451	
Restricted cash and cash equivalents	101	—	
Restricted investments	150	153	
Property and equipment, net	2,563	2,761	
Deferred initial public offering costs	—	1,391	
Other assets	<u>422</u>	<u>409</u>	
Total assets	<u>\$ 12,898</u>	<u>\$ 15,165</u>	
Liabilities and stockholders' equity (deficit)			
Current liabilities:			
Accounts payable	\$ 822	\$ 1,077	
Accrued compensation and benefits	2,358	3,009	
Accrued marketing expenses	923	1,027	
Deferred revenue	3	523	
Other current liabilities (Note 5)	<u>759</u>	<u>1,179</u>	
Total current liabilities	4,865	6,815	
Other non-current liabilities	59	212	
Commitments and contingencies			
Convertible preferred stock; \$0.001 par value; 23,100,000 shares authorized at December 31, 2004 and 2005, issuable in series:			
Series A; 5,200,000 shares authorized; 5,098,915 shares issued and outstanding at December 31, 2004 and 2005 (aggregate liquidation preference of \$11,947); no shares outstanding pro forma (unaudited)	11,947	11,947	\$ —
Series B; 4,900,000 shares authorized; 4,245,710 shares issued and outstanding at December 31, 2004 and 2005, respectively (liquidation preference of \$42,160); no shares outstanding pro forma (unaudited)	42,211	42,160	—
Series C; 13,000,000 shares authorized; 11,231,646 shares issued and outstanding at December 31, 2004 and 2005 (liquidation preference of \$32,201); no shares outstanding pro forma (unaudited)	32,212	32,212	—
Stockholders' equity (deficit):			
Common stock; \$0.001 par value; 43,600,000 and 40,000,000 shares authorized at December 31, 2004 and 2005, respectively; 9,162,667 and 9,577,838 shares issued and outstanding at December 31, 2004 and 2005, respectively; 31,553,654 shares outstanding pro forma (unaudited)	9	10	32
Class A nonvoting common stock; \$0.001 par value; none and 1,600,000 shares authorized at December 31, 2004 and 2005, respectively; none and 514,100 shares issued and outstanding at December 31, 2004 and 2005, respectively; no shares outstanding pro forma (unaudited)	—	1	—
Additional paid-in capital	1,417	1,977	88,275
Deferred stock-based compensation	(104)	(62)	(62)
Accumulated deficit	(79,718)	(80,132)	(80,132)
Accumulated other comprehensive income	—	25	25
Total stockholders' equity (deficit)	<u>(78,396)</u>	<u>(78,181)</u>	<u>\$ 8,138</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 12,898</u>	<u>\$ 15,165</u>	

See accompanying notes.

EHEALTH, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except per share information)

	Years Ended December 31,		
	2003	2004	2005
Revenue:			
Commission	\$21,868	\$29,783	\$41,237
License and other	368	432	515
Total revenue	22,236	30,215	41,752
Operating costs and expenses:			
Cost of revenue	600	447	614
Marketing and advertising (1)	7,002	12,732	17,786
Customer care and enrollment (1)	6,185	7,577	8,822
Technology and content (1)	6,595	7,461	8,054
General and administrative (1)	5,123	5,385	7,108
Total operating costs and expenses	25,505	33,602	42,384
Loss from operations	(3,269)	(3,387)	(632)
Other income, net	74	60	239
Loss before provision for income taxes	(3,195)	(3,327)	(393)
Provision for income taxes	—	—	21
Net loss	<u>\$ (3,195)</u>	<u>\$ (3,327)</u>	<u>\$ (414)</u>
Comprehensive loss:			
Net loss	\$ (3,195)	\$ (3,327)	\$ (414)
Foreign currency translation adjustment	—	—	25
Total comprehensive loss	<u>\$ (3,195)</u>	<u>\$ (3,327)</u>	<u>\$ (389)</u>
Net loss per share:			
Basic—common stock and Class A nonvoting common stock	\$ (0.37)	\$ (0.37)	\$ (0.04)
Diluted—common stock	\$ (0.37)	\$ (0.37)	\$ (0.04)
Diluted—Class A nonvoting common stock	—	—	\$ (0.04)
Pro forma—basic and diluted (unaudited)			\$ (0.01)
Weighted-average number of shares used in per share amounts:			
Basic—common stock and Class A nonvoting common stock	8,662	8,946	9,329
Diluted—common stock	8,662	8,946	9,322
Diluted—Class A nonvoting common stock (on as-if-converted basis)	—	—	1
Pro forma—basic and diluted (unaudited)			31,235
(1) Includes stock-based compensation as follows:			
Marketing and advertising	\$ 49	\$ 59	\$ 97
Customer care and enrollment	25	7	6
Technology and content	9	14	62
General and administrative	9	19	26
Total	<u>\$ 92</u>	<u>\$ 99</u>	<u>\$ 191</u>

See accompanying notes.

EHEALTH, INC.
CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands)

	Convertible Preferred Stock						Common Stock		Class A Nonvoting Common Stock		Additional Paid-in Capital	Deferred Stock-Based Compensation	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity (Deficit)
	Series A		Series B		Series C		Shares	Amount	Shares	Amount					
	Shares	Amount	Shares	Amount	Shares	Amount									
Balance at December 31, 2002	5,099	\$ 11,947	4,246	\$ 42,181	11,222	\$ 32,223	8,634	\$ 9	—	\$ —	\$ 804	\$ —	\$(73,196)	\$ —	\$ (72,383)
Issuance of common stock in connection with the exercise of common stock options, net of repurchases	—	—	—	—	—	—	118	—	—	—	76	—	—	—	76
Issuance of restricted common stock awards to non-employees, net of cancellations	—	—	—	—	—	—	26	—	—	—	—	—	—	—	—
Issuance of Series C convertible preferred stock upon the exercise of stock warrants	—	—	—	—	10	29	—	—	—	—	—	—	—	—	—
Deferred stock-based compensation related to grants of common stock options to employees, net of reversals for terminated employees	—	—	—	—	—	—	—	—	—	—	109	(109)	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	10	—	—	10
Stock-based compensation related to change in terms of common stock option granted to employee	—	—	—	—	—	—	—	—	—	—	23	—	—	—	23
Stock-based compensation related to non-employees	—	—	—	—	—	—	—	—	—	—	16	—	—	—	16
Stock-based compensation related to Series B and C convertible preferred stock and common stock warrants issued in connection with marketing alliances	—	—	—	15	—	27	—	—	—	—	1	—	—	—	1
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(3,195)	—	(3,195)
Balance at December 31, 2003	5,099	11,947	4,246	42,196	11,232	32,279	8,778	9	—	1,029	(99)	(76,391)	—	(75,452)	
Issuance of common stock in connection with the exercise of common stock options	—	—	—	—	—	—	387	—	—	—	232	—	—	—	232
Cancellation of unvested restricted common stock awards in connection with termination of employees	—	—	—	—	—	—	(2)	—	—	—	—	—	—	—	—
Deferred stock-based compensation related to restricted common stock awards to employees, net of reversals for terminated employees	—	—	—	—	—	—	—	—	—	—	45	(45)	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	40	—	—	40
Stock-based compensation related to change in terms of common stock option granted to employee	—	—	—	—	—	—	—	—	—	—	25	—	—	—	25

EHEALTH, INC.

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)—(Continued)
(in thousands)

	Convertible Preferred Stock						Common Stock		Class A Nonvoting Common Stock		Additional Paid-in Capital	Deferred Stock-Based Compensation	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity (Deficit)
	Series A		Series B		Series C		Shares	Amount	Shares	Amount					
	Shares	Amount	Shares	Amount	Shares	Amount									
Stock-based compensation related to non-employees	—	—	—	—	—	—	—	—	—	—	18	—	—	—	18
Stock-based compensation related to Series B convertible preferred stock and common stock warrants issued in connection with marketing alliances	—	—	—	15	—	—	—	—	—	—	1	—	—	—	1
Expiration of Series C convertible preferred stock warrants	—	—	—	—	—	(67)	—	—	—	—	67	—	—	—	67
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(3,327)	—	(3,327)
Balance at December 31, 2004	5,099	11,947	4,246	42,211	11,232	32,212	9,163	9	—	—	1,417	(104)	(79,718)	—	(78,396)
Issuance of common stock in connection with exercise of common stock options	—	—	—	—	—	—	415	1	—	—	361	—	—	—	362
Issuance of Class A nonvoting restricted common stock awards to employees, net of reversals for terminated employees	—	—	—	—	—	—	—	—	514	1	(1)	—	—	—	—
Stock-based compensation related to Class A nonvoting restricted common stock awards	—	—	—	—	—	—	—	—	—	—	49	—	—	—	49
Stock-based compensation related to change in terms of common stock options granted to employees	—	—	—	—	—	—	—	—	—	—	83	—	—	—	83
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	42	—	—	42
Stock-based compensation related to non-employees	—	—	—	—	—	—	—	—	—	—	3	—	—	—	3
Stock-based compensation related to Series B convertible preferred stock and common stock warrants issued in connection with marketing alliances	—	—	—	13	—	—	—	—	—	—	1	—	—	—	1
Expiration of Series B convertible preferred stock warrants	—	—	—	(64)	—	—	—	—	—	—	64	—	—	—	64
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	25	25
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(414)	—	(414)
Balance at December 31, 2005	<u>5,099</u>	<u>\$ 11,947</u>	<u>4,246</u>	<u>\$ 42,160</u>	<u>11,232</u>	<u>\$ 32,212</u>	<u>9,578</u>	<u>\$ 10</u>	<u>514</u>	<u>\$ 1</u>	<u>\$ 1,977</u>	<u>\$ (62)</u>	<u>\$(80,132)</u>	<u>\$ 25</u>	<u>\$ (78,181)</u>

See accompanying notes.

EHEALTH, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended December 31,		
	2003	2004	2005
Operating activities			
Net loss	\$(3,195)	\$(3,327)	\$ (414)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	1,164	1,484	1,136
Stock-based compensation expense	92	99	191
Deferred rent	(13)	29	168
(Gain) loss on disposal of property and equipment	—	(29)	17
Changes in operating assets and liabilities:			
Accounts receivable	(31)	(1)	(96)
Prepaid expenses and other current assets	(739)	182	15
Other assets	241	(270)	13
Accounts payable	89	259	163
Accrued compensation and benefits	32	471	649
Accrued marketing expenses	222	367	104
Deferred revenue	1	(8)	520
Other current liabilities	(834)	145	151
Other non-current liabilities	(17)	—	—
Net cash provided by (used in) operating activities	<u>(2,988)</u>	<u>(599)</u>	<u>2,617</u>
Investing activities			
Purchases of property and equipment	(807)	(1,582)	(1,337)
Changes in restricted cash	(1)	—	101
Changes in restricted investments	8	(2)	(3)
Purchases of short-term investments	(7,700)	—	—
Sales of short-term investments	6,104	7,002	—
Maturities of short-term investments	1,520	—	—
Net proceeds from the sale of property and equipment	—	29	—
Net cash provided by (used in) investing activities	<u>(876)</u>	<u>5,447</u>	<u>(1,239)</u>
Financing activities			
Net proceeds from the exercise of Series C convertible preferred stock warrant	29	—	—
Net proceeds from the exercise of common stock options	76	232	362
Costs incurred in connection with initial public offering	—	—	(1,022)
Principal payments in connection with capital leases	(14)	(17)	(22)
Net cash provided by (used in) financing activities	<u>91</u>	<u>215</u>	<u>(682)</u>
Effect of exchange rate changes on cash and cash equivalents	—	—	12
Net increase (decrease) in cash and cash equivalents	(3,773)	5,063	708
Cash and cash equivalents at beginning of year	7,417	3,644	8,707
Cash and cash equivalents at end of year	<u>\$ 3,644</u>	<u>\$ 8,707</u>	<u>\$ 9,415</u>
Supplemental disclosure of non-cash activities			
Capital lease obligations incurred	<u>\$ —</u>	<u>\$ 28</u>	<u>\$ —</u>
Deferred stock-based compensation expense related to granting of restricted stock awards and stock options to employees	<u>\$ 109</u>	<u>\$ 45</u>	<u>\$ —</u>
Supplemental disclosure of cash flows			
Cash paid for interest	<u>\$ 8</u>	<u>\$ 5</u>	<u>\$ 17</u>
Cash paid for income taxes	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

See accompanying notes.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1—Summary of Business and Significant Accounting Policies

eHealth, Inc. and subsidiaries (“Company,” “we” or “us”), formerly known as eHealthInsurance Services, Inc., was incorporated in the state of Delaware on November 14, 1997. We offer an Internet-based insurance agency service for individuals, families and small businesses in the United States. Our service enables individuals, families and small businesses to research, analyze, compare and purchase health insurance products from health insurance carriers across the nation. We are licensed to market and sell health insurance in all 50 states and the District of Columbia.

Principles of Consolidation—The consolidated financial statements include the accounts of eHealth, Inc. and our wholly-owned subsidiaries, eHealthInsurance Services, Inc., eHealth China, Inc. and eHealth China (Xiamen) Technology Co., Ltd. eHealth China, Inc. was incorporated in October 2003. eHealth China (Xiamen) Technology Co., Ltd., a wholly-owned foreign enterprise of eHealth China, Inc., was incorporated in China in December 2003. All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates—The preparation of consolidated financial statements and related disclosures in conformity with U.S. generally accepted accounting principles requires management to make estimates, judgments and assumptions that affect the amounts reported and disclosed in the consolidated financial statements and accompanying notes. On an ongoing basis, we evaluate our estimates, including those related to the useful lives of long-lived assets including property and equipment, fair value of investments, fair value of intangible assets, allowances for commission forfeitures payable to carriers, the value of our common stock for the purpose of determining stock-based compensation, and income taxes, among others. We base our estimates of the carrying value of certain assets and liabilities on historical experience and on various other assumptions that we believe to be reasonable. Actual results may differ from these estimates.

Revenue Recognition—We recognize revenue for our services using the criteria set forth in Staff Accounting Bulletin No. 104, *Revenue Recognition* (SAB 104). SAB 104 states that revenue is recognized when each of the following four criteria is met: persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the seller’s price to the buyer is fixed or determinable; and collectibility is reasonably assured.

Our revenue is primarily comprised of compensation paid to us by health insurance carriers related to insurance policies that have been purchased by a member who used our service. We define a member as an individual currently covered by an insurance product for which we are entitled to receive compensation. Our compensation generally represents a percentage of the premium amount collected by the carrier during the period that a member maintains coverage under a policy (commissions) and, to a lesser extent, override commissions that health insurance carriers pay us for achieving certain objectives. Premium-based commissions are reported to us after the premiums are collected by the carrier, generally on a monthly basis. We determine that there is persuasive evidence of an arrangement when we have a commission agreement with a health insurance carrier and a carrier reports to us that it has approved an application submitted through our ecommerce platform. Our services are complete when a carrier has approved an application. Commissions are deemed fixed or determinable and collectibility is reasonably assured when commission amounts have been reported to us by a carrier. We recognize commission override revenue when reported to us by a carrier based on the actual attainment of predetermined target sales levels or other objectives as determined by the carrier.

We recognize commission revenue when our commission is reported to us by a health insurance carrier, net of an allowance for future forfeiture amounts payable to carriers due to policy cancellations. Commissions are reported to us by a cash payment and commission statement. We generally receive these communications simultaneously. In rare instances when we receive the cash payment and commission statement separately and in

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

different accounting periods, we recognize revenue in the period that we receive the earliest communication, provided we receive the second communication corroborating the amount reported in the first communication within ten business days. If the second corroborating communication is not received within ten business days, we recognize revenue in the period the second communication is received. We use the data in the commission statement to identify the members for which we are receiving a commission payment and the amount received for each member, and to estimate our allowance for forfeitures.

Certain commission amounts are subject to forfeiture in circumstances where a member has prepaid his or her premium for a future period of coverage and subsequently cancels his or her policy before the completion of that period. We record an allowance for these forfeitures based on historical cancellation experience using data provided on commission statements. The allowance for forfeitures totaled \$190,000 and \$236,000 at December 31, 2004 and 2005, respectively, and is included in other current liabilities in the accompanying consolidated balance sheets. There were no significant changes in our forfeiture rates during the years ended December 31, 2003, 2004 or 2005.

We also evaluate the criteria outlined in Emerging Issues Task Force (EITF) Issue No. 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent*, in determining whether it is appropriate to record the gross amount of the insurance premiums from our transactions or the net amount earned as commissions. We are not obligated with respect to the insurance coverage sold through our ecommerce platform. As a result, we recognize the net amount of compensation earned as the agent in the transaction.

Deferred Revenue—Deferred revenue primarily consists of amounts that have been reported to us related to transactions where our services are complete, but where we cannot currently estimate the allowance for future forfeitures related to those amounts. Deferred revenue at December 31, 2004 and 2005 was \$3,000 and \$523,000, respectively. Included in deferred revenue at December 31, 2005 was \$473,000 related to a single health insurance carrier that, effective January 2005, changed its basis for calculating and reporting commission amounts from a percentage of the premium it collected to a percentage of the premium it billed. Since this was the first carrier to calculate and report commission amounts on this basis, we did not have sufficient historical forfeiture experience to estimate and record an appropriate allowance for forfeitures as commission amounts were reported to us by the carrier. Accordingly, all commission amounts reported to us by the carrier in 2005 were deferred. We expect to have sufficient experience to estimate an allowance for forfeitures for this carrier in 2006, at which time all amounts previously deferred will be recorded as revenue, net of an allowance for forfeitures.

Cash Equivalents and Short-Term Investments—We consider all highly liquid investments with an original maturity of three months or less from the date of purchase to be cash equivalents. We have classified our short-term investments as available-for-sale. Short-term investments generally consist of highly liquid securities that we intend to hold for more than three months, but less than one year. These investments are carried at fair value with unrealized gains and losses, net of taxes, reported as a component of stockholders' equity (deficit) in the accompanying consolidated balance sheets. Realized gains and losses and declines in value that are determined to be other-than-temporary on available-for-sale securities are included in other income, net in the accompanying consolidated statements of operations and are derived using the specific identification method for determining the cost of securities.

Restricted Cash Equivalents—Restricted cash equivalents consist of an amount on deposit as a compensating balance with a financial institution. The amount was returned to us in 2005.

Restricted Investments—Restricted investments consist of certificates of deposit and the interest receivable thereon securing letters of credit, which act as collateral for certain of our operating leases. Letters of credit,

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

which totaled \$138,000 at December 31, 2005, expire between April 10, 2006 and October 7, 2006 and automatically renew for one year, unless cancelled by us prior to renewal.

Property and Equipment—Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation is computed using the straight-line method based on estimated useful lives as follows:

Computer equipment and software	3 to 5 years
Office equipment and furniture	5 years
Leasehold improvements	Lesser of useful life (typically 5 to 7 years) or related lease term

Maintenance and minor replacements are expensed as incurred.

Deferred Initial Public Offering Costs—Deferred initial public offering costs consist of capitalized expenses associated with the planned initial public offering (IPO) of our common stock. Upon successful completion of the IPO, these costs will be offset against the gross proceeds received in the offering.

Other Assets—Other assets consist of security deposits related to capital and operating leases, as well as intangible assets.

Intangible Assets—In accordance with Statement of Financial Accounting Standards (SFAS) No. 142, *Goodwill and Other Intangible Assets*, intangible assets determined to have an indefinite useful life are not amortized, but are tested for impairment, at least annually or more frequently if indicators of impairment arise. Impairment, if any, is based on the excess of the carrying amount over the fair value of those assets. Intangible assets totaling \$245,000 at both December 31, 2004 and 2005 were deemed to have an indefinite useful life and are included in other assets in the accompanying consolidated balance sheets. No assets were deemed impaired during the three-year period ended December 31, 2005.

Long-Lived Assets—In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, we evaluate other long-lived assets for impairment on a periodic basis or whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds its fair value. No assets were deemed impaired during the three year-period ended December 31, 2005.

Concentration of Credit Risk—Our financial instruments that are exposed to concentrations of credit risk principally consist of cash and cash equivalents and accounts receivable. We deposit our cash and cash equivalents in accounts with major financial institutions and, at times, such investments may be in excess of federally insured limits. We do not require collateral or other security for accounts receivable.

All revenue for all periods presented was generated from customers located solely in the United States.

Revenue under separate agreements with individual unaffiliated carriers in excess of 10% of total revenue was as follows:

	Years Ended December 31,		
	2003	2004	2005
Carrier A	16%	17%	17%
Carrier B	18%	17%	15%

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Fair Value of Financial Instruments—The carrying amounts of our financial instruments, including cash and cash equivalents, investments, accounts receivable, accounts payable and accrued liabilities (including accrued compensation and benefits, accrued marketing expenses and other current liabilities), approximate fair value because of their short maturities. The carrying amounts of our capital leases approximate the fair value of these obligations based upon our best estimates of interest rates that would be available for similar debt obligations at December 31, 2004 and 2005.

Cost of Revenue—Cost of revenue consists primarily of payments related to health insurance policies sold to members who were referred to our website by marketing partners with whom we have revenue-sharing arrangements. Costs related to revenue sharing arrangements are expensed at the time the related revenue is recognized.

Marketing and Advertising—Marketing and advertising expenses consist primarily of member acquisition expenses associated with our direct, marketing partner and online advertising channels, in addition to compensation, benefits and other expenses related to marketing, business development, public relations and carrier relations personnel who support our offerings. We report the cost of advertising as expense in the period in which costs are incurred.

Our direct channel expenses primarily consist of direct mail, television and radio advertising and associated costs. We generally compensate our marketing partners by paying a one-time fee each time a consumer referral from a partner results in a submitted health insurance application on our ecommerce platform, regardless of whether the consumer's application is approved by the health insurance carrier. We recognize these expenditures in the period when a marketing partner's referral results in the submission of a health insurance application on our website. Paid keyword search advertising on search engines represents the majority of expenses in our online advertising channel. We incur expenses associated with search engine advertising in the period in which the consumer clicks on the advertisement.

Advertising costs incurred have been classified as follows (in thousands):

	Years Ended December 31,		
	2003	2004	2005
Contra-commission revenue	\$ 48	\$ 28	\$ 22
Cost of revenue	516	383	557
Marketing and advertising expense	3,947	9,340	12,859
Total advertising costs	<u>\$ 4,511</u>	<u>\$ 9,751</u>	<u>\$ 13,438</u>

Costs associated with revenue sharing of commissions with a health insurance carrier have been offset against commission revenue in the accompanying consolidated statements of operations, while costs associated with revenue sharing of commissions with partners have been included in cost of revenue.

Customer Care and Enrollment—Customer care and enrollment expenses consist of compensation and related expenses for personnel engaged in pre-sales assistance to applicants who call our customer care center and enrollment personnel who assist applicants during the underwriting process.

Technology and Content—Technology and content expenses consist primarily of compensation and related expenses for personnel associated with developing and enhancing our website technology as well as maintaining our website.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Research and Development—Research and development expenses consist primarily of compensation and related expenses incurred for enhancements to the functionality of our websites. In accordance with EITF Issue No. 00–2, *Accounting for Web Site Development Costs*, we expense as incurred all website development costs for new features and functionalities since it is not probable that they will result in additional functionality until they are both developed and tested with confirmation that they are more effective than the current set of features and functionalities on our website. Research and development costs, which totaled \$3.2 million, \$3.3 million and \$3.2 million for the years ended December 31, 2003, 2004 and 2005, respectively, are included in technology and content expense in the accompanying consolidated statements of operations.

Software Developed for Internal Use—In accordance with Statement of Position (SOP) No. 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use*, we capitalize costs of materials, consultants and compensation and related expenses of employees who devote time to the development of internal-use software. As of December 31, 2004 and 2005, the net book value of capitalized internal-use software totaled approximately \$211,000 and \$90,000, respectively. We expense costs incurred for preliminary project assessment, research and development, re-engineering, training and application maintenance activities.

Stock-Based Compensation—We account for stock option grants in accordance with Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25), and comply with the disclosure provisions of SFAS No. 123, *Accounting for Stock Based Compensation* (SFAS 123), as amended by SFAS No. 148, *Accounting for Stock Based Compensation—Transition and Disclosure* (SFAS 148). Under APB 25, deferred stock-based compensation expense is recorded for the intrinsic value of options (the difference between the deemed fair value of our common stock and the option exercise price) at the grant date and is amortized ratably over the option's vesting period.

We account for equity instruments issued to non-employees in accordance with SFAS 123, EITF Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring or in Conjunction with Selling, Goods or Services*, and the Financial Accounting Standards Board (FASB) Financial Interpretation (FIN) No. 44, *Accounting for Certain Transactions Involving Stock Compensation* (FIN 44), which is an interpretation of APB 25. All transactions in which equity instruments are issued in consideration for the receipt of goods or services are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date of the fair value of the equity instrument issued is the earlier of the date on which the counterparty's performance is complete or the date on which it is probable that performance will occur.

Had compensation cost for all options granted to our employees under our stock-based compensation plans (see Note 7) been determined based on the fair value method prescribed by SFAS 123, our net loss and net loss per share would have been adjusted to the pro forma amounts as follows (in thousands, except per share data):

	Years Ended December 31,		
	2003	2004	2005
Net loss, as reported	\$ (3,195)	\$ (3,327)	\$ (414)
Add: stock-based employee compensation expense included in reported net loss, net of related tax effects	33	65	125
Deduct: stock-based employee compensation expense determined under fair value method for all awards, net of related tax effects	(419)	(188)	(190)
Net loss, pro forma	<u>\$ (3,581)</u>	<u>\$ (3,450)</u>	<u>\$ (479)</u>
Net loss per share:			
As reported—basic and diluted	\$ (0.37)	\$ (0.37)	\$ (0.04)
Pro forma—basic and diluted	\$ (0.41)	\$ (0.39)	\$ (0.05)

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

For purposes of the above pro forma calculation, the fair value of each option granted during the years ended December 31, 2003, 2004 and 2005 was estimated on the date of grant using the minimum value method with the following weighted-average assumptions:

	Years Ended December 31,		
	2003	2004	2005
Risk-free interest rate	2.7%	3.1%	4.2%
Dividend yield	—	—	—
Weighted-average expected life	4.0 years	4.0 years	4.5 years

The following table summarizes the weighted-average fair value of options granted during the years ended December 31, 2003, 2004 and 2005:

	Years Ended December 31,		
	2003	2004	2005
Weighted-average fair value of options granted:			
Exercise price equal to fair value	\$ 0.10	\$ 0.24	\$ 0.70
Exercise price less than fair value	\$ 1.10	—	—

Income Taxes—We account for income taxes using the liability method as required by SFAS No. 109, *Accounting for Income Taxes* (SFAS 109). Under SFAS 109, deferred income taxes are determined based on the differences between the financial reporting and tax bases of assets and liabilities, using enacted statutory tax rates in effect for the year in which the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Comprehensive Income (Loss)—In accordance with SFAS No. 130, *Reporting Comprehensive Income*, all components of comprehensive income, including net income (loss), are reported in the consolidated financial statements in the period in which they are recognized. Comprehensive income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources (primarily foreign currency translation gains and losses). Statements of comprehensive loss have been included within the accompanying consolidated statements of operations and comprehensive loss.

Net Income (Loss) Per Share—We calculate net income (loss) per share in accordance with SFAS No. 128, *Earnings Per Share* (SFAS 128). Under SFAS 128, basic net income (loss) per share is computed by dividing net income (loss) by the weighted average number of common shares outstanding for the period (excluding shares subject to repurchase). Diluted net income (loss) per share is computed by dividing the net income (loss) for the period by the weighted average number of common and common equivalent shares outstanding during the period. Potentially dilutive securities, composed of incremental common shares issuable upon the exercise of stock options and warrants and the conversion of convertible preferred stock and Class A nonvoting common stock, are included in diluted net income per share to the extent such shares are dilutive. Diluted net loss per share was the same as basic net loss per share for all periods presented, since the effect of any potentially dilutive securities was anti-dilutive.

Foreign Currency Translation—The functional currency of our only foreign subsidiary is its local currency. The financial statements of our foreign subsidiary are translated into U.S. Dollars using month-end rates of exchange for assets and liabilities, and average rates of exchange for revenues, costs and expenses. Translation adjustments are reflected in accumulated other comprehensive income in the accompanying consolidated balance sheets, while gains and losses resulting from foreign currency transactions are included in other income, net in the accompanying consolidated statements of operations. We did not recognize any material

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

gains or losses resulting from foreign currency transactions during the years ended December 31, 2003, 2004 and 2005.

Recent Accounting Pronouncements—In December 2004, the FASB issued SFAS No. 123R, *Share-Based Payment* (SFAS 123R). SFAS 123R requires measurement of all employee stock-based compensation awards using a fair value method and the recording of such expense in the consolidated financial statements. The adoption of SFAS 123R will require additional accounting related to the income tax effects, and additional disclosure regarding the cash flow effects, resulting from share-based payment arrangements. We adopted SFAS 123R on January 1, 2006. As permitted, we will continue to account for the portion of awards outstanding on or before December 31, 2005 using the provisions of APB 25 and its related interpretative guidance.

For awards after December 31, 2005, we will begin recognizing the expense associated with these awards in the income statement over the award's vesting period using the prospective method. Awards made or modified on or after January 1, 2006 will be valued using the Black-Scholes-Merton pricing model. Because the amount, terms and fair values of awards to be issued in the future are unknown, we are unable to predict the impact of the adoption of SFAS 123R on our consolidated financial statements. However, we expect that the impact could be material over time as the number of options issued and outstanding after January 1, 2006 increases.

In September 2005, the EITF issued EITF 05-06, *Determining the Amortization Period for Leasehold Improvements after Lease Inception or Acquired in a Business Combination* (EITF 05-06). EITF 05-06 requires that leasehold improvements acquired in a business combination be capitalized over the shorter of the useful life of the assets or a term that includes required lease periods and renewals that are deemed to be reasonably assured at the date of acquisition. EITF 05-06 also requires leasehold improvements that are placed in service significantly after and not contemplated at or near the beginning of the lease term should be amortized over the shorter of the useful life of the assets or a term that includes required lease periods and renewals that are deemed to be reasonably assured (as defined in paragraph 5 of SFAS No. 13, *Accounting for Leases*) at the date the leasehold improvements are purchased. EITF 05-06 is effective for leasehold improvements that are purchased or acquired in reporting periods beginning after June 29, 2005. Early adoption of the consensus is permitted in periods for which financial statements have not been issued. We do not expect the adoption of EITF 05-06 to have a material effect on our consolidated financial position or results of operations.

Note 2—Unaudited Pro Forma Stockholders' Equity (Deficit)

Each share of our Series A, B and C convertible preferred stock automatically converts into common stock at the conversion rate then in effect upon the earlier of: (1) the closing of a firmly underwritten public offering of our common stock pursuant to a registration statement on Form S-1 under the Securities and Exchange Act of 1933, as amended, at an offering price of not less than \$7.17 per share and with aggregate gross proceeds of at least \$30.0 million; or (2) the approval of the holders of two-thirds of the then outstanding shares of Series A, B and C convertible preferred stock, voting together as a single class and on an as-converted basis (*Note 6*). In addition, each eight shares of Class A nonvoting common stock will automatically convert into one share of common stock upon the earlier of: (1) the closing of a firmly underwritten public offering of our common stock pursuant to a registration statement on Form S-1 under the Securities and Exchange Act of 1933, as amended, at an offering price of not less than \$7.17 per share and with aggregate gross proceeds of at least \$30.0 million; or (2) a date specified by a resolution adopted by our board of directors (*Note 7*). Unaudited pro forma stockholders' equity at December 31, 2005 reflected the assumed conversion of convertible preferred stock and Class A nonvoting common stock, based on the shares of convertible preferred stock and Class A nonvoting common stock outstanding at December 31, 2005. This conversion is currently assumed at the time of an initial public offering either as the result of an automatic conversion or a resolution of the board of directors and holders of convertible preferred stock as described above.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Note 3—Cash, Cash Equivalents and Investments

Cash and cash equivalents consisted of the following (in thousands):

	As of December 31,	
	2004	2005
Cash and cash equivalents:		
Cash	\$ 650	\$ 1,582
Money market funds	8,057	7,833
Total cash and cash equivalents	<u>\$ 8,707</u>	<u>\$ 9,415</u>

At December 31, 2004 and 2005, our investment portfolio, apart from certificates of deposit related to our restricted investments (see *Note 1*), consisted primarily of cash and money market funds, which are highly liquid in nature. Since the duration of these securities is short, the risk of fluctuations in market interest rates and yields is not significant.

We did not experience any significant realized gains or losses on our investments in the periods presented. Gross unrealized gains and losses at December 31, 2004 and 2005 were not material.

Note 4—Property and Equipment

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

	As of December 31,	
	2004	2005
Computer equipment and software	\$ 4,697	\$ 5,103
Office equipment and furniture	401	407
Leasehold improvements	178	273
	5,276	5,783
Less accumulated depreciation and amortization	<u>(2,713)</u>	<u>(3,022)</u>
Property and equipment, net	<u>\$ 2,563</u>	<u>\$ 2,761</u>

During the years ended December 31, 2004 and 2005, we wrote-off \$2.2 million and \$823,000, respectively, of fully-depreciated assets, which were no longer in use. Write-offs by category were as follows (in thousands):

	Years Ended December 31,	
	2004	2005
Computer equipment and software	\$ 889	\$ 800
Office equipment and furniture	833	23
Leasehold improvements	443	—
	<u>\$ 2,165</u>	<u>\$ 823</u>

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Assets under capital leases were included in the consolidated balance sheets as follows (in thousands):

	As of December 31,	
	2004	2005
Office equipment and furniture	\$ 79	\$ 28
Less accumulated depreciation	(38)	(9)
	<u>\$ 41</u>	<u>\$ 19</u>

Note 5—Other Current Liabilities

Other current liabilities consisted of the following (in thousands):

	As of December 31,	
	2004	2005
Professional fees	\$ 196	\$ 731
Other accrued expenses	563	448
Other current liabilities	<u>\$ 759</u>	<u>\$ 1,179</u>

Note 6—Convertible Preferred Stock and Other Stock Based Rights

Convertible Preferred Stock—As of December 31, 2005, we had authorized 23,100,000 shares of convertible preferred stock, \$0.001 par value per share, issuable in series.

The following table describes information with respect to our convertible preferred stock as of December 31, 2005 (in thousands, except per share data):

	Number of Shares Designated and Authorized	Issuance Dates	Issuance Price Per Share	Number of Shares Issued and Outstanding	Aggregate Liquidation Preference
Series A	5,200	Apr 1999 – May 1999	\$ 2.343	5,099	\$ 11,947
Series B	4,900	Nov 1999 – Dec 1999	\$ 9.930	4,246	42,160
Series C	13,000	Dec 2000 – Jan 2001	\$ 2.867	11,232	32,201
	<u>23,100</u>			<u>20,577</u>	<u>\$ 86,308</u>

Dividends—The holders of Series A, B and C convertible preferred stock are entitled to receive non-cumulative, annual dividends, when, as and if declared by our board of directors, in the amount of \$0.1875, \$0.7944 and \$0.2294 per share (adjusted for stock splits, stock dividends, combinations and recapitalizations), respectively, or, if greater (as determined on a per annum and as converted basis), an amount equal to that paid on any other outstanding shares, subject to antidilution adjustments, plus all previously declared but unpaid dividends, out of funds legally available prior and in preference to any declaration or payment of any dividend (other than stock dividends) on any other series or class of our capital stock. No dividends were declared on any series or class of our capital stock through December 31, 2005.

Conversion—Convertible preferred stock is convertible into common stock at any time at the option of the stockholder. As of December 31, 2005, each share of Series A and C convertible preferred stock was convertible into one share of common stock and each share of Series B convertible preferred stock was convertible into

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1,3145 shares of common stock. The conversion ratios are adjustable under certain circumstances including stock splits, stock dividends and recapitalizations, and as described in “Antidilution” below. Each share of Series A, B and C convertible preferred stock automatically converts into common stock at the conversion rate then in effect upon the earlier of: (1) the closing of a firmly underwritten public offering of our common stock pursuant to a registration statement on Form S-1 under the Securities and Exchange Act of 1933, as amended, at an offering price of not less than \$7.17 per share and with aggregate gross proceeds of at least \$30.0 million; or (2) the approval of the holders of two-thirds of the then outstanding shares of Series A, B and C convertible preferred stock, voting together as a single class and on an as-converted basis.

Antidilution—The Series A, B and C convertible preferred stock contain an antidilution feature that, subject to certain exceptions, requires an adjustment to the conversion ratio in the event of a subsequent issuance of securities by us at a price below the conversion price for such series in effect immediately prior to each such issuance. In connection with the issuance of the Series C convertible preferred stock during 2000 and 2001, this antidilution feature was triggered with regard to the Series B convertible preferred stock, resulting in an additional 1,335,262 shares of common stock being reserved by us for potential future issuance to holders of the Series B convertible preferred stock upon the conversion thereof into our common stock. Such shares will be issued if the Series B convertible preferred stockholders convert their shares into common stock. This adjustment is reflected in the conversion rate for Series B convertible preferred stock discussed in the previous paragraph.

Voting Rights—Each share of Series A, B and C convertible preferred stock entitles the holder thereof to cast the number of votes that such holder would be entitled to cast assuming that such shares were converted into common stock.

Redemption—The Series A, B and C convertible preferred stock are not mandatorily redeemable.

Liquidation—Upon our liquidation, dissolution or winding up, the holders of Series A, B and C convertible preferred stock are entitled to liquidation preferences equal to their original issue price, plus any declared but unpaid dividends, adjusted for stock splits, stock dividends, combinations and recapitalizations. If the assets available for distribution to the convertible preferred stockholders are insufficient to pay such stockholders the full preferential amount, then the available assets are to be distributed ratably to the Series A, B, and C convertible preferred stockholders in proportion to the preferential amounts each such holder is otherwise entitled to receive.

Classification—Our certificate of incorporation provides that a change in control is deemed to be a liquidation event and that any consideration paid in connection with such a transaction be distributed in accordance with the provisions regarding liquidation preferences. As a result, a cash redemption of our convertible preferred stock could be triggered by a change in control, which would be considered to be outside our control. Thus, in accordance with EITF Topic D-98, *Classification and Measurement of Redeemable Securities*, all series of our convertible preferred stock are classified outside of permanent equity in the accompanying consolidated balance sheets.

Preferred Stock Warrants—During 2000 and 2001, we entered into a series of marketing agreements with various partners, in which we issued warrants to purchase an aggregate of 335,088 shares of our Series B convertible preferred stock at \$9.93 per share and 147,500 shares of our Series C convertible preferred stock at \$2.87 per share. The warrants were generally exercisable upon issuance or upon the achievement of certain milestones. During 2003, we issued 10,000 shares of Series C convertible preferred stock in connection with the exercise of a warrant for total proceeds of approximately \$29,000. All other warrants expired unexercised prior to December 31, 2005.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

During the period the warrants were outstanding, we periodically evaluated the probability that the partners would meet the various milestones, if applicable. Once a determination was made that it was probable that a milestone would be met, we valued the portion of the warrant that became exercisable and recognized the corresponding amount as expense over the remaining term of the warrant. The deemed fair value of these warrants was estimated using the Black-Scholes-Merton pricing model. As no milestones were achieved during the years ended December 31, 2003, 2004 and 2005, no warrants were valued during those periods.

For the years ended December 31, 2003, 2004 and 2005, we recorded marketing and advertising expense totaling approximately \$42,000, \$15,000 and \$13,000, respectively, relating to the preferred stock warrants. No ongoing expense will be recognized related to these warrants subsequent to December 31, 2005.

Note 7—Stockholders' Equity (Deficit)

Common Stock—As of December 31, 2005, we had authorized 40,000,000 shares of common stock, \$0.001 par value per share. On January 4, 2006, upon approval of our board of directors and stockholders, an additional 5,000,000 shares of common stock were authorized, bringing the total number of authorized shares of common stock to 45,000,000. Holders of common stock are entitled to one vote per share on all matters to be voted upon by our stockholders. The holders of common stock are entitled to receive dividends when, as and if declared by our board of directors, subject to rights and preferences of the holders of Series A, B and C convertible preferred stock. Upon our liquidation, dissolution or winding up, the holders of the common stock and Class A nonvoting common stock are entitled to receive assets of the Company remaining after distribution to the holders of Series A, B and C convertible preferred stock (see *Note 6*), pro rata based on the number of shares of common stock and Class A nonvoting common stock held by each.

Class A Nonvoting Common Stock—As of December 31, 2005, we had authorized 1,600,000 shares of Class A nonvoting common stock, \$0.001 par value per share. Each share of Class A nonvoting common stock has the same rights as our common stock, except each share of Class A nonvoting common stock is nonvoting and will automatically convert into one-eighth of one share of our common stock upon the earlier of: (1) the closing of a firmly underwritten public offering of our common stock pursuant to a registration statement on Form S-1 under the Securities and Exchange Act of 1933, as amended, at an offering price of not less than \$7.17 per share and with aggregate gross proceeds of at least \$30.0 million; or (2) a date specified by a resolution adopted by our board of directors.

Shares Reserved—At December 31, 2005, shares of authorized but unissued common stock reserved for future issuance were as follows (in thousands):

Convertible preferred stock:	
Issued and outstanding (including antidilution provision for Series B convertible preferred stock)	21,912
Common stock:	
Stock options issued and outstanding	10,774
Stock options available for future grants	623
Class A nonvoting common stock:	
Issued and outstanding	64
Stock awards available for future grants	136
	<u>33,509</u>

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Common Stock Warrants—During 2000, we entered into a marketing agreement with a partner in which we issued a warrant to purchase an aggregate of 25,000 shares of our common stock at \$1.00 per share. The warrant, which was exercisable upon issuance, expired unexercised during December 2005. We recorded marketing and advertising expense totaling approximately \$1,000 during each of the years ended December 31, 2003, 2004 and 2005 relating to this warrant. No ongoing expense will be recognized related to this warrant subsequent to December 31, 2005.

Stock Plans—We currently maintain the 1998 Stock Plan (as amended) and the 2005 Stock Plan, which are collectively referred to as the “Stock Plans.” Our Stock Plans provide for the granting of restricted common stock awards and options to purchase shares of common stock to employees, non-employee members of our board of directors and consultants. Employees may receive incentive stock options and nonstatutory stock options. Non-employee members of our board of directors and consultants may receive nonstatutory stock options.

Options may be granted with exercise prices that are not less than 100% of the fair value of our common stock on the date of grant for incentive stock options and not less than 85% of the fair value of our common stock on the date of grant for nonstatutory stock options. Options are generally granted for a term of up to ten years and generally vest 25% after the first year of service and ratably each month over the subsequent 36 months. Typically, options may be exercised at any time, with unvested shares issued upon exercise being subject to repurchase rights by us at the exercise price of the stock option. As of December 31, 2005, no shares were subject to repurchase.

Pursuant to the terms of a May 2003 stock option granted to one of our executive officers, upon a change in control, the officer immediately becomes vested in 50% of the remaining unvested shares subject to the option. If the officer is terminated without cause following the change in control, he becomes vested in any remaining unvested shares subject to the option, provided that he signs a general release of claims. As these vesting acceleration provisions are provided in the original terms of stock option agreements, no additional stock-based compensation was or will be recognized related to these provisions.

Shares of common stock subject to restricted common stock awards under the Stock Plans issued during the years ended December 31, 2001 and 2002 were subject to a forfeiture condition that lapsed ratably each month over a 24-month period, contingent upon the grantee continuing to provide services to us. Shares of common stock subject to restricted common stock awards under the Stock Plans issued during the year ended December 31, 2003 were subject to a forfeiture condition that lapsed 25% after the first year of service and ratably each month over the subsequent 36 months, contingent upon the grantee continuing to provide services to us. No restricted common stock awards under the Stock Plans were issued during the years ended December 31, 2004 and 2005. As of December 31, 2003, 2004 and 2005, 24,000, 16,000 and 9,000, respectively, shares of restricted common stock awarded under the Stock Plans were subject to forfeiture.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes activity under our Stock Plans (in thousands, except per share data):

	Shares Available for Grant	Options Outstanding	
		Number of Shares	Weighted- Average Exercise Price
Balance at December 31, 2002	2,982	6,059	\$ 0.64
Additional shares authorized	2,000	—	—
Granted—exercise price equal to fair value	(3,980)	3,980	\$ 1.02
Granted—exercise price below fair value	(109)	109	\$ 1.00
Granted—stock awards	(28)	—	—
Exercised	—	(119)	\$ 0.62
Repurchased	1	—	\$ 0.25
Canceled	585	(585)	\$ 0.61
Canceled—stock awards	2	—	—
Balance at December 31, 2003	1,453	9,444	\$ 0.80
Reduction in number of authorized shares	(200)	—	—
Granted—exercise price equal to fair value	(842)	842	\$ 2.04
Exercised	—	(387)	\$ 0.60
Canceled	484	(484)	\$ 1.04
Canceled—stock awards	2	—	—
Balance at December 31, 2004	897	9,415	\$ 0.91
Additional shares authorized	1,500	—	—
Granted—exercise price equal to fair value	(2,240)	2,240	\$ 4.07
Exercised	—	(415)	\$ 0.87
Canceled	466	(466)	\$ 1.96
Balance at December 31, 2005	623	10,774	\$ 1.52

The following table summarizes options exercisable and options vested at December 31, 2003, 2004 and 2005 (in thousands):

	As of December 31,		
	2003	2004	2005
Options exercisable	9,444	9,415	10,774
Options vested	5,466	6,690	7,480

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes information about stock options outstanding as of December 31, 2005 (in thousands, except per share data and lives):

Exercise Price	Outstanding and Exercisable		Vested	
	Number of Options	Weighted-Average Remaining Contract Life (in years)	Number of Options Vested	Weighted-Average Exercise Price
\$0.25	342	3.67	342	\$ 0.25
\$0.50	2,669	5.30	2,655	\$ 0.50
\$1.00	5,128	6.55	4,214	\$ 1.00
\$2.00	395	7.99	233	\$ 2.00
\$2.50	148	8.99	35	\$ 2.50
\$3.25	259	9.45	—	\$ 3.25
\$4.00	152	9.70	1	\$ 4.00
\$4.15	568	9.84	—	\$ 4.15
\$4.40	1,113	9.95	—	\$ 4.40
	<u>10,774</u>	6.87	<u>7,480</u>	\$ 0.83

During the 12-month period ended December 31, 2005, we granted stock options with weighted-average exercise prices and fair values of underlying common stock as follows (in thousands, except per share data):

Grants Made During Quarter Ended	Number of Options Granted	Weighted-Average Exercise Price	Weighted-Average Fair Value of Common Stock per Share	Weighted-Average Intrinsic Value per Share
March 31, 2005	91	\$ 2.50	\$ 2.50	\$ —
June 30, 2005	255	\$ 3.25	\$ 3.25	\$ —
September 30, 2005	213	\$ 3.82	\$ 3.82	\$ —
December 31, 2005	1,681	\$ 4.32	\$ 4.32	\$ —

The intrinsic value per share, if any, is being recognized as compensation expense over the applicable vesting period, which equals the service period. During the last three quarters of 2005, the exercise price of each stock option grant was established by the board of directors using the fair value of our common stock as contemporaneously determined by an unrelated independent valuation specialist. The independent valuation used the probability-weighted expected return method.

Deferred Stock-Based Compensation Expense—In connection with certain stock options granted to employees under the Stock Plans, we recorded deferred stock-based compensation expense representing the difference between the option exercise price, if any, and the deemed fair value of the underlying common stock determined for financial reporting purposes on the grant date (intrinsic value method) as prescribed in APB 25. The deferred stock-based compensation is being recognized as an expense over the vesting period of these options, which is generally four years. We recorded deferred stock-based compensation of \$109,000 during the year ended December 31, 2003 associated with stock options granted during 2003, net of reversals for terminated employees. No deferred stock-based compensation was recorded during the years ended December 31, 2004 or 2005. Net amortization of deferred stock-based compensation totaled approximately \$10,000, \$25,000 and \$30,000 for the years ended December 31, 2003, 2004 and 2005, respectively.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The remaining unamortized deferred stock-based compensation totaled approximately \$62,000 as of December 31, 2005. The expected future amortization expense for this balance, assuming no change in the stock option accounting rules and assuming all employees remain employed for their remaining vesting periods, is as follows (in thousands):

	(unaudited)
2006	\$ 38
2007	24
	<u>\$ 62</u>

During the years ended December 31, 2003, 2004 and 2005, we recorded stock-based compensation expense totaling \$23,000, \$25,000 and \$83,000, respectively, in connection with modifications made to the terms of common stock options granted to three employees. No ongoing stock-based compensation expense will be recognized related to these options subsequent to December 31, 2005.

Stock Awards and Stock Options Granted to Non-Employees—We account for equity instruments issued to non-employees in accordance with SFAS 123, EITF Issue No. 96-18, and FIN 44. The compensation cost of these arrangements is determined using the fair value method and is subject to remeasurement over the vesting terms as equity instruments are being earned. The weighted-average assumptions for the Black-Scholes-Merton pricing model used in determining the fair value of stock options granted to non-employees were as follows:

	Years Ended December 31,		
	2003	2004	2005
Risk-free interest rate	2.7%	3.1%	4.2%
Dividend yield	—	—	—
Volatility factor	60%	60%	60%
Weighted-average contractual life	0.2 to 6 years	2 years	10 years

During the years ended December 31, 2003, 2004 and 2005, we issued the following stock options to non-employees under the Stock Plans:

	Years Ended December 31,		
	2003	2004	2005
Stock options granted	10,500	26,250	1,000
Weighted-average exercise price	\$ 1.00	\$ 2.00	\$ 4.00

The following table summarizes the weighted-average fair value of options granted to consultants during the years ended December 31, 2003, 2004 and 2005:

	Years Ended December 31,		
	2003	2004	2005
Weighted-average fair value of options granted	\$ 0.49	\$ 0.70	\$ 2.90

We recorded stock-based compensation expense of \$8,000, \$18,000 and \$3,000 during the years ended December 31, 2003, 2004 and 2005, respectively, related to the stock options granted to non-employees. The amount recorded for the year ended December 31, 2005 related to services performed by a consultant in connection with our initial public offering; therefore, the amount was capitalized in deferred initial public offering costs in the accompanying consolidated balance sheets.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

On January 1, 2004, our wholly-owned subsidiary in China began hiring a number of individuals who were previously providing consulting services to the Company. During the years ended December 31, 2001, 2002 and 2003, these individuals were granted (pursuant to the terms of the 1998 Stock Plan) a total of 34,500 restricted common stock awards for the services they provided. During the year ended December 31, 2003, we recorded stock-based compensation expense of \$8,000 related to these restricted stock awards, determined based on the fair value of our common stock at remeasurement dates. Upon the change in status of these individuals, on January 1, 2004, we recorded \$45,000 of deferred stock-based compensation related to these restricted stock awards determined based on the intrinsic value of these awards as of January 1, 2004 and the number of restricted awards for which the forfeiture provision had not lapsed as of January 1, 2004. This amount is being amortized using the straight-line method over the remaining vesting term of these awards. We recorded stock-based compensation expense of \$15,000 and \$12,000 during the years ended December 31, 2004 and 2005, respectively, related to these awards.

2004 Stock Plan for eHealth China—During November 2004, our board of directors adopted the 2004 Stock Plan for eHealth China, Inc. (eHealth China Plan), which provides for the grant of Class A nonvoting common stock awards and options to purchase shares of Class A nonvoting common stock to employees, non-employee members of our board of directors and consultants. Employees may receive incentive stock options and nonstatutory stock options. Non-employee members of our board of directors and consultants may receive nonstatutory stock options.

Options may be granted with exercise prices that are not less than 100% of the fair value of our common stock on the date of grant for incentive stock options and not less than 85% of the fair value of our common stock on the date of grant for nonstatutory stock options. Options may be granted for a term of up to ten years and vest 25% after the first year of service and ratably each month over the subsequent 36 months. Options may be exercised at any time, with unvested shares issued upon exercise being subject to repurchase rights by us. As of December 31, 2005, no options had been granted under the eHealth China Plan.

Class A nonvoting common stock awarded under the eHealth China Plan is subject to a forfeiture condition, which lapses 25% after the first year of service and ratably each month over the subsequent 36 months. The forfeiture condition commences on the date of award and is contingent upon the grantee continuing to provide services to us.

The following table summarizes activity under our eHealth China Plan (in thousands):

	Shares Available for Grant
Balance at December 31, 2004	—
Initial shares authorized	1,600
Granted—stock awards	(602)
Cancelled—stock awards	88
Balance at December 31, 2005	<u>1,086</u>

Due to uncertainty of the events that would trigger a conversion of Class A nonvoting common stock into common stock, we account for these awards as variable awards. Under this method, we record no deferred stock-based compensation, but measure and record stock-based compensation expense based on the fair value of the underlying common stock at the end of each reporting period within the vesting periods. During the year ended December 31, 2005, we recorded \$49,000 of stock-based compensation expense related to these awards.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Note 8—401(k) Plan

In September 1998, our board of directors adopted a defined contribution retirement plan (401(k) Plan), which qualifies under Section 401(k) of the Internal Revenue Code of 1986. Participation in the 401(k) Plan is available to substantially all employees in the United States. Employees can contribute up to 25% of their salary, up to the federal maximum allowable limit, on a before-tax basis to the 401(k) Plan. Employee contributions are fully vested when contributed. Company contributions to the 401(k) Plan are discretionary. We did not make any matching contributions to the 401(k) Plan through December 31, 2005.

Note 9—Income Taxes

The components of our loss before income taxes were as follows (in thousands):

	Years Ended December 31,		
	2003	2004	2005
United States	\$(3,195)	\$(3,360)	\$ (417)
Foreign	—	33	24
Total	<u>\$(3,195)</u>	<u>\$(3,327)</u>	<u>\$ (393)</u>

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

	Years Ended December 31,		
	2003	2004	2005
Current:			
Federal	\$ —	\$ —	\$ 21
State	—	—	—
Total current	—	—	21
Deferred:			
Federal	(1,074)	(1,114)	(110)
State	(133)	(208)	(29)
Total deferred	(1,207)	(1,322)	(139)
Valuation allowance	1,207	1,322	139
Total deferred	—	—	—
Provision for income taxes	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 21</u>

The following table provides a reconciliation of the federal statutory income tax rate to our effective tax rate for the years ended December 31, 2003, 2004 and 2005:

	Years Ended December 31,		
	2003	2004	2005
Federal statutory rate	(34.0)%	(34.0)%	(34.0)%
Research and development tax credit carryforwards	(1.3)	(1.6)	(11.5)
Stock-based compensation	0.9	1.4	21.7
Increase in valuation allowance	37.8	39.7	35.4
Other	(3.4)	(5.5)	(6.3)
Effective tax rate	<u>— %</u>	<u>— %</u>	<u>5.3%</u>

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes, together with net operating loss and tax credit carryforwards. Significant components of our deferred tax assets and liabilities were as follows (in thousands):

	As of December 31,	
	2004	2005
Deferred tax assets:		
Federal and state net operating loss carryforwards	\$ 27,815	\$ 27,535
Federal and state research and development tax credit carryforwards	363	409
Other	581	961
	<u>28,759</u>	<u>28,905</u>
Valuation allowance	(28,670)	(28,809)
Net deferred tax assets	89	96
Deferred tax liabilities:		
Depreciation and amortization	(89)	(96)
Net deferred tax liabilities	(89)	(96)
Net deferred taxes	<u>\$ —</u>	<u>\$ —</u>

The valuation allowance for deferred taxes was increased by approximately \$1.2 million, \$1.3 million and \$139,000 during the years ended December 31, 2003, 2004 and 2005, respectively, due to significant doubt regarding the recoverability of the deferred tax assets. Management's assessment with respect to the amount of deferred tax assets considered realizable may be revised over the near term based on actual operating results and revised financial statement projections.

Under certain provisions of the Internal Revenue Code of 1986, as amended, the availability of our domestic net operating loss and tax credits may be subject to limitation due to changes in ownership of more than 50% of the value of our stock. Our net operating losses and tax credit carryforwards were available without annual limitations as of December 31, 2004, based on an analysis performed as of that date. We have not performed an analysis of annual limitations of our domestic net operating loss and tax credit carryforwards subsequent to December 31, 2004.

At December 31, 2005, we had net operating loss and tax credit carryforwards of approximately \$73.6 million and \$246,000, respectively, for U.S. federal income tax purposes, which begin expiring in 2019. At December 31, 2005, we had net operating loss and tax credit carryforwards of approximately \$43.2 million and \$247,000, respectively, for state income tax purposes, which begin expiring in 2007.

Income from our China subsidiary is subject to reduced tax rates due to our commitment to invest \$1.0 million in its operations within the first eighteen months of its operations, which we met during the year ended December 31, 2005. As a result, all of the foreign tax related to income generated by our subsidiary during the years ended December 31, 2004 and 2005 was rebated to us. In addition, half of the foreign tax related to income generated by our subsidiary during the years ending December 31, 2006, 2007 and 2008 will be rebated to us. The income tax benefits related to this tax status were estimated to be \$5,000 and \$4,000 for the years ended December 31, 2004 and 2005, respectively.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Note 10—Net Loss Per Share

Basic net income (loss) per share is calculated using the weighted-average number of shares of common stock and Class A nonvoting common stock outstanding during the period, excluding shares subject to repurchase or forfeiture. Diluted net income (loss) per share is presented using the two-class method under SFAS 128, and gives effect to all dilutive potential common shares outstanding during the period, including convertible preferred stock, common stock options and warrants, preferred stock warrants, and common stock and Class A nonvoting common stock (on as-if-converted basis) subject to repurchase or forfeiture, unless such common stock equivalent shares are anti-dilutive.

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

	Years Ended December 31,		
	2003	2004	2005
Numerator:			
Net loss	<u>\$ (3,195)</u>	<u>\$ (3,327)</u>	<u>\$ (414)</u>
Denominator:			
Basic—common stock and Class A nonvoting common stock:			
Weighted average number of common shares outstanding	8,697	8,969	9,334
Weighted average number of common shares subject to repurchase	(20)	—	—
Weighted average number of common shares subject to forfeiture	(15)	(23)	(12)
Weighted average number of Class A nonvoting common shares	—	—	380
Weighted average number of Class A nonvoting common shares subject to forfeiture	—	—	(373)
Weighted average number of common shares and Class A nonvoting shares used to calculate net loss per share—basic	<u>8,662</u>	<u>8,946</u>	<u>9,329</u>
Diluted—common stock:			
Weighted average number of common shares outstanding	8,697	8,969	9,334
Weighted average number of common shares subject to repurchase	(20)	—	—
Weighted average number of common shares subject to forfeiture	(15)	(23)	(12)
Weighted average number of common shares used to calculate net loss per share—diluted—common stock	<u>8,662</u>	<u>8,946</u>	<u>9,322</u>
Diluted—Class A nonvoting common stock (on as-if-converted basis):			
Weighted average number of Class A nonvoting common shares	—	—	48
Weighted average number of Class A nonvoting common shares subject to forfeiture	—	—	(47)
Weighted average number of Class A nonvoting shares used to calculate net loss per share—diluted—Class A nonvoting common stock	<u>—</u>	<u>—</u>	<u>1</u>
Pro forma—basic and diluted			
Weighted average number of common shares outstanding			9,334
Weighted average number of common shares subject to repurchase			—
Weighted average number of common shares subject to forfeiture			(12)
Pro forma adjustments to reflect assumed weighted effect of conversion of Class A nonvoting common stock (unaudited)			48

EHEALTH, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	Years Ended December 31,		
	2003	2004	2005
Pro forma adjustments to reflect assumed weighted effect of conversion of Class A nonvoting common stock subject to forfeiture (unaudited)			(47)
Pro forma adjustments to reflect assumed weighted effect of conversion of convertible preferred stock (unaudited)			21,912
Weighted average number of common shares used to calculate pro forma net loss per share—basic and diluted			<u>31,235</u>
Net loss per share:			
Basic—common stock and Class A nonvoting common stock	\$(0.37)	\$(0.37)	\$ (0.04)
Diluted—common stock	\$(0.37)	\$(0.37)	\$ (0.04)
Diluted—Class A nonvoting common stock	—	—	\$ (0.04)
Pro forma—basic and diluted (unaudited)			\$ (0.01)

For each of the years in the three-year period ended December 31, 2005, we had securities outstanding that could potentially dilute basic earnings per share, but the incremental shares from the assumed conversion or exercise of these securities were excluded in the computation of diluted net loss per share as their effect would have been anti-dilutive. The number of weighted-average outstanding securities consisted of the following (in thousands):

	Years Ended December 31,		
	2003	2004	2005
Outstanding options	2,474	4,832	5,754
Outstanding common stock warrants	8	14	16
Common stock subject to repurchase	20	—	—
Restricted common stock awards subject to forfeiture	15	23	12
Assumed issuable shares of common stock upon conversion of Class A nonvoting common stock, subject to forfeiture (on as-if-converted basis)	—	—	47
Assumed issuable shares of common stock upon conversion of convertible preferred stock	21,904	21,912	21,912
Total	<u>24,421</u>	<u>26,781</u>	<u>27,741</u>

Note 11—Commitments and Contingencies

Leases—In August 2004, we entered into a lease agreement for our headquarters building in Mountain View, California. This facility is leased under a non-cancelable operating lease that expires in 2009, with a renewal option at fair market value for an additional five year period. In December 2004, we moved our customer care center from Folsom, California to Gold River, California and entered into a non-cancelable sixty-five month lease which expires in 2010. We also lease office facilities in the United States and China under non-cancelable operating leases that range in terms from one to two years. We also lease equipment under operating and capital leases.

Total rent expense under all operating leases was approximately \$1.3 million, \$1.3 million and \$1.6 million for the years ended December 31, 2003, 2004 and 2005, respectively.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Future minimum lease payments under noncancelable leases at December 31, 2005 were as follows (in thousands):

<u>Year ending December 31,</u>	<u>Capital Leases</u>	<u>Operating Leases</u>
2006	\$ 12	\$ 1,281
2007	18	1,124
2008	—	1,149
2009	—	933
2010	—	265
Total minimum lease payments	30	\$ 4,752
Less amount representing interest	(8)	
Present value of net minimum lease payments	22	
Current portion	7	
	<u>\$ 15</u>	

Service Agreement—In November 2005, we entered into an agreement with a third-party service provider to provide certain information services for our website. As of December 31, 2005, future payment commitments for services provided in connection with the agreement were as follows (in thousands):

<u>Year ending December 31,</u>	<u>Amount</u>
2006	\$ 145
2007	175
2008	210
2009	250
Total	<u>\$ 780</u>

Legal Proceedings—As of December 31, 2005, we had no significant outstanding legal proceedings. We are subject to certain legal proceedings and claims that may arise in the ordinary course of business. In the opinion of management, we do not have a potential liability related to any current legal proceedings and claims that would individually, or in the aggregate, have a material adverse effect on our consolidated financial condition, liquidity or results of operations.

Guarantees and Indemnifications—We have agreed to indemnify our directors and officers for fees, expenses, judgments, fines and settlement amounts incurred in any action or proceeding, including actions or proceedings by or in the right of the Company, to which any of them is, or is threatened to be, made a party by reason of their service as a director or officer of the Company or service provided to another company or enterprise at our request. The term of the director and officer indemnification is perpetual as to events or occurrences that take place while the director or officer is, or was, serving at our request. The maximum potential amount of future payment we could be required to make under these indemnification arrangements is unlimited. We, however, have a director and officer insurance policy that limits our exposure under certain circumstances and that may allow us to recover a portion of future amounts paid. We believe the estimated fair value of these indemnification agreements is minimal. Accordingly, we have not recorded any liabilities for these agreements as of December 31, 2004 or 2005.

While we have various guarantees included in contracts in the normal course of business, primarily in the form of indemnity obligations under certain circumstances, these guarantees do not represent significant

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

commitments or contingent liabilities of the indebtedness of others. Accordingly, we have not recorded a liability related to these indemnification provisions.

Note 12—Segment Information

Operating Segments—SFAS No. 131, *Disclosures About Segments of an Enterprise and Related Information*, establishes standards for reporting information about operating segments. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance of the Company. Our chief operating decision maker is considered to be our chief executive officer (CEO). Our CEO reviews our financial information presented on a consolidated basis in a manner substantially similar to the accompanying consolidated financial statements. Therefore, we have concluded that we operate in one segment, and accordingly we have provided only the required enterprise-wide disclosures.

Geographic Information—We generate revenue solely in the United States. Our long-lived assets consist primarily of property and equipment and deferred initial public offering costs, and are attributed to the geographic location in which they are located. Long-lived assets by geographical area were as follows (in thousands):

	As of December 31,	
	2004	2005
United States	\$ 2,699	\$ 4,272
China	286	289
Total	<u>\$ 2,985</u>	<u>\$ 4,561</u>

Note 13—Subsequent Events (unaudited)

Initial Public Offering—In April 2006, our board of directors authorized the filing of a registration statement with the U.S. Securities and Exchange Commission that would permit us to sell shares of our common stock in connection with a proposed initial public offering.

2006 Equity Incentive Plan—During April 2006, our board of directors adopted the 2006 Equity Incentive Plan (2006 Plan), which provides for the grant of restricted common stock awards, stock units, nonstatutory stock options and stock appreciation rights to employees, non-employee members of our board of directors and consultants and the grant of incentive stock options to employees. The 2006 Plan will become effective upon the completion of the initial public offering, at which time we will not grant any additional awards under our 1998 Stock Plan, our 2005 Stock Plan or our eHealth China Plan.

We have reserved 4,000,000 shares of common stock for issuance under the 2006 Plan. As of January 1 of each year commencing in 2007, the aggregate number of shares of common stock that may be issued under the 2006 Plan will automatically increase by a number equal to the lowest of 4% of the total number of shares of our common stock then outstanding, 3,000,000 shares or a lower number determined by the administrator of the 2006 Plan.

Options cannot be granted under the 2006 Plan with exercise prices of less than 100% of the fair value of our common stock on the date of grant. In addition, we anticipate that stock options granted under the 2006 Plan will generally have a term of up to ten years and generally vest 25% after the first year of service and ratably each month over the subsequent 36 months.

EHEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The 2006 Plan provides for the grant of nonstatutory stock options to purchase 50,000 shares of common stock to each non-employee member of our board of directors who becomes a member of our board of directors after the effective date of our initial public offering. In addition, on the date of each regular annual meeting of our stockholders held in 2007 and thereafter, each non-employee member of our board of directors will receive an automatic nonstatutory stock option grant to purchase 12,500 shares of common stock. The exercise price of options granted to non-employee members of our board of directors will be equal to the fair value of the common stock on the date of grant. Such options will vest 25% after the first year of service and ratably each month over the subsequent 36 months and expire 10 years after the date of grant, or earlier if the service relationship is terminated. Additionally, such options will become exercisable in full in the event of a change of control of us before each non-employee director's service relationship terminates.

401(k) Plan—In April 2006, we began matching employee contributions to our 401(k) Plan at 25% of an employee's contribution each pay period, up to a maximum of 1% of the employee's salary during such pay period. Our matching contributions vest one-third for each of the first three years of service.

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eHealth[®]

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the fees and expenses, other than underwriting discounts and commissions, payable in connection with the registration of the common stock hereunder. All amounts are estimates except the SEC registration fee.

SEC registration fee	\$9,095
NASD filing fee	*
Nasdaq National Market or New York Stock Exchange listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous	*
Total	\$ *

* To be completed by amendment.

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law permits a corporation to include in its charter documents, and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by the current law. The registrant's certificate of incorporation includes provisions that eliminate the personal liability of its directors and executive officers for monetary damages for breach of their fiduciary duty as directors and officers. The registrant's bylaws provide for the indemnification of officer, directors and third parties acting on its behalf with respect to actions taken in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of the registrant, and with respect to any criminal action or proceeding, actions that the indemnitee had no reasonable cause to believe were unlawful. Reference is made to the registrant's certificate of incorporation filed as Exhibit 3.1 hereto and the registrant's bylaws filed as Exhibit 3.2 hereto.

The registrant has entered into indemnification agreements with its officers and directors, a form of which is filed as Exhibit 10.1 hereto. The indemnification agreements provide the registrant's officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law and also provides for certain additional procedural protections. The registrant currently maintains a directors' and officers' liability insurance policy to insure such persons against certain liabilities.

The underwriting agreement provides that the underwriters are obligated, under certain circumstances, to indemnify directors, officers and controlling persons of the registrant against certain liabilities, including liabilities under the Securities Act. Reference is made to the form of underwriting agreement filed as Exhibit 1.1 hereto.

Item 15. Recent Sales of Unregistered Securities.

In the three years preceding the filing of this registration statement, the registrant has issued the following securities that were not registered under the Securities Act:

Common Stock

From January 2003 through December 2005, the registrant issued an aggregate of 920,395 shares of its common stock for an aggregate purchase price of \$667,540, and has granted options to purchase an aggregate of 7,198,750 shares of common stock at an aggregate exercise price of \$14,991,125.

The foregoing options and shares of common stock were granted to employees, directors and consultants in accordance with the terms of the registrant's equity compensation plans. Such issuances were made in reliance upon the exemption provided by Rule 701 promulgated under the Securities Act and, in the case of certain consultants, Section 4(2) of the Securities Act. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and other instruments issued in such transactions. The sales of these securities were made without general solicitation or advertising.

Class A Nonvoting Common Stock

From January 2003 through December 2005, the registrant has issued an aggregate of 601,600 shares of its Class A nonvoting common stock to employees, consultants, directors and other service providers located in China pursuant to share awards granted under its 2004 Stock Plan for eHealth China. Such issuances were made in reliance upon the exemption provided by Rule 701 promulgated under the Securities Act. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and other instruments issued in such transactions. The sales of these securities were made without general solicitation or advertising.

Preferred Stock

In September 2003, the registrant issued 10,000 shares of Series C preferred stock to an accredited investor upon the exercise of a warrant for an aggregate exercise price of \$28,670. The issuance was deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act as transactions by an issuer not involving any public offering. The recipient of such securities represented its intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificate and other instruments issued in such transactions. The sale of these securities was made without general solicitation or advertising.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits:

<u>Exhibit No.</u>	<u>Exhibit Index</u>
1.1*	Form of Underwriting Agreement
3.1	Form of Amended and Restated Certificate of Incorporation of the Registrant, to take effect on the closing of the offering
3.1.1	Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect
3.1.2	Form of Amended and Restated Certificate of Incorporation of the Registrant, to take effect prior to the closing of the offering
3.2	Form of Amended and Restated Bylaws of the Registrant, to take effect upon the closing of the offering
3.2.1	Bylaws of the Registrant, as currently in effect
4.1*	Form of the Registrant's Common Stock Certificate
5.1*	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
10.1	Form of Indemnification Agreement, to be entered into between the registrant and its directors and officers
10.2	1998 Stock Plan of the Registrant
10.3	2004 Stock Plan for eHealth China
10.4	2005 Stock Plan of the Registrant
10.5	2006 Equity Incentive Plan of the Registrant, to take effect upon completion of the offering
10.6	Amended and Restated Investors' Rights Agreement, dated May 23, 2005
10.7#	Agent Agreement, effective October 1, 2000, among Blue Cross of California, BC Life and Health Insurance Company, Unicare Life and Health Insurance Company and eHealthInsurance Services, Inc., as amended
10.8#	Internet Marketing Service Agreement, dated November 5, 1999, between Golden Rule Insurance Company and eHealthInsurance Services, Inc., as amended
10.9	Employment Agreement, dated November 30, 1999, between Gary Lauer and eHealthInsurance Services, Inc.
10.10	Employment Agreement, dated May 4, 2000, between Stuart Huizinga and eHealthInsurance Services, Inc., as amended on August 22, 2000
10.11	Supplemental Employment Agreement, dated August 24, 2000, between Sheldon Wang and eHealthInsurance Services, Inc.
10.12	Supplemental Employment Agreement dated August 7, 2000, between Bruce Telkamp and eHealthInsurance Services, Inc.
10.13	Letter Agreement, dated November 17, 2005, between Jack L. Oliver III and the Registrant
10.14	Lease Agreement, dated May 2004, between eHealthInsurance Services, Inc. and Brian Avery, Trustee of the 1983 Avery Investments Trust, as amended
10.15	Standard Lease Agreement, dated June 10, 2004, between eHealthInsurance Services, Inc. and Gold Pointe E LLC, as amended

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<u>Exhibit No.</u>	<u>Exhibit Index</u>
10.16	Office Lease Contract, dated March 31, 2006, among Xiamen Torch Hi-tech Industrial Development Zone Finance Services Center, Xiamen Software Industry Investment & Development Co., Ltd. and eHealth China (Xiamen) Technology Co., Ltd.
21.1	List of Subsidiaries
23.1	Consent of Independent Registered Public Accounting Firm
23.2*	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on page II-5)

* To be included by amendment.

Application has been made to the Securities and Exchange Commission for confidential treatment of certain provisions. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

(b) Consolidated Financial Statements Schedules:

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions described in Item 14, 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 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 and will be governed by the final adjudication of such issue.

The registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purposes of determining any liability under the Securities Act of 1933, 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 a initial *bona fide* offering thereof.

The registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in Mountain View, California on April 25, 2006.

EHEALTH, INC.

By: /s/ GARY L. LAUER

Gary L. Lauer

Chairman of the Board, President and Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

The undersigned officers and directors of eHealth, Inc. hereby constitute and appoint Gary Lauer and Stuart Huizinga, and each of them singly, with full power of substitution, our true and lawful attorneys-in-fact and agents to take any actions to enable eHealth, Inc. to comply with the Securities Act, and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this registration statement, including the power and authority to sign for us in our names in the capacities indicated below and all amendments (including post-effective amendments) to this registration statement and any other registration statement filed pursuant to the provisions of Rule 462 under the Securities Act and the power to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agents full power and authority to perform each and every act in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
/s/ GARY L. LAUER Gary L. Lauer	President, Chief Executive Officer and Director (<i>Principal Executive Officer</i>)	April 25, 2006
/s/ STUART M. HUIZINGA Stuart M. Huizinga	Chief Financial Officer (<i>Principal Financial and Accounting Officer</i>)	April 25, 2006
/s/ MICHAEL D. GOLDBERG Michael D. Goldberg	Director	April 25, 2006
/s/ JOSEPH S. LACOB Joseph S. Lacob	Director	April 25, 2006
/s/ KATHLEEN D. LAPORTE Kathleen D. LaPorte	Director	April 25, 2006
/s/ JACK L. OLIVER III Jack L. Oliver III	Director	April 25, 2006
/s/ CHRISTOPHER J. SCHAEPE Christopher J. Schaepe	Director	April 25, 2006

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3.2	Form of Amended and Restated Bylaws of the Registrant, to take effect upon the closing of the offering
3.2.1	Bylaws of the Registrant, as currently in effect
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10.15	Standard Lease Agreement, dated June 10, 2004, between eHealthInsurance Services, Inc. and Gold Pointe E LLC, as amended
10.16	Office Lease Contract, dated March 31, 2006, among Xiamen Torch Hi-tech Industrial Development Zone Finance Services Center, Xiamen Software Industry Investment & Development Co., Ltd. and eHealth China (Xiamen) Technology Co., Ltd.
21.1	List of Subsidiaries
23.1	Consent of Independent Registered Public Accounting Firm
23.2*	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on page II-5)

* To be included by amendment

Application has been made to the Securities and Exchange Commission for confidential treatment of certain provisions. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

RESTATED CERTIFICATE OF INCORPORATION**OF****EHEALTH, INC.****(Pursuant to Sections 242 and 245 of
the Delaware General Corporation Law)**

eHealth, Inc., a corporation organized and existing under and by virtue of the provisions of the Delaware General Corporation Law,

DOES HEREBY CERTIFY:

FIRST: The name of the corporation is eHealth, Inc. and that this corporation was originally incorporated pursuant to the Delaware General Corporation Law on November 14, 1997 under the name SASH Communications, Inc.

SECOND: That the Restated Certificate of Incorporation of the Corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of the corporation is eHealth, Inc. (the "Corporation").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 3500 South Dupont Highway, in the City of Dover, County of Kent. The name of its registered agent at such 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 Corporation Law.

ARTICLE IV

A. The total number of shares of all classes of stock which the Corporation shall have authority to issue is one hundred ten million (110,000,000), consisting of one hundred million (100,000,000) shares of Common Stock, par value \$0.001 per share (the "Common Stock") and ten million (10,000,000) shares of Preferred Stock, par value \$0.001 per share (the "Preferred Stock").

B. The board of directors is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Delaware (such certificate being hereinafter referred to as a "Preferred Stock Designation"), to establish from time to time the number of

shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereof. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock Designation.

C. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Restated Certificate of Incorporation (including any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Restated Certificate of Incorporation (including any Preferred Stock Designation).

ARTICLE V

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. The business and affairs of the Corporation shall be managed by or under the direction of the board of directors. In addition to the powers and authority expressly conferred upon them by statute or by this Restated Certificate of Incorporation or the bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

B. The directors of the Corporation need not be elected by written ballot unless the bylaws so provide.

C. 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.

D. Unless otherwise required by law, special meetings of stockholders of the Corporation may be called only by the Chairman of the board of directors or the Chief Executive Officer (or if there is no Chief Executive Officer, the President) or by the board of directors acting pursuant to a resolution adopted by a majority of the Whole Board. For purposes of this Restated Certificate of Incorporation, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

E. No stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE VI

A. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the board of directors pursuant to a resolution adopted by a majority of the Whole Board. The directors, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be divided into three classes, with the term of office of the first class to expire at the Corporation's first annual meeting of stockholders following the date of the filing of this Restated Certificate of Incorporation, the term of office of the second class to expire at the Corporation's second annual meeting of stockholders following the date of the filing of this Restated Certificate of Incorporation, and the term of office of the third class to expire at the Corporation's third annual meeting of stockholders following the date of the filing of this Restated Certificate of Incorporation, with each director to hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of stockholders commencing with the first annual meeting following the date of the filing of this Restated Certificate of Incorporation, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified.

B. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the board of directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise required by law or by resolution of the board of directors, be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), and directors so chosen shall serve for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been chosen expires or until such director's successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

C. 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.

D. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire board of directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66²/₃%) of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly empowered to adopt, amend or repeal bylaws of the Corporation. Any adoption, amendment or repeal of the bylaws of the Corporation by the board of directors shall

require the approval of a majority of the Whole Board. The stockholders shall also have power to adopt, amend or repeal the bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Restated Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66^{2/3}%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the bylaws of the Corporation.

ARTICLE VIII

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, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law 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 Delaware General Corporation Law, as so amended.

The Corporation 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 criminal, civil, administrative or investigative, by reason of the fact that he, she, his or her testator or intestate is or was a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation or serves or served at any other enterprise as a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE IX

The Corporation reserves the right to amend or repeal any provision contained in this Restated Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however, that, notwithstanding any other provision of this Restated Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of this corporation required by law or by this Restated Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66^{2/3}%) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors, voting together as a single class, shall be required to amend or repeal this Article IX, Sections C or D or E of Article V, Article VI, Article VII, or Article VIII.

THIRD: That the foregoing Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Corporation in accordance with Section 228 of the Delaware General Corporation Law.

FOURTH: That said this Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's heretofore existing Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation this ____ day of _____, 2006.

Gary Lauer
Chief Executive Officer

**CERTIFICATE OF AMENDMENT OF
RESTATED CERTIFICATE OF INCORPORATION
OF EHEALTH, INC.**

eHealth, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware (the "Corporation"), pursuant to the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY that:

FIRST: The name of the Corporation is eHealth, Inc.

SECOND: The date on which the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware was February 22, 2002 under the name eHealth, Inc.

THIRD: The Board of Directors of the Corporation adopted a resolution setting forth a proposed amendment to the Restated Certificate of Incorporation, declaring said amendment to be advisable and in the best interests of the Corporation and its stockholders, and authorizing the appropriate officers of the Corporation to solicit the approval of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

RESOLVED, that Section A of Article IV of the Restated Certificate of Incorporation of the Corporation be amended to read in its entirety as follows:

"A. Classes of Stock. This corporation is authorized to issue three classes of stock to be designated, respectively, "Common Stock", "Class A Nonvoting Common Stock" (herein referred to as "Class A Common Stock") and "Preferred Stock." The total number of shares that this corporation is authorized to issue is Sixty-Nine Million Seven Hundred Thousand (69,700,000) shares. Forty-five Million (45,000,000) shares shall be Common Stock, One Million Six Hundred Thousand (1,600,000) shall be Class A Common Stock and Twenty-Three Million One Hundred Thousand (23,100,000) shares shall be Preferred Stock, each with a par value of \$0.001 per share.

FOURTH: That thereafter said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, this Certificate of Amendment of the Restated Certificate of Incorporation has been executed by its duly authorized Chief Executive Officer, President and Secretary on this 16th day of December, 2005.

/s/ Gary Lauer

Gary Lauer

Chief Executive Officer and President

/s/ Bruce Telkamp

Bruce Telkamp

Secretary

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
EHEALTH, INC.**

**(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)**

eHealth, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is eHealth, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on February 22, 2002.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is eHealth, Inc.

ARTICLE II

The address of the registered office of this corporation in the State of Delaware is 3500 South Dupont Highway, in the City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. Classes of Stock. This corporation is authorized to issue three classes of stock to be designated, respectively, "Common Stock," "Class A Nonvoting Common

Stock” (herein referred to as “Class A Common Stock”) and “Preferred Stock.” The total number of shares that this corporation is authorized to issue is Sixty-Four Million Seven Hundred Thousand (64,700,000) shares. Forty Million (40,000,000) shares shall be Common Stock, One Million Six Hundred Thousand (1,600,000) shares shall be Class A Common Stock and Twenty-Three Million One Hundred Thousand (23,100,000) shares shall be Preferred Stock, each with a par value of \$0.001 per share.

B. Rights, Preferences and Restrictions. The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of Five Million Two Hundred Thousand (5,200,000) shares (the “Series A Preferred Stock”), the Series B Preferred Stock, which series shall consist of Four Million Nine Hundred Thousand (4,900,000) shares (the “Series B Preferred Stock”) and the Series C Preferred Stock, which series shall consist of Thirteen Million (13,000,000) shares (the “Series C Preferred Stock”), are as set forth below in this Article IV(B). The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights that have been or may be granted to the Preferred Stock or series thereof in Certificates of Designation or this corporation’s Certificate of Incorporation (“Protective Provisions”), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock), prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

1. Dividend Provisions.

(a) Subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of shares of Series A, Series B and Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock or Class A Common Stock of this corporation, at the rate of (i) in the case of the Series A Preferred Stock, \$.1875 per share per annum, (ii) in the case of the Series B Preferred Stock, \$.7944 per share per annum and (iii) in the case of the Series C Preferred Stock, \$0.2294 per share per annum (each amount as adjusted for any stock splits, stock dividends, recapitalizations or the like with respect to such shares) or, if greater (as determined on a per annum basis and on an as converted basis for the Series A, Series B and Series C Preferred

Stock), an amount equal to that paid on any other outstanding shares of this corporation, payable when, as, and if declared by the Board of Directors. Such dividends shall not be cumulative. Any partial payment will be made among the holders of the Series A, Series B and Series C Preferred Stock in proportion to the payment each such holder is otherwise entitled to receive.

Unless full dividends on the Series A, Series B and Series C Preferred Stock for the then current dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, no dividend whatsoever (other than a dividend payable solely in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) shall be paid or declared, and no distribution shall be made, on any share of Common Stock or Class A Common Stock.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence, the holders of Series A, Series B and Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock or Class A Common Stock by reason of their ownership thereof, (i) for the Series A Preferred Stock, an amount per share equal to the sum of (A) \$2.343 for each outstanding share of Series A Preferred Stock (the "Original Series A Issue Price") and (B) declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like), (ii) for the Series B Preferred Stock, an amount per share equal to the sum of (A) \$9.93 for each outstanding share of Series B Preferred Stock (the "Original Series B Issue Price") and (B) declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like); and (iii) for the Series C Preferred Stock, an amount per share equal to the sum of (A) \$2.867 for each outstanding share of Series C Preferred Stock (the "Original Series C Issue Price", and together with the Original Series A Issue Price and the Original Series B Issue Price, the "Original Issue Price") and (B) declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like). If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A, Series B and Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of the Series A, Series B and Series C Preferred Stock in proportion to the amounts each such holder is otherwise entitled to receive.

(b) Upon completion of the distribution required by subsection (a) of this Section 2 and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, all of the remaining assets of this corporation available for distribution to stockholders shall be distributed among the holders of Common Stock or Class A Common Stock pro rata based on the number of shares of Common Stock or Class A Common Stock held by each.

(c) (i) For purposes of this Section 2, a liquidation, dissolution or winding up of this corporation shall be deemed to be occasioned by, or to include (unless the holders of at least a majority of the Series A, Series B and Series C Preferred Stock then outstanding shall determine otherwise, voting together as a single class and not as a separate series, and on an as-converted basis), (A) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation, but excluding the reorganization, merger or consolidation with any directly or indirectly wholly-owned subsidiary of this corporation; (B) a sale or other distribution of all or substantially all of the assets of this corporation or (C) the exclusive license in substantially all major geographic areas of all or substantially all of this corporation's intellectual property in all applicable fields.

(i) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(ii) In the event the requirements of this subsection 2(c) are not complied with, this corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A, Series B and Series C Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(c)(iv) hereof.

(iii) This corporation shall give each holder of record of Series A, Series B and Series C Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after this corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

3. Redemption. The Series A, Series B and Series C Preferred Stock are not redeemable.

4. Conversion. The holders of the Series A, Series B and Series C Preferred Stock and holders of Class A Common Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A, Series B and Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for such series by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for shares of Series A, Series B and Series C Preferred Stock shall be the Original Issue Price for such series; provided, however, that the Conversion Price for the Series A, Series B and Series C Preferred Stock shall be subject to adjustment as set forth in subsection 4(d).

(b) Automatic Conversion.

(i) Each share of Series A, Series B and Series C Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such series immediately upon the earlier of (A) the consummation of this corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended (the "Securities Act"), the public offering price of which was not less than 2.5 times the Original Series C Issue Price (as adjusted for any stock splits, stock

dividends, recapitalizations or the like) and \$30,000,000 in the aggregate (a “Qualified IPO”) or (B) the date specified by written consent or agreement of the holders of two-thirds of the then outstanding shares of Series A, Series B and Series C Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(ii) Each share of Class A Common Stock shall automatically be converted into one-eighth (0.125) of a fully paid and nonassessable share of Common Stock upon the earlier of (A) a Qualified IPO or (B) the date specified by a resolution adopted by this corporation’s Board of Directors.

(c) Mechanics of Conversion. Before any holder of Series A, Series B or Series C Preferred Stock or Class A Common Stock shall be entitled to convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent, and shall give written notice to this corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering shares for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion shall not be deemed to have converted such stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Series A, Series B and Series C Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If this corporation shall issue, after the date upon which any shares of Series C Preferred Stock were first issued (the “Purchase Date”), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of Common Stock that the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of

shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of such Additional Stock. However, the foregoing calculation shall not take into account shares deemed issued pursuant to Section 4(d)(i)(E) on account of options, rights or convertible or exchangeable securities (or the actual or deemed consideration therefor), except to the extent (i) such options, rights or convertible or exchangeable securities have been exercised, converted or exchanged or (ii) the consideration to be paid upon such exercise, conversion or exchange per share of underlying Common Stock is less than or equal to the per share consideration for the Additional Stock that has given rise to the Conversion Price adjustment being calculated. In addition to the foregoing, if this corporation shall issue, after the Purchase Date, any Additional Stock (excluding shares of Series C Preferred Stock) for a consideration per share less than the Conversion Price for the Series B Preferred Stock, but greater than or equal to the Conversion Price for the Series C Preferred Stock, as each such Conversion Price is in effect immediately prior to the issuance of such Additional Stock (a "Dilutive Issuance"), then the Conversion Price for the Series C Preferred Stock then in effect immediately prior to each such Dilutive Issuance shall forthwith be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the quotient determined by dividing (a) \$77,500,000 by (b) the sum of (i) 27,027,626 shares and (ii) the number of Dilutive Shares (as defined below) from such Dilutive Issuance, and the denominator shall be \$2.867. "Dilutive Shares" shall mean the difference between (a) the number of shares of Common Stock into which all outstanding shares of Series B Preferred Stock are convertible immediately following a Dilutive Issuance and (b) the number of shares of Common Stock into which all outstanding shares of Series B Preferred Stock are convertible immediately preceding such Dilutive Issuance. All such figures in the abovementioned equations shall be as adjusted for any stock splits, stock dividends, combinations, recapitalizations and the like

(A) No adjustment of the Conversion Price for the Series A, Series B or Series C Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(B) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(C) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, or in the event any Additional Stock is issued together with other shares or securities or assets of this corporation

which covers both, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(D) In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe or otherwise acquire for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i) and subsection 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration (without taking into account potential antidilution adjustments) equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), the Conversion Price of the Series A, Series B or Series C Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual

issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A, Series B or Series C Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this corporation after the Purchase Date other than:

(A) Common Stock issued pursuant to a transaction described in subsection 4(d)(iii) hereof;

(B) Up to (1) 12,400,000 shares of Common Stock and (2) 1,600,000 shares of Class A Common Stock, including any shares of Common Stock issued or issuable upon conversion of the Class A Common Stock, issuable or issued to employees, consultants, directors or vendors (if in transactions with primarily non-financing purposes) of this corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors, including at least one director elected by the holders of Series A Preferred Stock, of this corporation; provided, however, that an issuance may exceed this maximum if such issuance is approved by at least one of the directors appointed by the holders of Series A, Series B or Series C Preferred Stock;

(C) Common Stock issued pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock registered under the Securities Act;

(D) Common Stock issued or issuable pursuant to the conversion or exercise of convertible or exercisable securities outstanding as of the Purchase Date;

(E) Common Stock issued or issuable in connection with a bona fide business acquisition of or by this corporation, whether by merger,

consolidation, sale of assets, sale or exchange of stock or otherwise approved by the Board of Directors; or

(F) the issuance of Common Stock or warrants or other rights to acquire up to 750,000 shares of Common Stock or Preferred Stock pursuant to credit, license, joint venture or corporate partnering transactions for which this corporation is a party, provided such transactions are for other than primarily equity financing purposes and approved by the Board of Directors; provided, however, that an issuance may exceed this maximum if such issuance is approved by at least one of the directors appointed by the holders of Series A, Series B or Series C Preferred Stock.

(iii) In the event this corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A, Series B and Series C Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination consolidation, by reclassification or otherwise of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A, Series B and Series C Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Series A, Series B and Series C Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Series A, Series B and Series C Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A, Series B and Series C Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A, Series B and Series C Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A, Series B and Series C Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A, Series B and Series C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. This corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A, Series B and Series C Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A, Series B and Series C Preferred Stock and Class A Common Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A, Series B and Series C Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. If any fractional interest in a share of Common Stock would, except for the provisions of the first sentence of this Section (h)(i), be delivered upon any such conversion, this corporation, in lieu of delivering the fractional share thereof, shall pay to the holder surrendering the Series A, Series B or Series C Preferred Stock or Class A Common Stock for conversion an amount in cash equal to the current market price of such fractional interest as determined in good faith by the Board of Directors.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A, Series B and Series C Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A, Series B or Series C Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Series A, Series B or Series C Preferred Stock, furnish or cause to be furnished to such holder a like

certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A, Series B and Series C Preferred Stock.

(i) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or to effect any reclassification of its Common Stock this corporation shall mail to each holder of Series A, Series B and Series C Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A, Series B and Series C Preferred Stock and Class A Common 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 Series A, Series B and Series C Preferred Stock and Class A Common 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 Series A, Series B and Series C Preferred Stock and Class A Common Stock, in addition to such other remedies as shall be available to the holder of such stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A, Series B and Series C Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

(l) Issue Taxes. This corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series A, Series B and Series C Preferred Stock pursuant hereto.

5. Voting Rights.

(a) General Voting Rights. The holder of each share of Series A, Series B and Series C Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A, Series B and Series C Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers

equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A, Series B and Series C Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors. As long as at least one-third of the shares of Series A Preferred Stock originally issued remain outstanding, the holders of such shares of Series A Preferred Stock shall be entitled to elect two (2) directors of this corporation at each annual election of directors. As long as at least one-third of the shares of Series C Preferred Stock originally issued remain outstanding, the holders of such shares of Series C Preferred Stock shall be entitled to elect one (1) director of this corporation at each annual election of directors. The holders of outstanding Common Stock shall be entitled to elect two (2) directors of this corporation at each annual election of directors. The holders of Series A, Series B and Series C Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect any remaining directors of this corporation.

In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section 5(b), the remaining directors so elected by that class or series may by affirmative vote thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of that class or series), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class or series of stock or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

6. Protective Provisions.

(a) Series A Preferred Stock. Subject to the rights of series of Preferred Stock that may from time to time come into existence, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a two-thirds of the then outstanding shares of Series A Preferred Stock:

- (i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares; or

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock;

(b) Series B Preferred Stock. Subject to the rights of series of Preferred Stock that may from time to time come into existence, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a two-thirds of the then outstanding shares of Series B Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely the shares; or

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B Preferred Stock;

(c) Series C Preferred Stock. Subject to the rights of series of Preferred Stock that may from time to time come into existence, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a two-thirds of the then outstanding shares of Series C Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock so as to affect adversely the shares; or

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series C Preferred Stock;

(d) Series A, Series B and Series C Preferred Stock. Subject to the rights of series of Preferred Stock that may from time to time come into existence, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least eighty percent (80%) of the then outstanding shares of Series A, Series B and Series C Preferred Stock, voting as a single class and not as a separate series and on an as-converted basis:

(i) sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a directly or indirectly wholly-owned subsidiary of this corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of this corporation is disposed of (other than a directly or indirectly wholly-owned subsidiary of this corporation) unless the consideration received per share of Series B Preferred Stock in such transaction (or series of related transactions) is at least \$17.3775 (as adjusted for any stock splits, stock dividends, recapitalizations or the like); or

(ii) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over the Series A, Series B or Series C Preferred Stock with respect to dividends, liquidation, redemption, conversion or voting.

7. Status of Converted Stock. In the event any shares of Series A, Series B or Series C Preferred Stock shall be converted pursuant to Section 4 hereof,

the shares so converted shall be cancelled and shall not be issuable by this corporation. The Amended and Restated Certificate of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in this corporation's authorized capital stock.

C. Common Stock and Class A Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock and Class A Common Stock are as set forth below in this Article IV(C).

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock and Class A Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section (B)(2)(b) of Article IV hereof.

3. Redemption. The Common Stock and Class A Common Stock are not redeemable.

4. Voting Rights.

(a) The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. There shall be no cumulative voting.

(b) Except as otherwise required by law, the holder of each share of Class A Common Stock will have no right to vote such share of Class A Common Stock on any matters to be voted on by this corporation's stockholders and shall not be entitled to notice of any stockholders' meetings.

ARTICLE V

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

ARTICLE VI

The number of directors of this corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors or by the stockholders.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this corporation.

ARTICLE IX

A director of this corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended, after approval by the stockholders of this Article, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article IX, by the stockholders of this corporation shall not apply to or adversely affect any right or protection of a director of this corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE X

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE XI

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

* * *

THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That said amendment and restatement was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by the President and the Secretary of this corporation on this 16th day of May, 2005.

/s/ Gary Lauer

Gary Lauer, President

/s/ Bruce Telkamp

Bruce Telkamp, Secretary

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
EHEALTH, INC.**

**(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)**

eHealth, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “General Corporation Law”),

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is eHealth, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on February 22, 2002.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is eHealth, Inc.

ARTICLE II

The address of the registered office of this corporation in the State of Delaware is 3500 South Dupont Highway, in the City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. Classes of Stock. This corporation is authorized to issue three classes of stock to be designated, respectively, “Common Stock,” “Class A Nonvoting Common

Stock” (herein referred to as “Class A Common Stock”) and “Preferred Stock.” The total number of shares that this corporation is authorized to issue is Sixty-Nine Million Seven Hundred Thousand (69,700,000) shares. Forty-Five Million (45,000,000) shares shall be Common Stock, One Million Six Hundred Thousand (1,600,000) shares shall be Class A Common Stock and Twenty-Three Million One Hundred Thousand (23,100,000) shares shall be Preferred Stock, each with a par value of \$0.001 per share.

B. Rights, Preferences and Restrictions. The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of Five Million Two Hundred Thousand (5,200,000) shares (the “Series A Preferred Stock”), the Series B Preferred Stock, which series shall consist of Four Million Nine Hundred Thousand (4,900,000) shares (the “Series B Preferred Stock”) and the Series C Preferred Stock, which series shall consist of Thirteen Million (13,000,000) shares (the “Series C Preferred Stock”), are as set forth below in this Article IV(B). The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights that have been or may be granted to the Preferred Stock or series thereof in Certificates of Designation or this corporation’s Certificate of Incorporation (“Protective Provisions”), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock), prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

1. Dividend Provisions.

(a) Subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of shares of Series A, Series B and Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock or Class A Common Stock of this corporation, at the rate of (i) in the case of the Series A Preferred Stock, \$.1875 per share per annum, (ii) in the case of the Series B Preferred Stock, \$.7944 per share per annum and (iii) in the case of the Series C Preferred Stock, \$0.2294 per share per annum (each amount as adjusted for any stock splits, stock dividends, recapitalizations or the like with respect to such shares) or, if greater (as determined on a per annum basis and on an as converted basis for the Series A, Series B and Series C Preferred

Stock), an amount equal to that paid on any other outstanding shares of this corporation, payable when, as, and if declared by the Board of Directors. Such dividends shall not be cumulative. Any partial payment will be made among the holders of the Series A, Series B and Series C Preferred Stock in proportion to the payment each such holder is otherwise entitled to receive.

Unless full dividends on the Series A, Series B and Series C Preferred Stock for the then current dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, no dividend whatsoever (other than a dividend payable solely in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) shall be paid or declared, and no distribution shall be made, on any share of Common Stock or Class A Common Stock.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence, the holders of Series A, Series B and Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock or Class A Common Stock by reason of their ownership thereof, (i) for the Series A Preferred Stock, an amount per share equal to the sum of (A) \$2.343 for each outstanding share of Series A Preferred Stock (the "Original Series A Issue Price") and (B) declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like), (ii) for the Series B Preferred Stock, an amount per share equal to the sum of (A) \$9.93 for each outstanding share of Series B Preferred Stock (the "Original Series B Issue Price") and (B) declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like); and (iii) for the Series C Preferred Stock, an amount per share equal to the sum of (A) \$2.867 for each outstanding share of Series C Preferred Stock (the "Original Series C Issue Price", and together with the Original Series A Issue Price and the Original Series B Issue Price, the "Original Issue Price") and (B) declared but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like). If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A, Series B and Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of the Series A, Series B and Series C Preferred Stock in proportion to the amounts each such holder is otherwise entitled to receive.

(b) Upon completion of the distribution required by subsection (a) of this Section 2 and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, all of the remaining assets of this corporation available for distribution to stockholders shall be distributed among the holders of Common Stock or Class A Common Stock pro rata based on the number of shares of Common Stock or Class A Common Stock held by each.

(c) (i) For purposes of this Section 2, a liquidation, dissolution or winding up of this corporation shall be deemed to be occasioned by, or to include (unless the holders of at least a majority of the Series A, Series B and Series C Preferred Stock then outstanding shall determine otherwise, voting together as a single class and not as a separate series, and on an as-converted basis), (A) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation, but excluding the reorganization, merger or consolidation with any directly or indirectly wholly-owned subsidiary of this corporation; (B) a sale or other distribution of all or substantially all of the assets of this corporation or (C) the exclusive license in substantially all major geographic areas of all or substantially all of this corporation's intellectual property in all applicable fields.

(i) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(ii) In the event the requirements of this subsection 2(c) are not complied with, this corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A, Series B and Series C Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(c)(iv) hereof.

(iii) This corporation shall give each holder of record of Series A, Series B and Series C Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after this corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

3. Redemption. The Series A, Series B and Series C Preferred Stock are not redeemable.

4. Conversion. The holders of the Series A, Series B and Series C Preferred Stock and holders of Class A Common Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A, Series B and Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for such series by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for shares of Series A and Series C Preferred Stock shall be the Original Issue Price for such series, and the initial Conversion Price per share for Series B shall be \$7.55422; provided, however, that the Conversion Price for the Series A, Series B and Series C Preferred Stock shall be subject to adjustment as set forth in subsection 4(d).

(b) Automatic Conversion.

(i) Each share of Series A, Series B and Series C Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such series immediately upon the earlier of (A) the consummation of this corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended (the "Securities Act"), the public offering price of which was

not less than 2.5 times the Original Series C Issue Price (as adjusted for any stock splits, stock dividends, recapitalizations or the like) and \$30,000,000 in the aggregate (a "Qualified IPO") or (B) the date specified by written consent or agreement of the holders of two-thirds of the then outstanding shares of Series A, Series B and Series C Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(ii) Each share of Class A Common Stock shall automatically be converted into one-eighth (0.125) of a fully paid and nonassessable share of Common Stock upon the earlier of (A) a Qualified IPO or (B) the date specified by a resolution adopted by this corporation's Board of Directors.

(c) Mechanics of Conversion. Before any holder of Series A, Series B or Series C Preferred Stock or Class A Common Stock shall be entitled to convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent, and shall give written notice to this corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. Automatic conversion of the Series A, Series B or Series C Preferred Stock or Class A Common Stock pursuant to this section shall be effective without any further action on the part of the holders of such shares and shall be effective whether or not the certificates for such shares are surrendered to this corporation or its transfer agent. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering shares for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion shall not be deemed to have converted such stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Series A, Series B and Series C Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If this corporation shall issue, after the date of the filing of this Amended and Restated Certificate of Incorporation (the "Filing Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying

such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of Common Stock that the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of such Additional Stock. However, the foregoing calculation shall not take into account shares deemed issued pursuant to Section 4(d)(i)(E) on account of options, rights or convertible or exchangeable securities (or the actual or deemed consideration therefor), except to the extent (i) such options, rights or convertible or exchangeable securities have been exercised, converted or exchanged or (ii) the consideration to be paid upon such exercise, conversion or exchange per share of underlying Common Stock is less than or equal to the per share consideration for the Additional Stock that has given rise to the Conversion Price adjustment being calculated. In addition to the foregoing, if this corporation shall issue, after the Filing Date, any Additional Stock (excluding shares of Series C Preferred Stock) for a consideration per share less than the Conversion Price for the Series B Preferred Stock, but greater than or equal to the Conversion Price for the Series C Preferred Stock, as each such Conversion Price is in effect immediately prior to the issuance of such Additional Stock (a "Dilutive Issuance"), then the Conversion Price for the Series C Preferred Stock then in effect immediately prior to each such Dilutive Issuance shall forthwith be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the quotient determined by dividing (a) \$77,500,000 by (b) the sum of (i) 27,027,626 shares and (ii) the number of Dilutive Shares (as defined below) from such Dilutive Issuance, and the denominator shall be \$2.867. "Dilutive Shares" shall mean the difference between (a) the number of shares of Common Stock into which all outstanding shares of Series B Preferred Stock are convertible immediately following a Dilutive Issuance and (b) the number of shares of Common Stock into which all outstanding shares of Series B Preferred Stock are convertible immediately preceding such Dilutive Issuance. All such figures in the abovementioned equations shall be as adjusted for any stock splits, stock dividends, combinations, recapitalizations and the like.

(A) No adjustment of the Conversion Price for the Series A, Series B or Series C Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(B) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(C) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, or in the event any Additional Stock is issued together with other shares or securities or assets of this corporation which covers both, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(D) In the case of the issuance (whether before, on or after the Filing Date) of options to purchase or rights to subscribe or otherwise acquire for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i) and subsection 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration (without taking into account potential antidilution adjustments) equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), the Conversion Price of the Series A, Series B or Series C Preferred

Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A, Series B or Series C Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this corporation after the Filing Date other than:

(A) Common Stock issued pursuant to a transaction described in subsection 4(d)(iii) hereof;

(B) Up to (1) 12,400,000 shares of Common Stock and (2) 1,600,000 shares of Class A Common Stock, including any shares of Common Stock issued or issuable upon conversion of the Class A Common Stock, issuable or issued to employees, consultants, directors or vendors (if in transactions with primarily non-financing purposes) of this corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors, including at least one director elected by the holders of Series A Preferred Stock, of this corporation; provided, however, that an issuance may exceed this maximum if such issuance is approved by at least one of the directors appointed by the holders of Series A, Series B or Series C Preferred Stock;

(C) Common Stock issued pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock registered under the Securities Act;

(D) Common Stock issued or issuable pursuant to the conversion or exercise of convertible or exercisable securities outstanding as of the Filing Date;

(E) Common Stock issued or issuable in connection with a bona fide business acquisition of or by this corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise approved by the Board of Directors; or

(F) the issuance of Common Stock or warrants or other rights to acquire up to 750,000 shares of Common Stock or Preferred Stock pursuant to credit, license, joint venture or corporate partnering transactions for which this corporation is a party, provided such transactions are for other than primarily equity financing purposes and approved by the Board of Directors; provided, however, that an issuance may exceed this maximum if such issuance is approved by at least one of the directors appointed by the holders of Series A, Series B or Series C Preferred Stock.

(iii) In the event this corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A, Series B and Series C Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination consolidation, by reclassification or otherwise of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A, Series B and Series C Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Series A, Series B and Series C Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Series A, Series B and Series C Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A, Series B and Series C Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A, Series B and Series C Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A, Series B and Series C Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A, Series B and Series C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. This corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A, Series B and Series C Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A, Series B and Series C Preferred Stock and Class A Common Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of that number of shares of Series A, Series B and Series C Preferred Stock represented by a stock certificate that the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A, Series B and Series C Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A, Series B or Series C Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Series A, Series B or Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A, Series B and Series C Preferred Stock.

(i) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or to effect any reclassification of its Common Stock this corporation shall mail to each holder of Series A, Series B and Series C Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A, Series B and Series C Preferred Stock and Class A Common 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 Series A, Series B and Series C Preferred Stock and Class A Common 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 Series A, Series B and Series C Preferred Stock and Class A Common Stock, in addition to such other remedies as shall be available to the holder of such stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A, Series B and Series C Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

(l) Issue Taxes. This corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series A, Series B and Series C Preferred Stock pursuant hereto.

5. Voting Rights.

(a) General Voting Rights. The holder of each share of Series A, Series B and Series C Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A, Series B and Series C Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an

as-converted basis (after aggregating all shares into which shares of Series A, Series B and Series C Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors. As long as at least one-third of the shares of Series A Preferred Stock originally issued remain outstanding, the holders of such shares of Series A Preferred Stock shall be entitled to elect two (2) directors of this corporation at each annual election of directors. As long as at least one-third of the shares of Series C Preferred Stock originally issued remain outstanding, the holders of such shares of Series C Preferred Stock shall be entitled to elect one (1) director of this corporation at each annual election of directors. The holders of outstanding Common Stock shall be entitled to elect two (2) directors of this corporation at each annual election of directors. The holders of Series A, Series B and Series C Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect any remaining directors of this corporation.

In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section 5(b), the remaining directors so elected by that class or series may by affirmative vote thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of that class or series), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class or series of stock or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

6. Protective Provisions.

(a) Series A Preferred Stock. Subject to the rights of series of Preferred Stock that may from time to time come into existence, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a two-thirds of the then outstanding shares of Series A Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares; or

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock;

(b) Series B Preferred Stock. Subject to the rights of series of Preferred Stock that may from time to time come into existence, this corporation shall

not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a two-thirds of the then outstanding shares of Series B Preferred Stock:

- (i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely the shares; or
- (ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B Preferred Stock;

(c) Series C Preferred Stock. Subject to the rights of series of Preferred Stock that may from time to time come into existence, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a two-thirds of the then outstanding shares of Series C Preferred Stock:

- (i) alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock so as to affect adversely the shares; or
- (ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series C Preferred Stock;

(d) Series A, Series B and Series C Preferred Stock. Subject to the rights of series of Preferred Stock that may from time to time come into existence, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least eighty percent (80%) of the then outstanding shares of Series A, Series B and Series C Preferred Stock, voting as a single class and not as a separate series and on an as-converted basis:

(i) sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a directly or indirectly wholly-owned subsidiary of this corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of this corporation is disposed of (other than a directly or indirectly wholly-owned subsidiary of this corporation) unless the consideration received per share of Series B Preferred Stock in such transaction (or series of related transactions) is at least \$17.3775 (as adjusted for any stock splits, stock dividends, recapitalizations or the like); or

(ii) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over the Series A, Series B or Series C Preferred Stock with respect to dividends, liquidation, redemption, conversion or voting.

7. Status of Converted Stock. In the event any shares of Series A, Series B or Series C Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by this corporation. The Amended and Restated Certificate of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in this corporation's authorized capital stock.

C. Common Stock and Class A Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock and Class A Common Stock are as set forth below in this Article IV(C).

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock and Class A Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section (B)(2)(b) of Article IV hereof.

3. Redemption. The Common Stock and Class A Common Stock are not redeemable.

4. Voting Rights.

(a) The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. There shall be no cumulative voting.

(b) Except as otherwise required by law, the holder of each share of Class A Common Stock will have no right to vote such share of Class A Common Stock on any matters to be voted on by this corporation's stockholders and shall not be entitled to notice of any stockholders' meetings.

ARTICLE V

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

ARTICLE VI

The number of directors of this corporation shall be determined in the manner set forth in the Bylaws of this corporation.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this corporation.

ARTICLE IX

A director of this corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended, after approval by the stockholders of this Article, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article IX, by the stockholders of this corporation shall not apply to or adversely affect any right or protection of a director of this corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE X

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE XI

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

* * *

THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That said amendment and restatement was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by the President and the Secretary of this corporation on this ____ day of _____, 2006.

Gary Lauer, President

Bruce Telkamp, Secretary

EHEALTH, INC.
A DELAWARE CORPORATION
AMENDED AND RESTATED BYLAWS

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EHEALTH, INC.

AMENDED AND RESTATED BYLAWS

**ARTICLE I
STOCKHOLDERS**

Section 1. Annual Meeting.

(1) An annual meeting of the stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date, and at such time as the Board of Directors shall each year fix.

(2) Nominations of persons for election to the Board of Directors and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice with respect to such meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of record of the Corporation who was a stockholder of record at the time of the giving of the notice provided for in the following paragraph, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this section.

(3) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of the foregoing paragraph, (1) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (2) such business must be a proper matter for stockholder action under the General Corporation Law of the State of Delaware, (3) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the Corporation with a Solicitation Notice, as that term is defined in subclause (c)(iii) of this paragraph, such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such stockholder or beneficial holder to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice and (4) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this section. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than 90 or more than 120 days prior to the first anniversary (the "Anniversary") of the preceding year's annual meeting of stockholders; provided, however, that if the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not later than the close of business on the later of (i) the 90th day prior to such annual meeting or (ii) the 10th day following the day on which public announcement of the date of such meeting is

first made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and such person's written consent to serve as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class and number of shares of the Corporation that are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

(4) Notwithstanding anything in the second sentence of the third paragraph of this Section 1 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least 100 days prior to the Anniversary, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(5) Only persons nominated in accordance with the procedures set forth in this Section 1 shall be eligible to serve as directors and only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this section. The chairperson of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defectively proposed business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(6) For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(7) Notwithstanding the foregoing provisions of this Section 1, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by, and

otherwise comply with all applicable requirements of, the Exchange Act and the rules and regulations promulgated thereunder with respect to matters set forth in this Section 1. Nothing in this Section 1 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2. Special Meetings.

(1) Special meetings of the stockholders, other than those required by statute, may be called at any time only by the Chairperson of the Board or the Chief Executive Officer (or if there is no Chief Executive Officer, the President) or by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. For purposes of these Bylaws, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. The Board of Directors may postpone or reschedule any previously scheduled special meeting.

(2) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of record of the Corporation who is a stockholder of record at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in Section 1 of this Article I. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice required by the third paragraph of Section 1 of this Article I shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

(3) Notwithstanding the foregoing provisions of this Section 2, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by, and otherwise comply with all applicable requirements of, the Exchange Act and the rules and regulations promulgated thereunder with respect to matters set forth in this Section 2. Nothing in this Section 2 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 3. Notice of Meetings. Notice of the place, if any, date, and time of all meetings of the stockholders, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation of the Corporation).

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders 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; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 4. Quorum. At any meeting of the stockholders, the holders of a majority of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law. Where a separate vote by a class or classes or series is required, a majority of the shares of such class 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.

The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, unless the number of stockholders who withdraw does not permit action to be taken by the stockholders in accordance with the Delaware General Corporation Law. If a quorum is not present or represented at any meeting of the stockholders, then the chairperson of the meeting shall have the power to adjourn the meeting from time to time until a quorum is present or represented.

Section 5. Organization. Such person as the Board of Directors may have designated or, in the absence of such a person, the Chairperson of the Board or, in his or her absence, the President of the Corporation or, in his or her absence, 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, shall call to order any meeting of the stockholders and act as chairperson of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairperson of the meeting appoints.

Section 6. 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 discussion as seem to him or her in order. The chairperson shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

Section 7. Proxies and Voting. At any meeting of the stockholders, every stockholder entitled to vote may vote in person or 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. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this paragraph may be substituted or used in lieu of

the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

The Corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more 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 may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by a duly appointed inspector or inspectors.

All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

Section 8. Stock List. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his or her name, shall be open to the examination of any such stockholder for a period of at least 10 days prior to the meeting in the manner provided by law.

The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This 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.

ARTICLE II BOARD OF DIRECTORS

Section 1. Number, Election and Term of Directors. Subject to the rights of the holders of any series of preferred stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board. The directors, other than those who may be elected by the holders of any series of preferred stock under specified circumstances, shall be divided, with respect to the time for which they severally hold office, into three classes with the term of office of the first class to expire at the Corporation's first annual meeting of stockholders after this Corporation's initial public offering of its common stock, the term of office of the second class to expire at the Corporation's second annual meeting of stockholders after this Corporation's initial public offering of its common stock and the term of office of the third class to expire at the Corporation's third annual meeting of stockholders after this Corporation's initial public offering of its common stock, with each director to hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of stockholders, commencing with the first annual meeting after this Corporation's initial public offering of its common stock, (i) directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of

stockholders after their election, and (ii) if authorized by a resolution of the Board of Directors, directors may be elected to fill any vacancy on the Board of Directors, regardless of how such vacancy shall have been created.

Section 2. Newly Created Directorships and Vacancies. Subject to the rights of the holders of any series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), and directors so chosen shall serve for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been elected expires or until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors shall shorten the term of any incumbent director.

Section 3. Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 4. Special Meetings. Special meetings of the Board of Directors may be called by the Chairperson of the Board, the Chief Executive Officer, or if none, the President or by a majority of the Whole Board and shall be held at such place, on such date, and at such time as they or he or she shall fix. Notice of the place, date, and time of each such special meeting shall be given to each director by whom it is not waived by mailing written notice not less than five (5) days before the meeting or by telephone or by telegraphing or telexing or by facsimile or electronic transmission of the same not less than twenty-four (24) hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 5. Quorum. At any meeting of the Board of Directors, a majority of the total number of the Whole Board shall constitute a quorum for all purposes. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

Section 6. Participation in Meetings By Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or 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 shall constitute presence in person at such meeting.

Section 7. Conduct of Business. At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided herein or required by law. Action may be taken by the Board of Directors without a meeting if all members thereof 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. 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.

Section 8. Compensation of Directors. Unless otherwise restricted by the certificate of incorporation, the Board of Directors shall have the authority to fix the compensation of the directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or paid a stated salary or paid other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings.

ARTICLE III COMMITTEES

Section 1. Committees of the Board of Directors. The Board of Directors may from time to time designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Section 2. Conduct of Business. Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; a majority of the members shall constitute a quorum unless the committee shall consist of one (1) or two (2) members, in which event one (1) member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such 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.

ARTICLE IV OFFICERS

Section 1. Officers. The officers of the Corporation shall be a Chief Executive Officer 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 President, a Chief Financial Officer, a 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.

Section 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 Sections 3 and 5 of this Article IV, subject to the rights, if any, of an officer under any contract of employment.

Section 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.

Section 4. Removal 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.

Section 5. Vacancies in Offices. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors or as provided in Section 2 of this Article IV.

Section 6. Authority and Duty 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.

Section 7. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board of Directors, the Chief Executive Officer or any officer of the Corporation authorized by the Chief Executive Officer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other Corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other Corporation.

ARTICLE V STOCK

Section 1. Certificates of Stock. The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a

certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares 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 vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 2. Transfers of Stock. Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 4 of Article V of these Bylaws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefor.

Section 3. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or 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, except as otherwise required by law, fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or 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, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

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 4. Lost, Stolen or Destroyed Certificates. In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such regulations as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

Section 5. Regulations. The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

**ARTICLE VI
NOTICES**

Section 1. Notices to Stockholders. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law.

Section 2. Notices to Directors. Notice of any special meeting shall be given to each director at his business or residence in writing, or by telegram, facsimile transmission, telephone communication (or verbally in person) or electronic transmission (provided, with respect to electronic transmission, that the director has consented to receive the form of transmission at the address to which it is directed). If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five (5) days before such meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four (24) hours before such meeting. If by facsimile transmission or other electronic transmission, such notice shall be transmitted at least twenty-four (24) hours before such meeting. If by telephone (or verbally in person), the notice shall be given at least twelve (12) hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting. A meeting may be held at any time without notice if all the directors are present (except as otherwise provided by law) or if those not present waive notice of the meeting in writing or by electronic transmission, either before or after such meeting.

Section 3. Waivers. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting to the timeliness of notice.

**ARTICLE VII
MISCELLANEOUS**

Section 1. Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 2. Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 3. Reliance upon Books, Reports and Records. Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee 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 4. Fiscal Year. The fiscal year of the Corporation shall be as fixed by the Board of Directors.

Section 5. Time Periods. In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE VIII INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this Article VIII with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 1 of this Article VIII, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including,

without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

Section 3. Right of Indemnitee to Bring Suit. If a claim under Section 1 or 2 of this Article VIII is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 4. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation’s Certificate of Incorporation, Bylaws, agreement, vote of stockholders or directors or otherwise.

Section 5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant

rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7. Nature of Rights. The rights conferred upon indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VIII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

ARTICLE IX AMENDMENTS

In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized to adopt, amend and repeal these Bylaws subject to the power of the holders of capital stock of the Corporation to adopt, amend or repeal the Bylaws; provided, however, that, with respect to the power of holders of capital stock to adopt, amend and repeal Bylaws of the Corporation, notwithstanding any other provision of these Bylaws or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, these Bylaws or any preferred stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 ²/₃%) of the voting power of all of the then outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of these Bylaws.

CERTIFICATE OF SECRETARY OF

EHEALTH, INC.

The undersigned, Bruce A. Telkamp, hereby certifies that he is the duly elected and acting Secretary of eHealth, Inc., a Delaware corporation (the "Corporation"), and that the Bylaws attached hereto constitute the Bylaws of said Corporation as duly adopted by the Board of Directors on _____, 2006 and by the stockholders of the Corporation on _____, 2006.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed his name this __ day of _____, 2006.

Bruce A. Telkamp,
Secretary

**AMENDED AND RESTATED BYLAWS
OF
EHEALTH, INC.**

ARTICLE I

OFFICES

Section 1. The registered office shall be in the City of Dover, County of Kent, State of Delaware.

Section 2. The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. All meetings of the stockholders for the election of directors shall be held at such place and time and, within or without the State of Delaware, as may be fixed from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual meetings of stockholders, commencing with the year 2003, shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect by a plurality vote a board of directors, and transact such other business as may properly be brought before the meeting.

Section 3. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not fewer than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 4. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list 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 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. 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.

Section 5. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by the president and shall be called by the president or secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning at least ten percent (10%) in amount of the entire capital stock of the corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

Section 6. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 7. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 8. The holders of fifty-one percent (51%) of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, 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 shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 9. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the certificate of incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 10. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no

proxy shall be voted on after three years from its date, unless the proxy provides for a longer period.

Section 11. Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum 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. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 12. Shareholders may participate in a meeting of the shareholders by means of communication by which all persons participating in the meeting can hear each other during the meeting (e.g. telephone meetings). A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

ARTICLE III

DIRECTORS

Section 1. The number of directors which shall constitute the whole board shall be determined by resolution of the Board of Directors or by the stockholders at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his successor is elected and qualified. Directors need not be stockholders.

Section 2. Vacancies and new created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office,

though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having 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.

Section 3. The business of the corporation shall be managed by or under the direction of its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

MEETINGS OF THE BOARD OF DIRECTORS

Section 4. The Board of Directors of the corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 5. The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected Board of Directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice

given as hereinafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

Section 6. 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.

Section 7. Special meetings of the board may be called by the president on two (2) days' notice to each director by mail or forty-eight (48) hours notice to each director either personally or by telegram; special meetings shall be called by the president or secretary in like manner and on like notice on the written request of two (2) directors unless the board consists of only one director, in which case special meetings shall be called by the president or secretary in like manner and on like notice on the written request of the sole director.

Section 8. At all meetings of the board a majority of the directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. 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 or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

Section 10. 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 similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 11. Any director may participate in a meeting of the directors by means of communication by which all persons participating in the meeting can hear each other during the meeting (e.g. telephone meetings). A director participating in a meeting by this means is deemed to be present in person at the meeting.

COMMITTEES OF DIRECTORS

Section 12. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board 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 he or they 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, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the

power or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

Section 13. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

COMPENSATION OF DIRECTORS

Section 14. 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. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

REMOVAL OF DIRECTORS

Section 15. Unless otherwise restricted by the certificate of incorporation or these bylaws, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of shares entitled to vote at an election of directors.

ARTICLE IV

NOTICES

Section 1. Whenever, under the provisions of the statutes or of the certificate of incorporation or of these bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram.

Section 2. Whenever any notice is required to be given under the provisions of the statutes or of the certificate of incorporation or of these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE V

OFFICERS

Section 1. The officers of the corporation shall be chosen by the Board of Directors and shall be a president, treasurer and a secretary. The Board of Directors may elect from among its members a Chairman of the Board and a Vice Chairman of the Board. The Board of Directors may also choose one or more vice-presidents, assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws otherwise provide.

Section 2. The Board of Directors at its first meeting after each annual meeting of stockholders shall choose a president, a treasurer, and a secretary and may choose vice presidents.

Section 3. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

Section 4. The salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 5. The officers of the corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

THE CHAIRMAN OF THE BOARD

Section 6. The Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and of the stockholders at which he shall be present. He shall have and may exercise such powers as are, from time to time, assigned to him by the board and as may be provided by law.

Section 7. In the absence of the Chairman of the Board, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and of the stockholders at which he shall be present. He shall have and may exercise such powers as are, from time to time, assigned to him by the board and as may be provided by law.

THE CHIEF EXECUTIVE OFFICER, PRESIDENT AND VICE-PRESIDENTS

Section 8. The president and chief executive officer shall be the executive officers of the corporation; and in the absence of the Chairman and Vice Chairman of the Board they shall preside at all meetings of the stockholders and the Board of Directors; they shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect.

Section 9. They shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

Section 10. In the absence of the president and chief executive officer or in the event of their inability or refusal to act, the vice-president, if any, (or in the event there be more than one vice-president, the vice-presidents in the order designated by the directors, or in the absence of any designation, then in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

THE SECRETARY AND ASSISTANT SECRETARY

Section 11. The secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or president, under whose supervision he shall be. He shall have custody of the corporate seal of the corporation and he, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 12. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

THE TREASURER AND ASSISTANT TREASURERS

Section 13. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and 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.

Section 14. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as treasurer and of the financial condition of the corporation.

Section 15. If required by the Board of Directors, he shall give the corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 16. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE VI

CERTIFICATE OF STOCK

Section 1. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the Chairman or Vice Chairman of the Board of Directors, or the president or a vice-president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by him in the corporation.

Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, 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 which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which 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.

Section 2. Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

LOST CERTIFICATES

Section 3. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

TRANSFER OF STOCK

Section 4. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a

new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

FIXING RECORD DATE

Section 5. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholder or any adjournment thereof, or to express consent to corporate action in writing 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 be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. 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.

REGISTERED STOCKHOLDERS

Section 6. The corporation 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, and to hold liable for calls and assessments a person registered on its books as the owner of shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII

GENERAL PROVISIONS

DIVIDENDS

Section 1. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 2. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purposes as the directors shall think conducive to the interest of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

CHECKS

Section 3. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

FISCAL YEAR

Section 4. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

SEAL

Section 5. The Board of Directors shall adopt a corporate seal having inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal,

Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

INDEMNIFICATION

Section 6. The corporation shall, to the fullest extent authorized under the laws of the State of Delaware, as those laws may be amended and supplemented from time to time, indemnify any director made, or threatened to be made, a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director of the corporation or a predecessor corporation or, at the corporation's request, a director or officer of another corporation, provided, however, that the corporation shall indemnify any such agent in connection with a proceeding initiated by such agent only if such proceeding was authorized by the Board of Directors of the corporation. The indemnification provided for in this Section 6 shall: (i) not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office, (ii) continue as to a person who has ceased to be a director, and (iii) inure to the benefit of the heirs, executors and administrators of such a person. The corporation's obligation to provide indemnification under this Section 6 shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by the corporation or any other person.

Expenses incurred by a director of the corporation in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director of the corporation (or was serving at the corporation's request as a director or officer of another corporation) shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director to repay such amount if it shall

ultimately be determined that he is not entitled to be indemnified by the corporation as authorized by relevant sections of the General Corporation Law of Delaware. Notwithstanding the foregoing, the corporation shall not be required to advance such expenses to an agent who is a party to an action, suit or proceeding brought by the corporation and approved by a majority of the Board of Directors of the corporation which alleges willful misappropriation of corporate assets by such agent, disclosure of confidential information in violation of such agent's fiduciary or contractual obligations to the corporation or any other willful and deliberate breach in bad faith of such agent's duty to the corporation or its stockholders.

The foregoing provisions of this Section 6 shall be deemed to be a contract between the corporation and each director who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

The Board of Directors in its discretion shall have power on behalf of the corporation to indemnify any person, other than a director, made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was an officer or employee of the corporation.

To assure indemnification under this Section 6 of all directors, officers and employees who are determined by the corporation or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the corporation which may exist from time to time, Section 145 of the General Corporation Law of Delaware shall, for the purposes of this Section 6, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee

benefit plan, including without limitation, any plan of the corporation which is governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974," as amended from time to time; the corporation shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed "fines."

ARTICLE VIII

AMENDMENTS

Section 1. These bylaws may be altered, amended or repealed or new bylaws may be adopted by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors by the certificate of incorporation at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal bylaws is conferred upon the Board of Directors by the certificate or incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal bylaws.

CERTIFICATE OF SECRETARY OF

EHEALTH, INC.

The undersigned, Bruce A. Telkamp, hereby certifies that he is the duly elected and acting Secretary of eHealth, Inc., a Delaware corporation (the "Corporation"), and that the Amended and Restated Bylaws attached hereto constitute the true, complete and correct copy of the Amended and Restated Bylaws of said Corporation as duly adopted by the Board of Directors and its stockholders on May __, 2005.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed his name this ____ day of May, 2005.

Bruce A. Telkamp
Secretary

INDEMNIFICATION AGREEMENT

THIS AGREEMENT is entered into, effective as of _____, 200__ by and between eHealth, Inc., a Delaware corporation (the "Company"), and _____ ("Indemnitee").

WHEREAS, it is essential to the Company to retain and attract as directors and officers the most capable persons available;

WHEREAS, Indemnitee is a director and/or officer of the Company;

WHEREAS, both the Company and Indemnitee recognize the increased risk of litigation and other claims currently being asserted against directors and officers of corporations;

WHEREAS, the Certificate of Incorporation and Bylaws of the Company require the Company to indemnify and advance expenses to its directors and officers to the fullest extent permitted under Delaware law, and the Indemnitee has been serving and continues to serve as a director and/or officer of the Company in part in reliance on the Company's Certificate of Incorporation and Bylaws; and

WHEREAS, in recognition of Indemnitee's need for (i) substantial protection against personal liability based on Indemnitee's reliance on the aforesaid Certificate of Incorporation and Bylaws, (ii) specific contractual assurance that the protection promised by the Certificate of Incorporation and Bylaws will be available to Indemnitee (regardless of, among other things, any amendment to or revocation of the Certificate of Incorporation and Bylaws or any change in the composition of the Company's Board of Directors or acquisition transaction relating to the Company) and (iii) an inducement to provide effective services to the Company as a director and/or officer, the Company wishes to provide in this Agreement for the indemnification of and the advancing of expenses to Indemnitee to the fullest extent (whether partial or complete) permitted under Delaware law and as set forth in this Agreement, and, to the extent insurance is maintained, to provide for the continued coverage of Indemnitee under the Company's directors' and officers' liability insurance policies.

NOW, THEREFORE, in consideration of the above premises and of Indemnitee continuing to serve the Company directly or, at its request, with another enterprise, and intending to be legally bound hereby, the parties agree as follows:

1. Certain Definitions:

(a) "Board" shall mean the Board of Directors of the Company.

(b) "Affiliate" shall mean any corporation or other person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the person specified, including, without limitation, with respect to the Company, any direct or indirect subsidiary of the Company.

(c) A “Change in Control” shall be deemed to have occurred if (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) (other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, and other than any person holding shares of the Company on the date that the Company first registers under the Act or any transferee of such individual if such transferee is a spouse or lineal descendant of the transferee or a trust for the benefit of the individual, his or her spouse or lineal descendants), is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of the total voting power represented by the Company’s then outstanding Voting Securities, (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds (2/3) 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 a majority of the Board, (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other entity, other than a merger or consolidation that would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least 80% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or (iv) the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company (in one transaction or a series of transactions) of all or substantially all of the Company’s assets.

(d) “Expenses” shall mean any expense, liability or loss, including attorneys’ fees, judgments, fines, ERISA excise taxes and penalties, amounts paid or to be paid in settlement, any interest, assessments or other charges imposed thereon, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement and all other costs and obligations, paid or incurred in connection with investigating, defending, being a witness in, participating in (including on appeal) or preparing for any of the foregoing in, any Proceeding relating to any Indemnifiable Event.

(e) “Indemnifiable Event” shall mean any event or occurrence that takes place either prior to or after the execution of this Agreement, related to the fact that Indemnitee is or was a director or officer of the Company or an Affiliate of the Company, or while a director or officer is or was serving at the request of the Company or an Affiliate of the Company as a director, officer, employee, trustee, agent or fiduciary of another foreign or domestic corporation, partnership, joint venture, employee benefit plan, trust or other enterprise or was a director, officer, employee or agent of a foreign or domestic corporation that was a predecessor corporation of the Company or of another enterprise at the request of such predecessor corporation, or related to anything done or not done by Indemnitee in any such capacity, whether or not the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent of the Company or an Affiliate of the Company, as described above.

(f) “Independent Counsel” shall mean the person or body appointed in connection with Section 3.

(g) “Proceeding” shall mean any threatened, pending or completed action, suit or proceeding or any alternative dispute resolution mechanism (including an action by or in the right of the Company or an Affiliate of the Company) or any inquiry, hearing or investigation, whether conducted by the Company or an Affiliate of the Company or any other party, that Indemnitee in good faith believes might lead to the institution of any such action, suit or proceeding, whether civil, criminal, administrative, investigative or other.

(h) “Reviewing Party” shall mean the person or body appointed in accordance with Section 3.

(i) “Voting Securities” shall mean any securities of the Company that vote generally in the election of directors.

2. Agreement to Indemnify.

(a) General Agreement. In the event Indemnitee was, is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, a Proceeding by reason of (or arising in part out of) an Indemnifiable Event, the Company shall indemnify Indemnitee from and against any and all Expenses to the fullest extent permitted by law, as the same exists or may hereafter be amended or interpreted (but in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the Company to provide broader indemnification rights than were permitted prior thereto). The parties hereto intend that this Agreement shall provide for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Company’s Certificate of Incorporation, its Bylaws, vote of its stockholders or disinterested directors or applicable law.

(b) Initiation of Proceeding. Notwithstanding anything in this Agreement to the contrary, Indemnitee shall not be entitled to indemnification pursuant to this Agreement in connection with any Proceeding initiated by Indemnitee against the Company or any director or officer of the Company unless (i) the Company has joined in or the Board has consented to the initiation of such Proceeding, (ii) the Proceeding is one to enforce indemnification rights under this Agreement or (iii) the Proceeding is instituted after a Change in Control (other than a Change in Control approved by a majority of the directors on the Board who were directors immediately prior to such Change in Control) and Independent Counsel has approved its initiation.

(c) Expense Advances. If so requested by Indemnitee, the Company shall advance (within thirty (30) days of such request) any and all Expenses to Indemnitee (an “Expense Advance”). The Indemnitee shall qualify for such Expense Advances upon the execution and delivery to the Company of this Agreement which shall constitute an undertaking providing that the Indemnitee undertakes to repay such Expense Advances if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. Indemnitee’s obligation to reimburse

the Company for Expense Advances shall be unsecured and no interest shall be charged thereon. This Section 2(c) shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 2(b) or 2(f).

(d) Mandatory Indemnification. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein, Indemnitee shall be indemnified against all Expenses incurred in connection therewith.

(e) Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

(f) Prohibited Indemnification. No indemnification pursuant to this Agreement shall be paid by the Company on account of any Proceeding in which a final judgment is rendered against Indemnitee or Indemnitee enters into a settlement, in each case for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) of the Exchange Act or similar provisions of any federal, state or local laws. Notwithstanding anything to the contrary stated or implied in this Section 2(f), indemnification pursuant to this Agreement relating to any Proceeding against Indemnitee for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) of the Exchange Act or similar provisions of any federal, state or local laws shall not be prohibited if Indemnitee ultimately establishes in any Proceeding that no recovery of such profits from Indemnitee is permitted under Section 16(b) of the Exchange Act or similar provisions of any federal, state or local laws.

3. Reviewing Party. Prior to any Change in Control, the Reviewing Party shall be any appropriate person or body appointed by the Board consisting of a member or members of the Board or any other person or body appointed by the Board who is not a party to the particular Proceeding with respect to which Indemnitee is seeking indemnification, provided that if all members of the Board are parties to the particular Proceeding with respect to which Indemnitee is seeking indemnification, the Independent Counsel referred to below shall become the Reviewing Party; after a Change in Control, the Independent Counsel referred to below shall become the Reviewing Party. With respect to all matters arising before a Change in Control for which Independent Counsel shall be the Reviewing Party and all matters arising after a Change in Control, in each case concerning the rights of Indemnitee to indemnity payments and Expense Advances under this Agreement or any other agreement or under applicable law or the Company's Certificate of Incorporation or Bylaws now or hereafter in effect relating to indemnification for Indemnifiable Events, the Company shall seek legal advice only from Independent Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld or delayed), and who has not otherwise performed services for the Company or the Indemnitee (other than in connection with indemnification matters) within the last five years. The 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. Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent the Indemnitee should be permitted to be indemnified under applicable law. The Company agrees to pay the reasonable fees of the Independent Counsel and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities, loss and damages arising out of or relating to this Agreement or the engagement of Independent Counsel pursuant hereto.

4. Indemnification Process and Appeal.

(a) Indemnification Payment. Indemnitee shall be entitled to indemnification of Expenses, and shall receive payment thereof, from the Company in accordance with this Agreement as soon as practicable after Indemnitee has made written demand on the Company for indemnification, but in no event later than thirty (30) days after demand, unless the Reviewing Party has given a written opinion to the Company that Indemnitee is not entitled to indemnification under applicable law.

(b) Suit to Enforce Rights. Regardless of any action by the Reviewing Party, if Indemnitee has not received full indemnification within thirty (30) days after making a demand in accordance with Section 4(a), Indemnitee shall have the right to enforce its indemnification rights under this Agreement by commencing litigation in any court in the State of California or the State of Delaware having subject matter jurisdiction thereof seeking an initial determination by the court or challenging any determination by the Reviewing Party or any aspect thereof. The Company hereby consents to service of process and to appear in any such proceeding. Any determination by the Reviewing Party not challenged by the Indemnitee shall be binding on the Company and Indemnitee. The Company shall be precluded from asserting in any such proceeding that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The remedy provided for in this Section 4 shall be in addition to any other remedies available to Indemnitee at law or in equity.

(c) Defense to Indemnification, Burden of Proof, and Presumptions. It shall be a defense to any action brought by Indemnitee against the Company to enforce this Agreement (other than an action brought to enforce a claim for Expenses incurred in defending a Proceeding in advance of its final disposition) that it is not permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. In connection with any such action or any determination by the Reviewing Party or otherwise as to whether Indemnitee is entitled to be indemnified hereunder, the burden of proving such a defense or determination shall be on the Company. Neither the failure of the Reviewing Party or the Company (including its Board, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action by Indemnitee that indemnification of the claimant is proper under the circumstances because Indemnitee has met the standard of conduct set forth in applicable law, nor an actual determination by the Reviewing Party or Company (including its Board, independent legal counsel or its stockholders) that the Indemnitee had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the Indemnitee has not met the applicable standard of conduct. For purposes of this Agreement, the termination of any claim, action, suit or proceeding, by judgment, order, settlement (whether with or without court approval),

conviction or upon a plea of nolo contendere or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law. For purposes of any determination of good faith under any applicable standard of conduct, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Company, including financial statements, or on information supplied to Indemnitee by the officers of the Company in the course of their duties, or on the advice of legal counsel for the Company or the Board or counsel selected by any committee of the Board or on information or records given or reports made to the Company by an independent certified public accountant or by an appraiser, investment banker or other expert selected with reasonable care by the Company or the Board or any committee of the Board. The provisions of the preceding sentence shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct. The knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Company shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

5. Indemnification for Expenses Incurred in Enforcing Rights. The Company shall indemnify Indemnitee against any and all Expenses that are incurred by Indemnitee in connection with any action brought by Indemnitee for

(i) indemnification or advance payment of Expenses by the Company under this Agreement or any other agreement or under applicable law or the Company's Certificate of Incorporation or Bylaws now or hereafter in effect relating to indemnification for Indemnifiable Events, and/or

(ii) recovery under directors' and officers' liability insurance policies maintained by the Company;

but only in the event that Indemnitee ultimately is determined to be entitled to such indemnification or insurance recovery, as the case may be. In addition, the Company shall, if so requested by Indemnitee, advance the foregoing Expenses to Indemnitee, subject to and in accordance with Section 2(c).

6. Notification and Defense of Proceeding.

(a) Notice. Promptly after receipt by Indemnitee of notice of the commencement of any Proceeding, Indemnitee shall, if a claim in respect thereof is to be made against the Company under this Agreement, notify the Company of the commencement thereof; but the omission so to notify the Company will not relieve the Company from any liability that it may have to Indemnitee, except as provided in Section 6(c).

(b) Defense. With respect to any Proceeding as to which Indemnitee notifies the Company of the commencement thereof, the Company will be entitled to participate in the Proceeding at its own expense and except as otherwise provided below, to the extent the Company so wishes, it may assume the defense thereof with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of

any Proceeding, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently incurred by Indemnitee in connection with the defense of such Proceeding other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ legal counsel in such Proceeding, but all Expenses related thereto incurred after notice from the Company of its assumption of the defense shall be at Indemnitee's expense unless: (i) the employment of legal counsel by Indemnitee has been authorized by the Company, (ii) Indemnitee has reasonably determined that there may be a conflict of interest between Indemnitee and the Company in the defense of the Proceeding, (iii) after a Change in Control, the employment of counsel by Indemnitee has been approved by the Independent Counsel or (iv) the Company shall not in fact have employed counsel to assume the defense of such Proceeding, in each of which cases all Expenses of the Proceeding shall be borne by the Company. The Company shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company, or as to which Indemnitee shall have made the determination provided for in (ii) above or under the circumstances provided for in (iii) and (iv) above.

(c) Settlement of Claims. The Company shall not be liable to indemnify Indemnitee under this Agreement or otherwise for any amounts paid in settlement of any Proceeding effected without the Company's written consent, such consent not to be unreasonably withheld; provided, however, that if a Change in Control has occurred, the Company shall be liable for indemnification of Indemnitee for amounts paid in settlement if the Independent Counsel has approved the settlement. The Company shall not settle any Proceeding in any manner that would impose any penalty, admission of liability or limitation on Indemnitee without Indemnitee's written consent. The Company shall not be liable to indemnify the Indemnitee under this Agreement with regard to any judicial award if the Company was not given a reasonable and timely opportunity as a result of Indemnitees' failure to provide notice, at the Company's expense, to participate in the defense of such action, and the lack of such notice materially prejudiced the Company's defense of such action. The Company's liability hereunder shall not be excused if participation in the Proceeding by the Company was barred by this Agreement.

7. Establishment of Trust. In the event of a Change in Control, the Company shall, upon written request by Indemnitee, create a Trust for the benefit of the Indemnitee and from time to time upon written request of Indemnitee shall fund the Trust in an amount sufficient to satisfy any and all Expenses reasonably anticipated at the time of each such request to be incurred in connection with investigating, preparing for, participating in, and/or defending any Proceeding relating to an Indemnifiable Event. The amount or amounts to be deposited in the Trust pursuant to the foregoing funding obligation shall be determined by the Independent Counsel. The terms of the Trust shall provide that (i) the Trust shall not be revoked or the principal thereof invaded without the written consent of the Indemnitee, (ii) the Trustee shall advance, within thirty (30) days of a request by the Indemnitee, any and all Expenses to the Indemnitee (and the Indemnitee hereby agrees to reimburse the Trust under the same circumstances for which the Indemnitee would be required to reimburse the Company under Section 2(c) of this Agreement), (iii) the Trust shall continue to be funded by the Company in accordance with the funding obligation set forth above, (iv) the Trustee shall promptly pay to the Indemnitee all amounts for which the Indemnitee shall be entitled to indemnification pursuant to this Agreement or otherwise no later than thirty (30) days after notice pursuant to Section 4(a) and (v) all unexpended funds in the Trust shall revert to the Company upon a final determination by the Independent Counsel or a court of competent jurisdiction, as the case

may be, that the Indemnitee has been fully indemnified under the terms of this Agreement. The Trustee shall be chosen by the Indemnitee. Nothing in this Section 7 shall relieve the Company of any of its obligations under this Agreement. All income earned on the assets held in the Trust shall be reported as income by the Company for federal, state, local and foreign tax purposes. The Company shall pay all costs of establishing and maintaining the Trust and shall indemnify the Trustee against any and all expenses (including attorneys' fees), claims, liabilities, loss and damages arising out of or relating to this Agreement or the establishment and maintenance of the Trust.

8. Non-Exclusivity. The rights of Indemnitee hereunder shall be in addition to any other rights Indemnitee may have under the Company's Certificate of Incorporation, Bylaws, applicable law or otherwise; provided, however, that this Agreement shall supersede any prior indemnification agreement between the Company and the Indemnitee. To the extent that a change in applicable law (whether by statute or judicial decision) permits greater indemnification than would be afforded currently under the Company's Certificate of Incorporation, Bylaws, applicable law or this Agreement, it is the intent of the parties that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change.

9. Liability Insurance. To the extent the Company maintains an insurance policy or policies providing general and/or directors' and officers' liability insurance, Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any Company director or officer.

10. Period of Limitations. No legal action shall be brought and no cause of action shall be asserted by or on behalf of the Company or any Affiliate of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two (2) years from the date of accrual of such cause of action, unless such limitation of such period to two (2) years is prohibited by state law under the circumstances. Any claim or cause of action of the Company or its Affiliate shall be extinguished and deemed released unless asserted by the timely filing and notice of a legal action within such period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action, the shorter period shall govern.

11. Amendment of this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

12. Subrogation. In the event of 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 shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

13. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any claim made against Indemnitee to the extent Indemnitee has otherwise received payment (under any insurance policy, Bylaw or otherwise) of the amounts otherwise indemnifiable hereunder.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity pertaining to an Indemnifiable Event even though Indemnitee may have ceased to serve in such capacity at the time of any Proceeding.

15. Severability. If any provision (or portion thereof) of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, (a) the remaining provisions shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable, that is not itself invalid, void or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, void or unenforceable.

16. Contribution. To the fullest extent permissible under applicable law, whether or not the indemnification provided for in this Agreement is available to Indemnitee for any reason whatsoever, the Company shall pay all or a portion of the amount that would otherwise be incurred by Indemnitee for Expenses in connection with any claim relating to an Indemnifiable Event, as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

17. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in such State without giving effect to its principles of conflicts of laws. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement may be brought in the Delaware Court of Chancery, (ii) consent to submit to the jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of

Chancery, and (iv) 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.

18. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt or mailed, postage prepaid, certified or registered mail, return receipt requested and addressed to the Company at:

eHealth, Inc.
440 East Middlefield Road
Mountain View, California 94043
Attention: General Counsel

and to Indemnitee at the address set forth below Indemnitee's signature hereto. Notice of change of address shall be effective only when given in accordance with this Section. All notices complying with this Section shall be deemed to have been received on the date of hand delivery or on the third business day after mailing.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

* * * * *

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the day specified above.

EHEALTH, INC.,
a Delaware corporation

By: _____
Print Name: _____
Title: _____

INDEMNITEE,
an individual

Indemnitee
Print Name: _____
Address: _____

EHEALTH, INC.

1998 STOCK PLAN

ADOPTED ON DECEMBER 1, 1998
AMENDED ON JUNE 8, 2005

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SECTION 1. ESTABLISHMENT AND PURPOSE.

The purpose of the Plan is to offer selected individuals an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing Shares of the Company's Stock. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may include Nonstatutory Options as well as ISOs intended to qualify under Section 422 of the Code.

Capitalized terms are defined in Section 12.

SECTION 2. ADMINISTRATION.

(a) **Committees of the Board of Directors.** The Plan may be administered by one or more Committees. Each Committee shall consist of one or more members of the Board of Directors who have been appointed by the Board of Directors. Each Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. If no Committee has been appointed, the entire Board of Directors shall administer the Plan. Any reference to the Board of Directors in the Plan shall be construed as a reference to the Committee (if any) to whom the Board of Directors has assigned a particular function.

(b) **Authority of the Board of Directors.** Subject to the provisions of the Plan, the Board of Directors shall have full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. All decisions, interpretations and other actions of the Board of Directors shall be final and binding on all Purchasers, all Optionees and all persons deriving their rights from a Purchaser or Optionee.

SECTION 3. ELIGIBILITY.

(a) **General Rule.** Only Employees, Outside Directors and Consultants shall be eligible for the grant of Options or the direct award or sale of Shares. Only Employees shall be eligible for the grant of ISOs.

(b) **Ten-Percent Stockholders.** An individual who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its Parent or any of its Subsidiaries shall not be eligible for designation as an Optionee or Purchaser unless (i) the Exercise Price is at least 110% of the Fair Market Value of a Share on the date of grant, (ii) the Purchase Price (if any) is at least 100% of the Fair Market Value of a Share and (iii) in the case of an ISO, such ISO by its terms is not exercisable after the expiration of five years from the date of grant. For purposes of this Subsection (b), in determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

SECTION 4. STOCK SUBJECT TO PLAN.

(a) **Basic Limitation.** Shares offered under the Plan may be authorized but unissued Shares or treasury Shares. The aggregate number of Shares that may be issued under the Plan (upon exercise of Options or other rights to acquire Shares) shall not exceed 11,514,355 Shares, subject to Subsection (b) below and Section 8(a). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan.

(b) **Additional Shares.** In the event that any outstanding Option or other right for any reason expires or is canceled or otherwise terminated, the Shares allocable to the unexercised portion of such Option or other right shall again be available for the purposes of the Plan. In the event that Shares issued under the Plan are reacquired by the Company, such Shares shall again be available for the purposes of the Plan.

SECTION 5. TERMS AND CONDITIONS OF AWARDS OR SALES.

(a) **Stock Purchase Agreement.** Each award or sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Purchaser and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Purchase Agreement. The provisions of the various Stock Purchase Agreements entered into under the Plan need not be identical.

(b) **Duration of Offers and Nontransferability of Rights.** Any right to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Purchaser within 30 days after the grant of such right was communicated to the Purchaser by the Company. Such right shall not be transferable and shall be exercisable only by the Purchaser to whom such right was granted.

(c) **Purchase Price.** The Purchase Price of Shares to be offered under the Plan shall not be less than 85% of the Fair Market Value of such Shares, and a higher percentage may be required by Section 3(b). Subject to the preceding sentence, the Purchase Price shall be determined by the Board of Directors at its sole discretion. The Purchase Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes.** As a condition to the purchase of Shares, the Purchaser shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such purchase.

(e) **Restrictions on Transfer of Shares and Minimum Vesting.** Any Shares awarded or sold under the Plan shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. In the case of a Purchaser who is not an officer of the Company, an Outside Director or a Consultant, any right to repurchase the Purchaser's Shares at the original Purchase Price (if any) upon termination of the Purchaser's Service shall lapse at least as rapidly as 20% per year over the five-year period commencing on the date of the award or sale of the Shares. Any such right may be exercised only within 90 days after the termination of the Purchaser's Service for cash or for cancellation of indebtedness incurred in purchasing the Shares.

(f) **Accelerated Vesting.** Unless the applicable Stock Purchase Agreement provides otherwise, no vesting shall be accelerated in the event the Company is subject to a Change in Control before the Purchaser's Service terminates. Any right to repurchase a Purchaser's Shares at the original Purchase Price (if any) upon termination of the Purchaser's Service shall remain in force.

SECTION 6. TERMS AND CONDITIONS OF OPTIONS.

(a) **Stock Option Agreement.** Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

(b) **Number of Shares.** Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 8. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

(c) **Exercise Price.** Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than 100% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). The Exercise Price of a Nonstatutory Option shall not be less than 85% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). Subject to the preceding two sentences, the Exercise Price under any Option shall be determined by the Board of Directors at its sole discretion. The Exercise Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes.** As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise. The Optionee shall also make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.

(e) **Exercisability.** Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. In the case of an Optionee who is not an officer of the Company, an Outside Director or a Consultant, an Option shall become exercisable at least as rapidly as 20% per year over the five-year period commencing on the date of grant. Subject to the preceding sentence, the exercisability provisions of any Stock Option Agreement shall be determined by the Board of Directors at its sole discretion.

(f) **Accelerated Exercisability.** Unless the applicable Stock Option Agreement provides otherwise, there shall be no acceleration of exercisability.

(g) **Basic Term.** The Stock Option Agreement shall specify the term of the Option. The term shall not exceed 10 years from the date of grant, and a shorter term may be required by Section 3(b). Subject to the preceding sentence, the Board of Directors at its sole discretion shall determine when an Option is to expire.

(h) **Nontransferability.** No Option shall be transferable by the Optionee other than by beneficiary designation, will or the laws of descent and distribution. An Option may be exercised during the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative. No Option or interest therein may be transferred, assigned, pledged or hypothecated by the Optionee during the Optionee's lifetime, whether by operation of law or otherwise, or be made subject to execution, attachment or similar process.

(i) **Termination of Service (Except by Death).** If an Optionee's Service terminates for any reason other than the Optionee's death, then the Optionee's Options shall expire on the earliest of the following occasions:

(i) The expiration date determined pursuant to Subsection (g) above;

(ii) The date three months after the termination of the Optionee's Service for any reason other than Disability, or such later date as the Board of Directors may determine; or

(iii) The date six months after the termination of the Optionee's Service by reason of Disability, or such later date as the Board of Directors may determine.

The Optionee may exercise all or part of the Optionee's Options at any time before the expiration of such Options under the preceding sentence, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination). The balance of such Options shall lapse when the Optionee's Service terminates. In the event that the Optionee dies after the termination of the Optionee's Service but before the expiration of the Optionee's Options, all or part of such Options may be exercised (prior to expiration) by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination).

(j) **Leaves of Absence.** For purposes of Subsection (i) above, Service shall be deemed to continue while the Optionee is on a bona fide leave of absence, if such leave was approved by the Company in writing and if continued crediting of Service for this purpose is expressly required by the terms of such leave or by applicable law (as determined by the Company).

(k) **Death of Optionee.** If an Optionee dies while the Optionee is in Service, then the Optionee's Options shall expire on the earlier of the following dates:

- (i) The expiration date determined pursuant to Subsection (g) above; or
- (ii) The date 12 months after the Optionee's death.

All or part of the Optionee's Options may be exercised at any time before the expiration of such Options under the preceding sentence by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's death or became exercisable as a result of the death. The balance of such Options shall lapse when the Optionee dies.

(l) **No Rights as a Stockholder.** An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by the Optionee's Option until such person becomes entitled to receive such Shares by filing a notice of exercise and paying the Exercise Price pursuant to the terms of such Option.

(m) **Modification, Extension and Assumption of Options.** Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether

granted by the Company or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair the Optionee's rights or increase the Optionee's obligations under such Option.

(n) **Restrictions on Transfer of Shares and Minimum Vesting.** Any Shares issued upon exercise of an Option shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. In the case of an Optionee who is not an officer of the Company, an Outside Director or a Consultant:

(i) Any right to repurchase the Optionee's Shares at the original Exercise Price upon termination of the Optionee's Service shall lapse at least as rapidly as 20% per year over the five-year period commencing on the date of the option grant;

(ii) Any such right may be exercised only for cash or for cancellation of indebtedness incurred in purchasing the Shares; and

(iii) Any such right may be exercised only within 90 days after the later of (A) the termination of the Optionee's Service or (B) the date of the option exercise.

(o) **Accelerated Vesting.** Unless the applicable Stock Purchase Agreement provides otherwise, no vesting shall be accelerated in the event the Company is subject to a Change in Control before the Purchaser's Service terminates. Any right to repurchase a Purchaser's Shares at the original Purchase Price (if any) upon termination of the Purchaser's Service shall remain in force.

SECTION 7. PAYMENT FOR SHARES.

(a) **General Rule.** The entire Purchase Price or Exercise Price of Shares issued under the Plan shall be payable in cash or cash equivalents at the time when such Shares are purchased, except as otherwise provided in this Section 7.

(b) **Surrender of Stock.** To the extent that a Stock Option Agreement so provides, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value on the date when the Option is exercised. The Optionee shall not surrender, or attest to the ownership of, Shares in payment of the Exercise Price if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes.

(c) **Services Rendered.** At the discretion of the Board of Directors, Shares may be awarded under the Plan in consideration of services rendered to the Company, a Parent or a Subsidiary prior to the award.

(d) **Promissory Note.** To the extent that a Stock Option Agreement or Stock Purchase Agreement so provides, all or a portion of the Exercise Price or Purchase Price (as the case may be) of Shares issued under the Plan may be paid with a full-recourse promissory note. However, the par value of the Shares, if newly issued, shall be paid in cash or cash equivalents. The Shares shall be pledged as security for payment of the principal amount of the promissory note and interest thereon. The interest rate payable under the terms of the promissory note shall not be less than the minimum rate (if any) required to avoid the imputation of additional interest under the Code. Subject to the foregoing, the Board of Directors (at its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of such note.

(e) **Exercise/Sale.** To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(f) **Exercise/Pledge.** To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to pledge Shares to a securities broker or lender approved by the Company, as security for a loan, and to deliver all or part of the loan proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

SECTION 8. ADJUSTMENT OF SHARES.

(a) **General.** In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a recapitalization, a spin-off, a reclassification or a similar occurrence, the Board of Directors shall make appropriate adjustments in one or more of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option or (iii) the Exercise Price under each outstanding Option.

(b) **Mergers and Consolidations.** In the event that the Company is a party to a merger or consolidation, outstanding Options shall be subject to the agreement of merger or consolidation. Such agreement, without the Optionees' consent, may provide for:

- (i) The continuation of such outstanding Options by the Company (if the Company is the surviving corporation);

- (ii) The assumption of the Plan and such outstanding Options by the surviving corporation or its parent;
- (iii) The substitution by the surviving corporation or its parent of options with substantially the same terms for such outstanding Options; or
- (iv) The cancellation of such outstanding Options without payment of any consideration.

(c) **Reservation of Rights.** Except as provided in this Section 8, an Optionee or Purchaser shall have no rights by reason of (i) any subdivision or consolidation of shares of stock of any class, (ii) the payment of any dividend or (iii) any other increase or decrease in the number of shares of stock of any class. Any issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option. The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 9. SECURITIES LAW REQUIREMENTS.

(a) **General.** Shares shall not be issued under the Plan unless the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

(b) **Financial Reports.** The Company each year shall furnish to Optionees, Purchasers and stockholders who have received Stock under the Plan its balance sheet and income statement, unless such Optionees, Purchasers or stockholders are key Employees whose duties with the Company assure them access to equivalent information. Such balance sheet and income statement need not be audited.

SECTION 10. NO RETENTION RIGHTS.

Nothing in the Plan or in any right or Option granted under the Plan shall confer upon the Purchaser or Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Purchaser or Optionee) or of the Purchaser or Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

SECTION 11. DURATION AND AMENDMENTS.

(a) **Term of the Plan.** The Plan, as set forth herein, shall become effective on the date of its adoption by the Board of Directors, subject to the approval of the Company's stockholders. In the event that the stockholders fail to approve the Plan within 12 months after its adoption by the Board of Directors, any grants of Options or sales or awards of Shares that have already occurred shall be rescinded, and no additional grants, sales or awards shall be made thereafter under the Plan. The Plan shall terminate automatically 10 years after its adoption by the Board of Directors and may be terminated on any earlier date pursuant to Subsection (b) below.

(b) **Right to Amend or Terminate the Plan.** The Board of Directors may amend, suspend or terminate the Plan at any time and for any reason; provided, however, that any amendment of the Plan which increases the number of Shares available for issuance under the Plan (except as provided in Section 8), or which materially changes the class of persons who are eligible for the grant of ISOs, shall be subject to the approval of the Company's stockholders. Stockholder approval shall not be required for any other amendment of the Plan.

(c) **Effect of Amendment or Termination.** No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of an Option granted prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or any Option previously granted under the Plan.

SECTION 12. DEFINITIONS.

(a) **"Board of Directors"** shall mean the Board of Directors of the Company, as constituted from time to time.

(b) **"Change in Control"** shall mean:

(i) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if persons who were not shareholders of the Company immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (A) the continuing or surviving entity and (B) any direct or indirect parent corporation of such continuing or surviving entity; or

(ii) The sale, transfer or other disposition of all or substantially all of the Company's assets.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(c) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(d) "**Committee**" shall mean a committee of the Board of Directors, as described in Section 2(a).

(e) "**Company**" shall mean eHealth, Inc., a Delaware corporation.

(f) "**Consultant**" shall mean a person who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor, excluding Employees and Outside Directors.

(g) "**Disability**" shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.

(h) "**Employee**" shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.

(i) "**Exercise Price**" shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Board of Directors in the applicable Stock Option Agreement.

(j) "**Fair Market Value**" shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

(k) "**ISO**" shall mean an employee incentive stock option described in Section 422(b) of the Code.

(l) "**Nonstatutory Option**" shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.

(m) "**Option**" shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(n) "**Optionee**" shall mean an individual who holds an Option.

(o) "**Outside Director**" shall mean a member of the Board of Directors who is not an Employee.

(p) "**Parent**" shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined

voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

(q) “**Plan**” shall mean this eHealth, Inc. 1998 Stock Plan.

(r) “**Purchase Price**” shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Board of Directors.

(s) “**Purchaser**” shall mean an individual to whom the Board of Directors has offered the right to acquire Shares under the Plan (other than upon exercise of an Option).

(t) “**Service**” shall mean service as an Employee, Outside Director or Consultant.

(u) “**Share**” shall mean one share of Stock, as adjusted in accordance with Section 8 (if applicable).

(v) “**Stock**” shall mean the Common Stock of the Company, with a par value of \$0.0001 per Share.

(w) “**Stock Option Agreement**” shall mean the agreement between the Company and an Optionee which contains the terms, conditions and restrictions pertaining to the Optionee’s Option.

(x) “**Stock Purchase Agreement**” shall mean the agreement between the Company and a Purchaser who acquires Shares under the Plan which contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(y) “**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 possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

EHEALTH, INC.

2004 STOCK PLAN FOR EHEALTH CHINA

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SECTION 1. ESTABLISHMENT AND PURPOSE.

The purpose of the Plan is to offer selected persons an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing Shares of the Company's Stock. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may include Nonstatutory Options as well as ISOs intended to qualify under Section 422 of the Code.

Capitalized terms are defined in Section 12.

SECTION 2. ADMINISTRATION.

(a) **Committees of the Board of Directors.** The Plan may be administered by one or more Committees. Each Committee shall consist of one or more members of the Board of Directors who have been appointed by the Board of Directors. Each Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. If no Committee has been appointed, the entire Board of Directors shall administer the Plan. Any reference to the Board of Directors in the Plan shall be construed as a reference to the Committee (if any) to whom the Board of Directors has assigned a particular function.

(b) **Authority of the Board of Directors.** Subject to the provisions of the Plan, the Board of Directors shall have full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. All decisions, interpretations and other actions of the Board of Directors shall be final and binding on all Purchasers, all Optionees and all persons deriving their rights from a Purchaser or Optionee.

SECTION 3. ELIGIBILITY.

(a) **General Rule.** Only Employees, Outside Directors and Consultants shall be eligible for the grant of Nonstatutory Options or the direct award or sale of Shares. Only Employees shall be eligible for the grant of ISOs.

(b) **Ten-Percent Stockholders.** An individual who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its Parent or any of its Subsidiaries shall not be eligible for designation as an Optionee or Purchaser unless (i) the Exercise Price is at least 110% of the Fair Market Value of a Share on the date of grant, (ii) the Purchase Price (if any) is at least 100% of the Fair Market Value of a Share and (iii) in the case of an ISO, such ISO by its terms is not exercisable after the expiration of five years from the date of grant. For purposes of this Subsection (b), in determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

SECTION 4. STOCK SUBJECT TO PLAN.

(a) **Basic Limitation.** Shares offered under the Plan may be authorized but unissued Shares or treasury Shares. The aggregate number of Shares that may be issued under the Plan (upon exercise of Options or other rights to acquire Shares) shall not exceed 1,600,000 Shares, subject to Subsection (b) below and Section 8(a). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan.

(b) **Additional Shares.** In the event that any outstanding Option or other right for any reason expires or is canceled or otherwise terminated, the Shares allocable to the unexercised portion of such Option or other right shall again be available for the purposes of the Plan. In the event that Shares issued under the Plan are reacquired by the Company pursuant to any forfeiture provision, right of repurchase or right of first refusal, such Shares shall again be available for the purposes of the Plan.

SECTION 5. TERMS AND CONDITIONS OF AWARDS OR SALES.

(a) **Stock Purchase Agreement.** Each award or sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement or Stock Award Agreement between the Purchaser or recipient and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Purchase Agreement or Stock Award Agreement. The provisions of the various Stock Purchase Agreements and Stock Award Agreements entered into under the Plan need not be identical.

(b) **Duration of Offers and Nontransferability of Rights.** Any right to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Purchaser within 30 days after the grant of such right was communicated to the Purchaser by the Company. Such right shall not be transferable and shall be exercisable only by the Purchaser to whom such right was granted.

(c) **Purchase Price.** The Purchase Price of Shares to be offered under the Plan shall not be less than 85% of the Fair Market Value of such Shares, and a higher percentage may be required by Section 3(b). Subject to the preceding sentence, the Purchase Price shall be determined by the Board of Directors at its sole discretion. The Purchase Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes.** As a condition to the purchase of Shares, the Purchaser shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such purchase.

(e) **Restrictions on Transfer of Shares and Minimum Vesting.** Any Shares awarded or sold under the Plan shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement or Stock Award Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally.

(f) **Accelerated Vesting.** Unless the applicable Stock Purchase Agreement or Stock Award Agreement provides otherwise, no vesting shall be accelerated in the event the Company is subject to a Change in Control before the Purchaser's Service terminates. Any right to repurchase a Purchaser's Shares at the original Purchase Price (if any) or any forfeiture right upon termination of the Purchaser's Service shall remain in force.

SECTION 6. TERMS AND CONDITIONS OF OPTIONS.

(a) **Stock Option Agreement.** Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

(b) **Number of Shares.** Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 8. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

(c) **Exercise Price.** Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than 100% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). The Exercise Price of a Nonstatutory Option shall not be less than 85% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). Subject to the preceding two sentences, the Exercise Price under any Option shall be determined by the Board of Directors at its sole discretion. The Exercise Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes.** As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise. The Optionee shall also make such

arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.

(e) **Exercisability.** Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. No Option shall be exercisable unless the Optionee has delivered an executed copy of the Stock Option Agreement to the Company. The exercisability provisions of any Stock Option Agreement shall be determined by the Board of Directors at its sole discretion.

(f) **Accelerated Exercisability.** Unless the applicable Stock Option Agreement provides otherwise, there shall be no acceleration of exercisability.

(g) **Basic Term.** The Stock Option Agreement shall specify the term of the Option. The term shall not exceed 10 years from the date of grant, and a shorter term may be required by Section 3(b). Subject to the preceding sentence, the Board of Directors at its sole discretion shall determine when an Option is to expire.

(h) **Nontransferability.** No Option shall be transferable by the Optionee other than by beneficiary designation, will or the laws of descent and distribution. An Option may be exercised during the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative. No Option or interest therein may be transferred, assigned, pledged or hypothecated by the Optionee during the Optionee's lifetime, whether by operation of law or otherwise, or be made subject to execution, attachment or similar process.

(i) **Termination of Service (Except by Death).** If an Optionee's Service terminates for any reason other than the Optionee's death, then the Optionee's Options shall expire on the earliest of the following occasions:

(i) The expiration date determined pursuant to Subsection (g) above;

(ii) The date three months after the termination of the Optionee's Service for any reason other than Disability, or such later date as the Board of Directors may determine; or

(iii) The date six months after the termination of the Optionee's Service by reason of Disability, or such later date as the Board of Directors may determine.

The Optionee may exercise all or part of the Optionee's Options at any time before the expiration of such Options under the preceding sentence, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination). The balance of such Options shall lapse when the Optionee's Service terminates. In the event that the Optionee dies after the termination of the Optionee's

Service but before the expiration of the Optionee's Options, all or part of such Options may be exercised (prior to expiration) by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination).

(j) **Leaves of Absence.** For purposes of Subsection (i) above, Service shall be deemed to continue while the Optionee is on a bona fide leave of absence, if such leave was approved by the Company in writing and if continued crediting of Service for this purpose is expressly required by the terms of such leave or by applicable law (as determined by the Company).

(k) **Death of Optionee.** If an Optionee dies while the Optionee is in Service, then the Optionee's Options shall expire on the earlier of the following dates:

- (i) The expiration date determined pursuant to Subsection (g) above; or
- (ii) The date 12 months after the Optionee's death.

All or part of the Optionee's Options may be exercised at any time before the expiration of such Options under the preceding sentence by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's death or became exercisable as a result of the death. The balance of such Options shall lapse when the Optionee dies.

(l) **No Rights as a Stockholder.** An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by the Optionee's Option until such person becomes entitled to receive such Shares by filing a notice of exercise and paying the Exercise Price pursuant to the terms of such Option.

(m) **Modification, Extension and Assumption of Options.** Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair the Optionee's rights or increase the Optionee's obligations under such Option.

(n) **Restrictions on Transfer of Shares and Minimum Vesting.** Any Shares issued upon exercise of an Option shall be subject to such special forfeiture

conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally.

(o) **Accelerated Vesting.** Unless the applicable Stock Option Agreement provides otherwise, any right to repurchase an Optionee's Shares at the original Exercise Price upon termination of the Purchaser's Service shall remain in force in the event that the Company is subject to a Change in Control before the Optionee's Service terminates.

SECTION 7. PAYMENT FOR SHARES.

(a) **General Rule.** The entire Purchase Price or Exercise Price of Shares issued under the Plan shall be payable in cash or cash equivalents at the time when such Shares are purchased, except as otherwise provided in this Section 7.

(b) **Surrender of Stock.** To the extent that a Stock Option Agreement so provides, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value on the date when the Option is exercised. The Optionee shall not surrender, or attest to the ownership of, Shares in payment of the Exercise Price if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes.

(c) **Services Rendered.** At the discretion of the Board of Directors, Shares may be awarded under the Plan in consideration of services rendered to the Company, a Parent or a Subsidiary prior to the award.

(d) **Promissory Note.** To the extent that a Stock Option Agreement or Stock Purchase Agreement so provides, all or a portion of the Exercise Price or Purchase Price (as the case may be) of Shares issued under the Plan may be paid with a full-recourse promissory note. However, the par value of the Shares, if newly issued, shall be paid in cash or cash equivalents. The Shares shall be pledged as security for payment of the principal amount of the promissory note and interest thereon. The interest rate payable under the terms of the promissory note shall not be less than the minimum rate (if any) required to avoid (i) the imputation of additional interest under the Code, and (ii) variable accounting under the applicable guidelines issued by the Financial Accounting Standards Board. Subject to the foregoing, the Board of Directors (at its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of such note.

(e) **Exercise/Sale.** To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(f) **Exercise/Pledge.** To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to pledge Shares to a securities broker or lender approved by the Company, as security for a loan, and to deliver all or part of the loan proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

SECTION 8. ADJUSTMENT OF SHARES.

(a) **General.** In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a recapitalization, a spin-off, a reclassification or a similar occurrence, the Board of Directors shall make appropriate adjustments in one or more of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option or (iii) the Exercise Price under each outstanding Option.

(b) **Mergers and Consolidations.** In the event that the Company is a party to a merger or consolidation, outstanding Options shall be subject to the agreement of merger or consolidation. Such agreement, without the Optionees' consent, may provide for:

- (i) The continuation of such outstanding Options by the Company (if the Company is the surviving corporation);
- (ii) The assumption of the Plan and such outstanding Options by the surviving corporation or its parent;
- (iii) The substitution by the surviving corporation or its parent of options with substantially the same terms for such outstanding Options; or
- (iv) The cancellation of such outstanding Options without payment of any consideration.

(c) **Rights with respect to Stock.** The Stock that may be acquired under this Plan is defined in Section 12(w) as the Class A Nonvoting Common Stock of the Company, with a par value of \$0.001 per Share. The Company's Class A Nonvoting Common Stock has exactly the same rights as the Company's Common Stock, except for the following attributes:

- (i) Each share of Class A Nonvoting Common Stock shall automatically be converted into one-eighth (0.125) of a fully paid and

nonassessable share of the Company's Common Stock upon the earlier of (A) a Qualified IPO or (B) the date specified by a resolution adopted by the Board of Directors.

(ii) Except as otherwise required by law, the holder of each share of Class A Nonvoting Common Stock will have no right to vote such share on any matters to be voted on by the Company's stockholders and will not be entitled to notice of any stockholders' meetings.

(d) **Reservation of Rights.** Except as provided in this Section 8, an Optionee or Purchaser shall have no rights by reason of (i) any subdivision or consolidation of shares of stock of any class, (ii) the payment of any dividend or (iii) any other increase or decrease in the number of shares of stock of any class. Any issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option. The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 9. SECURITIES LAW REQUIREMENTS.

Shares shall not be issued under the Plan unless the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

SECTION 10. NO RETENTION RIGHTS.

Nothing in the Plan or in any right or Option granted under the Plan shall confer upon the Purchaser or Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Purchaser or Optionee) or of the Purchaser or Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

SECTION 11. DURATION AND AMENDMENTS.

(a) **Term of the Plan.** The Plan, as set forth herein, shall become effective on the date of its adoption by the Board of Directors, subject to the approval of the Company's stockholders. In the event that the stockholders fail to approve the Plan within 12 months after its adoption by the Board of Directors, any grants of Options or

sales or awards of Shares that have already occurred shall be rescinded, and no additional grants, sales or awards shall be made thereafter under the Plan. The Plan shall terminate automatically 10 years after its adoption by the Board of Directors and may be terminated on any earlier date pursuant to Subsection (b) below.

(b) **Right to Amend or Terminate the Plan.** The Board of Directors may amend, suspend or terminate the Plan at any time and for any reason; provided, however, that any amendment of the Plan which increases the number of Shares available for issuance under the Plan (except as provided in Section 8), or which materially changes the class of persons who are eligible for the grant of ISOs, shall be subject to the approval of the Company's stockholders. Stockholder approval shall not be required for any other amendment of the Plan. If the stockholders fail to approve an increase in the number of Shares reserved under Section 4 within 12 months after its adoption by the Board of Directors, then any grants, exercises or sales that have already occurred in reliance on such increase shall be rescinded and no additional grants, exercises or sales shall thereafter be made in reliance on such increase.

(c) **Effect of Amendment or Termination.** No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of an Option granted prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or any Option previously granted under the Plan.

SECTION 12. DEFINITIONS.

(a) **"Board of Directors"** shall mean the Board of Directors of the Company, as constituted from time to time.

(b) **"Change in Control"** shall mean:

(i) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if persons who were not shareholders of the Company immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (A) the continuing or surviving entity and (B) any direct or indirect parent corporation of such continuing or surviving entity; or

(ii) The sale, transfer or other disposition of all or substantially all of the Company's assets.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

- (c) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.
- (d) “**Committee**” shall mean a committee of the Board of Directors, as described in Section 2(a).
- (e) “**Company**” shall mean eHealth, Inc., a Delaware corporation.
- (f) “**Consultant**” shall mean a person who performs bona fide services for eHealth China, Inc, its Parent or Subsidiary or eHealthInsurance Services, Inc. as a consultant or advisor, excluding Employees and Outside Directors.
- (g) “**Disability**” shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.
- (h) “**Employee**” shall mean any individual who is a common-law employee of eHealth China, Inc, its Parent or Subsidiary or eHealthInsurance Services, Inc.
- (i) “**Exercise Price**” shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Board of Directors in the applicable Stock Option Agreement.
- (j) “**Fair Market Value**” shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.
- (k) “**ISO**” shall mean an employee incentive stock option described in Section 422(b) of the Code.
- (l) “**Nonstatutory Option**” shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.
- (m) “**Option**” shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.
- (n) “**Optionee**” shall mean an individual who holds an Option.
- (o) “**Outside Director**” shall mean a member of the board of directors of eHealth China, Inc, its Parent or Subsidiary who is not an Employee.
- (p) “**Parent**” shall mean any corporation (other than eHealth China, Inc.) in an unbroken chain of corporations ending with eHealth China, Inc., if each of the corporations other than eHealth China, Inc. owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.
- (q) “**Plan**” shall mean this eHealth, Inc. 2004 Stock Plan for eHealth China.

(r) “**Purchase Price**” shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Board of Directors.

(s) “**Purchaser**” shall mean an individual to whom the Board of Directors has offered the right to acquire Shares under the Plan (other than upon exercise of an Option).

(t) “**Qualified IPO**” shall mean the Company’s sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended (the “Securities Act”), the public offering price of which was not less than 2.5 times the Original Series C Issue Price (as adjusted for any stock splits, stock dividends, recapitalizations or the like) and \$30,000,000 in the aggregate.

(u) “**Service**” shall mean service as an Employee, Outside Director or Consultant.

(v) “**Share**” shall mean one share of Stock, as adjusted in accordance with Section 8 (if applicable).

(w) “**Stock**” shall mean the Class A Nonvoting Common Stock of the Company, with a par value of \$0.001 per Share.

(x) “**Stock Award Agreement**” shall mean the agreement between the Company and a Purchaser or recipient who acquires Shares under the Plan which contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(y) “**Stock Option Agreement**” shall mean the agreement between the Company and an Optionee which contains the terms, conditions and restrictions pertaining to the Optionee’s Option.

(z) “**Stock Purchase Agreement**” shall mean the agreement between the Company and a Purchaser who acquires Shares under the Plan which contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(aa) “**Subsidiary**” means any corporation (other than eHealth China, Inc.) in an unbroken chain of corporations beginning with eHealth China, Inc., if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

EHEALTH, INC.

2005 STOCK PLAN

**ADOPTED ON JUNE 8, 2005 AND
AMENDED AND RESTATED ON NOVEMBER 2, 2005, AND DECEMBER 14, 2005**

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SECTION 1. ESTABLISHMENT AND PURPOSE.

The purpose of the Plan is to offer selected individuals an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing Shares of the Company's Stock. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may include Nonstatutory Options as well as ISOs intended to qualify under Section 422 of the Code.

Capitalized terms are defined in Section 12.

SECTION 2. ADMINISTRATION.

(a) **Committees of the Board of Directors.** The Plan may be administered by one or more Committees. Each Committee shall consist of one or more members of the Board of Directors who have been appointed by the Board of Directors. Each Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. If no Committee has been appointed, the entire Board of Directors shall administer the Plan. Any reference to the Board of Directors in the Plan shall be construed as a reference to the Committee (if any) to whom the Board of Directors has assigned a particular function.

(b) **Authority of the Board of Directors.** Subject to the provisions of the Plan, the Board of Directors shall have full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. All decisions, interpretations and other actions of the Board of Directors shall be final and binding on all Purchasers, all Optionees and all persons deriving their rights from a Purchaser or Optionee.

SECTION 3. ELIGIBILITY.

(a) **General Rule.** Only Employees, Outside Directors and Consultants shall be eligible for the grant of Options or the direct award or sale of Shares. Only Employees shall be eligible for the grant of ISOs.

(b) **Ten-Percent Stockholders.** An individual who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its Parent or any of its Subsidiaries shall not be eligible for designation as an Optionee or Purchaser unless (i) the Exercise Price is at least 110% of the Fair Market Value of a Share on the date of grant, (ii) the Purchase Price (if any) is at least 100% of the Fair Market Value of a Share and (iii) in the case of an ISO, such ISO by its terms is not exercisable after the expiration of five years from the date of grant. For purposes of this Subsection (b), in determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

SECTION 4. STOCK SUBJECT TO PLAN.

(a) **Basic Limitation.** Shares offered under the Plan may be authorized but unissued Shares or treasury Shares. The aggregate number of Shares that may be issued under the Plan (upon exercise of Options or other rights to acquire Shares) shall not exceed 2,385,645,¹ subject to Subsection (b) below and Section 8(a). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan.

(b) **Additional Shares.** In the event that any outstanding Option or other right under this Plan or the 1998 Stock Plan for any reason expires or is canceled or otherwise terminated, the Shares allocable to the unexercised portion of such Option or other right shall be added to the number of Shares then available for issuance under the Plan. In the event that Shares issued under the Plan or the 1998 Stock Plan are reacquired by the Company, such Shares shall be added to the number of Shares then available for issuance under the Plan.

SECTION 5. TERMS AND CONDITIONS OF AWARDS OR SALES.

(a) **Stock Purchase Agreement.** Each award or sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Purchaser and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Purchase Agreement. The provisions of the various Stock Purchase Agreements entered into under the Plan need not be identical.

(b) **Duration of Offers and Nontransferability of Rights.** Any right to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Purchaser within 30 days after the grant of such right was communicated to the Purchaser by the Company. Such right shall not be transferable and shall be exercisable only by the Purchaser to whom such right was granted.

(c) **Purchase Price.** The Purchase Price of Shares to be offered under the Plan shall not be less than 85% of the Fair Market Value of such Shares, and a higher percentage may be required by Section 3(b). Subject to the preceding sentence, the Purchase Price shall be determined by the Board of Directors at its sole discretion. The Purchase Price shall be payable in a form described in Section 7.

¹ Reflects 500,000-share increase approved by the Board of Directors on November 2, 2005; and 1,000,000-share increase approved by the Board of Directors on December 14, 2005.

(d) **Withholding Taxes.** As a condition to the purchase of Shares, the Purchaser shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such purchase.

(e) **Restrictions on Transfer of Shares and Minimum Vesting.** Any Shares awarded or sold under the Plan shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. In the case of a Purchaser who is not an officer of the Company, an Outside Director or a Consultant, any right to repurchase the Purchaser's Shares at the original Purchase Price (if any) upon termination of the Purchaser's Service shall lapse at least as rapidly as 20% per year over the five-year period commencing on the date of the award or sale of the Shares. Any such right may be exercised only within 90 days after the termination of the Purchaser's Service for cash or for cancellation of indebtedness incurred in purchasing the Shares.

(f) **Accelerated Vesting.** Unless the applicable Stock Purchase Agreement provides otherwise, no vesting shall be accelerated in the event the Company is subject to a Change in Control before the Purchaser's Service terminates. Any right to repurchase a Purchaser's Shares at the original Purchase Price (if any) upon termination of the Purchaser's Service shall remain in force.

SECTION 6. TERMS AND CONDITIONS OF OPTIONS.

(a) **Stock Option Agreement.** Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

(b) **Number of Shares.** Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 8. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

(c) **Exercise Price.** Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than 100% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). The Exercise Price of a Nonstatutory Option shall not be less than 85% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be

required by Section 3(b). Subject to the preceding two sentences, the Exercise Price under any Option shall be determined by the Board of Directors at its sole discretion. The Exercise Price shall be payable in a form described in Section 7.

(d) **Withholding Taxes.** As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise. The Optionee shall also make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.

(e) **Exercisability.** Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. In the case of an Optionee who is not an officer of the Company, an Outside Director or a Consultant, an Option shall become exercisable at least as rapidly as 20% per year over the five-year period commencing on the date of grant. Subject to the preceding sentence, the exercisability provisions of any Stock Option Agreement shall be determined by the Board of Directors at its sole discretion.

(f) **Accelerated Exercisability.** Unless the applicable Stock Option Agreement provides otherwise, there shall be no acceleration of exercisability.

(g) **Basic Term.** The Stock Option Agreement shall specify the term of the Option. The term shall not exceed 10 years from the date of grant, and a shorter term may be required by Section 3(b). Subject to the preceding sentence, the Board of Directors at its sole discretion shall determine when an Option is to expire.

(h) **Nontransferability.** No Option shall be transferable by the Optionee other than by beneficiary designation, will or the laws of descent and distribution. An Option may be exercised during the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative. No Option or interest therein may be transferred, assigned, pledged or hypothecated by the Optionee during the Optionee's lifetime, whether by operation of law or otherwise, or be made subject to execution, attachment or similar process.

(i) **Termination of Service (Except by Death).** If an Optionee's Service terminates for any reason other than the Optionee's death, then the Optionee's Options shall expire on the earliest of the following occasions:

(i) The expiration date determined pursuant to Subsection (g) above;

(ii) The date three months after the termination of the Optionee's Service for any reason other than Disability, or such later date as the Board of Directors may determine; or

(iii) The date six months after the termination of the Optionee's Service by reason of Disability, or such later date as the Board of Directors may determine.

The Optionee may exercise all or part of the Optionee's Options at any time before the expiration of such Options under the preceding sentence, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination). The balance of such Options shall lapse when the Optionee's Service terminates. In the event that the Optionee dies after the termination of the Optionee's Service but before the expiration of the Optionee's Options, all or part of such Options may be exercised (prior to expiration) by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination).

(j) **Leaves of Absence.** For purposes of Subsection (i) above, Service shall be deemed to continue while the Optionee is on a bona fide leave of absence, if such leave was approved by the Company in writing and if continued crediting of Service for this purpose is expressly required by the terms of such leave or by applicable law (as determined by the Company).

(k) **Death of Optionee.** If an Optionee dies while the Optionee is in Service, then the Optionee's Options shall expire on the earlier of the following dates:

(i) The expiration date determined pursuant to Subsection (g) above; or

(ii) The date 12 months after the Optionee's death.

All or part of the Optionee's Options may be exercised at any time before the expiration of such Options under the preceding sentence by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's death or became exercisable as a result of the death. The balance of such Options shall lapse when the Optionee dies.

(l) **No Rights as a Stockholder.** An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by the Optionee's Option until such person becomes entitled to receive such Shares by filing a notice of exercise and paying the Exercise Price pursuant to the terms of such Option.

(m) **Modification, Extension and Assumption of Options.** Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair the Optionee's rights or increase the Optionee's obligations under such Option.

(n) **Restrictions on Transfer of Shares and Minimum Vesting.** Any Shares issued upon exercise of an Option shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. In the case of an Optionee who is not an officer of the Company, an Outside Director or a Consultant:

(i) Any right to repurchase the Optionee's Shares at the original Exercise Price upon termination of the Optionee's Service shall lapse at least as rapidly as 20% per year over the five-year period commencing on the date of the option grant;

(ii) Any such right may be exercised only for cash or for cancellation of indebtedness incurred in purchasing the Shares; and

(iii) Any such right may be exercised only within 90 days after the later of (A) the termination of the Optionee's Service or (B) the date of the option exercise.

(o) **Accelerated Vesting.** Unless the applicable Stock Option Agreement provides otherwise, no vesting shall be accelerated in the event the Company is subject to a Change in Control before the Optionee's Service terminates. Any right to repurchase an Optionee's Shares at the original Exercise Price (if any) upon termination of the Optionee's Service shall remain in force.

SECTION 7. PAYMENT FOR SHARES.

(a) **General Rule.** The entire Purchase Price or Exercise Price of Shares issued under the Plan shall be payable in cash or cash equivalents at the time when such Shares are purchased, except as otherwise provided in this Section 7.

(b) **Surrender of Stock.** To the extent that a Stock Option Agreement so provides, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value on the date when the Option is exercised. The Optionee shall not surrender, or attest to the ownership of, Shares in payment of the Exercise Price if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes.

(c) **Services Rendered.** At the discretion of the Board of Directors, Shares may be awarded under the Plan in consideration of services rendered to the Company, a Parent or a Subsidiary prior to the award.

(d) **Promissory Note.** To the extent that a Stock Option Agreement or Stock Purchase Agreement so provides, all or a portion of the Exercise Price or Purchase Price (as the case may be) of Shares issued under the Plan may be paid with a full-recourse promissory note. However, the par value of the Shares, if newly issued, shall be paid in cash or cash equivalents. The Shares shall be pledged as security for payment of the principal amount of the promissory note and interest thereon. The interest rate payable under the terms of the promissory note shall not be less than the minimum rate (if any) required to avoid the imputation of additional interest under the Code. Subject to the foregoing, the Board of Directors (at its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of such note.

(e) **Exercise/Sale.** To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(f) **Exercise/Pledge.** To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to pledge Shares to a securities broker or lender approved by the Company, as security for a loan, and to deliver all or part of the loan proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

SECTION 8. ADJUSTMENT OF SHARES.

(a) **General.** In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a recapitalization, a spin-off, a reclassification or a similar occurrence, the Board of Directors shall make appropriate adjustments in one or more of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option or (iii) the Exercise Price under each outstanding Option.

(b) **Mergers and Consolidations.** In the event that the Company is a party to a merger or consolidation, outstanding Options shall be subject to the agreement of merger or consolidation. Such agreement, without the Optionees' consent, may provide for:

- (i) The continuation of such outstanding Options by the Company (if the Company is the surviving corporation);

- (ii) The assumption of the Plan and such outstanding Options by the surviving corporation or its parent;
- (iii) The substitution by the surviving corporation or its parent of options with substantially the same terms for such outstanding Options; or
- (iv) The cancellation of such outstanding Options without payment of any consideration.

(c) **Reservation of Rights.** Except as provided in this Section 8, an Optionee or Purchaser shall have no rights by reason of (i) any subdivision or consolidation of shares of stock of any class, (ii) the payment of any dividend or (iii) any other increase or decrease in the number of shares of stock of any class. Any issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option. The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 9. SECURITIES LAW REQUIREMENTS.

(a) **General.** Shares shall not be issued under the Plan unless the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

(b) **Financial Reports.** The Company each year shall furnish to Optionees, Purchasers and stockholders who have received Stock under the Plan its balance sheet and income statement, unless such Optionees, Purchasers or stockholders are key Employees whose duties with the Company assure them access to equivalent information. Such balance sheet and income statement need not be audited.

SECTION 10. NO RETENTION RIGHTS.

Nothing in the Plan or in any right or Option granted under the Plan shall confer upon the Purchaser or Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the

Company (or any Parent or Subsidiary employing or retaining the Purchaser or Optionee) or of the Purchaser or Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

SECTION 11. DURATION AND AMENDMENTS.

(a) **Term of the Plan.** The Plan, as set forth herein, shall become effective on the date of its adoption by the Board of Directors, subject to the approval of the Company's stockholders. In the event that the stockholders fail to approve the Plan within 12 months after its adoption by the Board of Directors, any grants of Options or sales or awards of Shares that have already occurred shall be rescinded, and no additional grants, sales or awards shall be made thereafter under the Plan. The Plan shall terminate automatically 10 years after its adoption by the Board of Directors and may be terminated on any earlier date pursuant to Subsection (b) below.

(b) **Right to Amend or Terminate the Plan.** The Board of Directors may amend, suspend or terminate the Plan at any time and for any reason; provided, however, that any amendment of the Plan which increases the number of Shares available for issuance under the Plan (except as provided in Section 8), or which materially changes the class of persons who are eligible for the grant of ISOs, shall be subject to the approval of the Company's stockholders. Stockholder approval shall not be required for any other amendment of the Plan.

(c) **Effect of Amendment or Termination.** No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of an Option granted prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or any Option previously granted under the Plan.

SECTION 12. DEFINITIONS.

(a) **"Board of Directors"** shall mean the Board of Directors of the Company, as constituted from time to time.

(b) **"Change in Control"** shall mean:

(i) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if persons who were not shareholders of the Company immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (A) the continuing or surviving entity and (B) any direct or indirect parent corporation of such continuing or surviving entity; or

(ii) The sale, transfer or other disposition of all or substantially all of the Company's assets.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(c) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(d) "**Committee**" shall mean a committee of the Board of Directors, as described in Section 2(a).

(e) "**Company**" shall mean eHealth, Inc., a Delaware corporation.

(f) "**Consultant**" shall mean a person who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor, excluding Employees and Outside Directors.

(g) "**Disability**" shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.

(h) "**Employee**" shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.

(i) "**Exercise Price**" shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Board of Directors in the applicable Stock Option Agreement.

(j) "**Fair Market Value**" shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

(k) "**ISO**" shall mean an employee incentive stock option described in Section 422(b) of the Code.

(l) "**Nonstatutory Option**" shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.

(m) "**Option**" shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(n) "**Optionee**" shall mean an individual who holds an Option.

(o) "**Outside Director**" shall mean a member of the Board of Directors who is not an Employee.

(p) “**Parent**” shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

(q) “**Plan**” shall mean this eHealth, Inc. 2005 Stock Plan.

(r) “**Purchase Price**” shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Board of Directors.

(s) “**Purchaser**” shall mean an individual to whom the Board of Directors has offered the right to acquire Shares under the Plan (other than upon exercise of an Option).

(t) “**Service**” shall mean service as an Employee, Outside Director or Consultant.

(u) “**Share**” shall mean one share of Stock, as adjusted in accordance with Section 8 (if applicable).

(v) “**Stock**” shall mean the Common Stock of the Company, with a par value of \$0.0001 per Share.

(w) “**Stock Option Agreement**” shall mean the agreement between the Company and an Optionee which contains the terms, conditions and restrictions pertaining to the Optionee’s Option.

(x) “**Stock Purchase Agreement**” shall mean the agreement between the Company and a Purchaser who acquires Shares under the Plan which contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(y) “**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 possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

EHEALTH, INC.
2006 EQUITY INCENTIVE PLAN
(AS ADOPTED APRIL 17, 2006)

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EHEALTH, INC.

2006 EQUITY INCENTIVE PLAN

ARTICLE 1. INTRODUCTION.

The Plan was adopted by the Board on April 17, 2006, to be effective as of the effective date of the IPO. The purpose of the Plan is to promote the long-term success of the Company and the creation of stockholder value by (a) encouraging Employees, Outside Directors and Consultants to focus on the Company's performance, (b) encouraging the attraction and retention of Employees, Outside Directors and Consultants with exceptional qualifications and (c) linking Employees, Outside Directors and Consultants directly to stockholder interests through increased stock ownership. The Plan seeks to achieve this purpose by providing for Awards in the form of Restricted Shares, Stock Units, Options (which may constitute ISOs or NSOs) or SARs.

The Plan shall be governed by, and construed in accordance with, the laws of the State of Delaware (except its choice-of-law provisions).

ARTICLE 2. ADMINISTRATION.

2.1 Administrator. The Administrator shall administer the Plan.

2.2 Administrator Responsibilities. The Administrator shall (a) select the Employees, Outside Directors and Consultants who are to receive Awards under the Plan, (b) determine the type, number, vesting requirements and other features and conditions of such Awards, (c) interpret the Plan and the terms of the Awards, and (d) make all other decisions relating to the operation of the Plan. The Administrator may adopt such rules or guidelines as it deems appropriate to implement the Plan and amend any Award, subject to the consent of the holder of such Award to the extent required by applicable law. The Administrator's determinations under the Plan shall be final and binding on all persons.

2.3 Committee for Non-Officer Grants. The Board may appoint a secondary committee of the Board that may administer the Plan with respect to Employees and Consultants who are not Outside Directors and are not considered executive officers of the Company under section 16 of the Exchange Act, may grant Awards under the Plan to such Employees and Consultants and may determine all features and conditions of such Awards. Within the limitations of this Section 2.3, any reference in the Plan to the Administrator shall include such secondary committee.

ARTICLE 3. SHARES AVAILABLE FOR GRANTS.

3.1 Basic Limitation. Shares of Stock issued pursuant to the Plan may be authorized but unissued shares or treasury shares. The aggregate number of shares of Stock issued under the Plan shall not exceed (a) 4,000,000 and (b) the additional shares of Stock

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described in Sections 3.2 and 3.3. The number of shares of Stock that are subject to Awards outstanding at any time under the Plan shall not exceed the number of shares of Stock that then remain available for issuance under the Plan. The limitations of this Section 3.1 and Section 3.2 shall be subject to adjustment pursuant to Article 11.

3.2 Annual Increase in Shares. As of January 1 of each year, commencing in 2007, the aggregate number of shares of Stock that may be issued under the Plan shall automatically increase by a number equal to the lowest of (a) 4% of the total number of shares of Stock then outstanding, (b) 3,000,000 shares of Stock or (c) the number determined by the Administrator.

3.3 Shares Returned to Reserve. If Restricted Shares or shares of Stock issued upon the exercise of Options under the Plan are forfeited or repurchased, then such shares of Stock shall again become available for Awards under the Plan. If Stock Units, Options or SARs under the Plan are forfeited or terminate for any other reason before being exercised or settled, then the corresponding shares of Stock shall again become available for Awards under the Plan. If Stock Units are settled, then only the number of shares of Stock (if any) actually issued in settlement of such Stock Units shall reduce the number available under Section 3.1 and the balance shall again become available for Awards under the Plan. If SARs are exercised, then only the number of shares of Stock (if any) actually issued in settlement of such SARs shall reduce the number available under Section 3.1 and the balance shall again become available for Awards under the Plan. If the Exercise Price (or purchase price) of an Award is paid through the tender of shares of Stock, or if shares of Stock are tendered or withheld to satisfy any Company withholding obligations, the number of shares of Stock so tendered or withheld shall again be available for issuance pursuant to future Awards under the Plan.

3.4 Dividend Equivalents. Any dividend equivalents paid or credited under the Plan shall not be applied against the number of shares of Stock that may be issued under the Plan, whether or not such dividend equivalents are converted into Stock Units.

ARTICLE 4. ELIGIBILITY.

4.1 Incentive Stock Options. Only Employees who are common-law employees of the Company, a Parent or a Subsidiary shall be eligible for the grant of ISOs. In addition, an Employee who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company or any of its Parents or Subsidiaries shall not be eligible for the grant of an ISO unless the requirements set forth in section 422(c)(5) of the Code are satisfied.

4.2 Other Grants. Only Employees, Outside Directors and Consultants shall be eligible for the grant of Restricted Shares, Stock Units, NSOs or SARs.

ARTICLE 5. OPTIONS.

5.1 Stock Option Agreement. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The Stock Option Agreement shall specify whether the

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Option is an ISO or an NSO. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical. Options may be granted in consideration of a reduction in the Optionee's other compensation. A Stock Option Agreement may provide that a new Option will be granted automatically to the Optionee when he or she exercises a prior Option and pays the Exercise Price in the form described in Section 6.2.

5.2 Number of Shares. Each Stock Option Agreement shall specify the number of shares of Stock subject to the Option and shall provide for the adjustment of such number in accordance with Article 11. Options granted to any Optionee in a single fiscal year of the Company shall not cover more than 500,000 shares of Stock, except that Options granted to a new Employee in the fiscal year of the Company in which his or her Service as an Employee first commences shall not cover more than 1,000,000 shares of Stock. The limitations set forth in the preceding sentence shall be subject to adjustment in accordance with Article 11.

5.3 Exercise Price. Each Stock Option Agreement shall specify the Exercise Price; provided that the Exercise Price under an Option shall in no event be less than 100% of the Fair Market Value of a share of Stock on the date of grant.

5.4 Exercisability and Term. Each Stock Option Agreement shall specify the date or event when all or any installment of the Option is to become exercisable and vested. The Stock Option Agreement shall also specify the term of the Option; provided that the term of an ISO shall in no event exceed 10 years from the date of grant. A Stock Option Agreement may provide for accelerated exercisability in the event of the Optionee's death, disability or retirement or other events and may provide for expiration prior to the end of its term in the event of the termination of the Optionee's Service. Options may be awarded in combination with SARs, and such an Award may provide that the Options will not be exercisable unless the related SARs are forfeited.

5.5 Effect of Change in Control. The Administrator may determine, at the time of granting an Option or thereafter, that such Option shall become vested and exercisable as to all or part of the shares of Stock subject to such Option upon certain events, such as a Change in Control or certain terminations following a Change in Control. In addition, acceleration of vesting and exercisability may be required under Section 11.3.

5.6 Modification or Assumption of Options. Within the limitations of the Plan, the Administrator may (a) modify, reprice, extend or assume outstanding options, (b) accept the cancellation of outstanding options (whether granted by the Company or by another issuer) in return for the grant of new Options for the same or a different number of shares and at the same or a different exercise price or (c) accept the cancellation of outstanding options in return for the grant of new Awards other than Options. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, alter or impair his or her rights or obligations under such Option.

5.7 Buyout Provisions. The Administrator may at any time (a) offer to buy out for a payment in cash or cash equivalents an Option previously granted or (b) authorize an Optionee to elect to cash out an Option previously granted, in either case at such time and based upon such terms and conditions as the Administrator shall establish.

ARTICLE 6. PAYMENT FOR OPTION SHARES.

6.1 General Rule. The entire Exercise Price of shares of Stock issued upon exercise of Options shall be payable in cash or cash equivalents at the time when such shares of Stock are purchased, except that the Administrator at its sole discretion may accept payment of the Exercise Price in any other form(s) described in this Article 6. However, if the Optionee is an Outside Director or executive officer of the Company, he or she may pay the Exercise Price in a form other than cash or cash equivalents only to the extent permitted by section 13(k) of the Exchange Act.

6.2 Surrender of Stock. With the Administrator's consent, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, shares of Stock that are already owned by the Optionee. Such shares of Stock shall be valued at their Fair Market Value on the date when the new shares of Stock are purchased under the Plan.

6.3 Exercise/Sale. With the Administrator's consent, all or any part of the Exercise Price and any withholding taxes may be paid by delivering (on a form prescribed by the Company) an irrevocable direction to a securities broker approved by the Company to sell all or part of the shares of Stock being purchased under the Plan and to deliver all or part of the sales proceeds to the Company.

6.4 Promissory Note. With the Administrator's consent, all or any part of the Exercise Price and any withholding taxes may be paid by delivering (on a form prescribed by the Company) a full-recourse promissory note.

6.5 Other Forms of Payment. With the Administrator's consent, all or any part of the Exercise Price and any withholding taxes may be paid in any other form that is consistent with applicable laws, regulations and rules.

ARTICLE 7. AUTOMATIC OPTION GRANTS TO OUTSIDE DIRECTORS.

7.1 Initial Grants. Except as provided in Section 7.7, each Outside Director who first becomes a member of the Board after the effective date of the IPO shall receive a one-time grant of an NSO covering 50,000 shares of Stock. Such NSO shall be granted on the date when such Outside Director first joins the Board and shall become exercisable as follows: upon the completion of 12 months of service with the Company following the Outside Director's first date of Board service, the Outside Director may exercise the option with respect to 25% of the shares of Stock, and upon the completion of each of the next 36 months of Board service, the Outside Director may exercise the option with respect to an additional 1/48th of the shares of Stock subject to the option. An Outside Director who previously was an Employee shall not receive a grant under this Section 7.1.

7.2 Annual Grants. Except as provided in Section 7.7, upon the conclusion of each regular annual meeting of the Company's stockholders held in the year 2007 or thereafter, each Outside Director who will continue serving as a member of the Board thereafter shall receive an NSO covering 12,500 shares of Stock, except that such NSO shall not be granted in the calendar year in which the same Outside Director received the NSO described in Section 7.1. NSOs granted under this Section 7.2 shall become exercisable as follows: upon the

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completion of 12 months of service with the Company following the date of grant of the NSO, the Outside Director may exercise the option with respect to 25% of the shares of Stock, and upon the completion of each of the next 36 months of Board service, the Outside Director may exercise the option with respect to an additional 1/48th of the shares of Stock subject to the option. An Outside Director who previously was an Employee shall be eligible to receive grants under this Section 7.2.

7.3 Accelerated Exercisability. Except as provided in Section 7.7, all NSOs granted to an Outside Director under this Article 7 shall also become exercisable in full in the event that the Company is subject to a Change in Control before such Outside Director's Service terminates. Acceleration of exercisability may also be required by Section 11.3.

7.4 Exercise Price. Except as provided in Section 7.7, the Exercise Price under all NSOs granted to an Outside Director under this Article 7 shall be equal to 100% of the Fair Market Value of a share of Stock on the date of grant, payable in one of the forms described in Sections 6.1, 6.2 and 6.3.

7.5 Term. Except as provided in Section 7.7, all NSOs granted to an Outside Director under this Article 7 shall terminate on the earlier of (a) the date 10 years after the date of grant or (b) a date following the termination of such Outside Director's Service, as described herein. If an Outside Director's Service terminates for any reason except death or Total and Permanent Disability, then the Outside Director's NSOs shall expire at the close of business at Company headquarters on the date three months after the Outside Director's Service termination date. If an Outside Director dies before his or her Service terminates, then the Outside Director's NSOs shall expire at the close of business at Company headquarters on the date 12 months after the date of death. If an Outside Director's Service terminates because of the Outside Director's Total and Permanent Disability, then the Outside Director's NSOs shall expire at the close of business at Company headquarters on the date 12 months after the Outside Director's Service termination date.

7.6 Affiliates of Outside Directors. The Administrator may provide that the NSOs that otherwise would be granted to an Outside Director under this Article 7 shall instead be granted to an affiliate of such Outside Director. Such affiliate shall then be deemed to be an Outside Director for purposes of the Plan, provided that the Service-related vesting and termination provisions pertaining to the NSOs shall be applied with regard to the Service of the Outside Director.

7.7 Amendments. Notwithstanding the foregoing, the Administrator in its discretion may change the number of shares of Stock subject to the NSOs described in Sections 7.1 and 7.2 above, may change the terms of such NSOs, as set forth in Sections 7.1 through 7.6, and may grant substitute Awards having an equivalent value to such NSOs, as determined by the Administrator on the date of grant.

ARTICLE 8. STOCK APPRECIATION RIGHTS.

8.1 SAR Agreement. Each grant of a SAR under the Plan shall be evidenced by a SAR Agreement between the Optionee and the Company. Such SAR shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with

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the Plan. The provisions of the various SAR Agreements entered into under the Plan need not be identical. SARs may be granted in consideration of a reduction in the Optionee's other compensation.

8.2 Number of Shares. Each SAR Agreement shall specify the number of shares of Stock to which the SAR pertains and shall provide for the adjustment of such number in accordance with Article 11. SARs granted to any Optionee in a single fiscal year shall in no event pertain to more than 500,000 shares of Stock, except that SARs granted to a new Employee in the fiscal year of the Company in which his or her Service as an Employee first commences shall not pertain to more than 1,000,000 shares of Stock. The limitations set forth in the preceding sentence shall be subject to adjustment in accordance with Article 11.

8.3 Exercise Price. Each SAR Agreement shall specify the Exercise Price; provided that the Exercise Price under an SAR shall in no event be less than 100% of the Fair Market Value of a share of Stock on the date of grant.

8.4 Exercisability and Term. Each SAR Agreement shall specify the date when all or any installment of the SAR is to become exercisable. The SAR Agreement shall also specify the term of the SAR. A SAR Agreement may provide for accelerated exercisability in the event of the Optionee's death, disability or retirement or other events and may provide for expiration prior to the end of its term in the event of the termination of the Optionee's Service. SARs may be awarded in combination with Options, and such an Award may provide that the SARs will not be exercisable unless the related Options are forfeited. A SAR may be included with an ISO only at the time of grant but may be included with an NSO at the time of grant or thereafter. A SAR granted under the Plan may provide that it will be exercisable only in the event of a Change in Control.

8.5 Effect of Change in Control. The Administrator may determine, at the time of granting a SAR or thereafter, that such SAR shall become fully exercisable as to all shares of Stock subject to such SAR upon certain events, such as a Change in Control or certain terminations following a Change in Control. In addition, acceleration of exercisability may be required under Section 11.3.

8.6 Exercise of SARs. Upon exercise of a SAR, the Optionee (or any person having the right to exercise the SAR after his or her death) shall receive from the Company (a) shares of Stock, (b) cash or (c) a combination of shares of Stock and cash, as the Administrator shall determine. The amount of cash and/or the Fair Market Value of shares of Stock received upon exercise of SARs shall, in the aggregate, not exceed the amount by which the Fair Market Value (on the date of surrender) of the shares of Stock subject to the SARs exceeds the Exercise Price. If, on the date when a SAR expires, the Exercise Price under such SAR is less than the Fair Market Value on such date but any portion of such SAR has not been exercised or surrendered, then such SAR shall automatically be deemed to be exercised as of such date with respect to such portion. A SAR Agreement may also provide for an automatic exercise of the SAR on an earlier date.

8.7 Modification or Assumption of SARs. Within the limitations of the Plan, the Administrator may (a) modify, reprice, extend or assume outstanding SARs, (b) accept

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the cancellation of outstanding SARs (whether granted by the Company or by another issuer) in return for the grant of new SARs for the same or a different number of shares and at the same or a different exercise price or (c) accept the cancellation of outstanding SARs in return for the grant of new Awards other than SARs. The foregoing notwithstanding, no modification of a SAR shall, without the consent of the Optionee, alter or impair his or her rights or obligations under such SAR.

ARTICLE 9. RESTRICTED SHARES.

9.1 Restricted Stock Agreement. Each grant of Restricted Shares under the Plan shall be evidenced by a Restricted Stock Agreement between the recipient and the Company. Such Restricted Shares shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Restricted Stock Agreements entered into under the Plan need not be identical. Restricted Shares may be granted in consideration of a reduction in the recipient's other compensation.

9.2 Payment for Awards. Restricted Shares may be sold or awarded under the Plan for such consideration as the Administrator may determine, including (without limitation) cash, cash equivalents, property, full-recourse promissory notes, past services and future services. If the Participant is an Outside Director or executive officer of the Company, he or she may pay for Restricted Shares with a promissory note only to the extent permitted by section 13(k) of the Exchange Act. Within the limitations of the Plan, the Administrator may accept the cancellation of outstanding options or SARs in return for the grant of Restricted Shares.

9.3 Vesting Conditions. Each Award of Restricted Shares may or may not be subject to vesting. Any vesting shall occur, in full or in installments, upon satisfaction of the conditions specified in the Restricted Stock Agreement. The Administrator may include among such conditions the requirement that the performance of the Company or a business unit of the Company for a specified period of one or more fiscal years equal or exceed a target determined in advance by the Administrator. Such target shall be based on one or more of the criteria set forth in Appendix A. The Administrator shall identify such target not later than the 90th day of such period. In no event shall more than 500,000 Restricted Shares that are subject to performance-based vesting conditions be granted to any Participant in a single fiscal year of the Company, subject to adjustment in accordance with Article 11. A Restricted Stock Agreement may provide for accelerated vesting in the event of the Participant's death, disability or retirement or other events. The Administrator may determine, at the time of granting Restricted Shares or thereafter, that all or part of such Restricted Shares shall become vested upon certain events, such as a Change in Control or certain terminations following a Change in Control.

9.4 Voting and Dividend Rights. The holders of Restricted Shares awarded under the Plan shall have the same voting, dividend and other rights as the Company's other stockholders. A Restricted Stock Agreement may require that the holders of Restricted Shares invest any cash dividends received in additional Restricted Shares. Any additional Restricted Shares that represent share dividends shall be subject to the same conditions and restrictions as the Award with respect to which the dividends were paid.

ARTICLE 10. STOCK UNITS.

10.1 Stock Unit Agreement. Each grant of Stock Units under the Plan shall be evidenced by a Stock Unit Agreement between the recipient and the Company. Such Stock Units shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Stock Unit Agreements entered into under the Plan need not be identical. Stock Units may be granted in consideration of a reduction in the recipient's other compensation.

10.2 Payment for Awards. To the extent that an Award is granted in the form of Stock Units, no cash consideration shall be required of the Award recipients. Within the limitations of the Plan, the Administrator may accept the cancellation of outstanding options or SARs in return for the grant of Stock Units.

10.3 Vesting Conditions. Each Award of Stock Units may or may not be subject to vesting. Vesting shall occur, in full or in installments, upon satisfaction of the conditions specified in the Stock Unit Agreement. The Administrator may include among such conditions the requirement that the performance of the Company or a business unit of the Company for a specified period of one or more fiscal years equal or exceed a target determined in advance by the Administrator. Such target shall be based on one or more of the criteria set forth in Appendix A. The Administrator shall identify such target not later than the 90th day of such period. In no event shall more than 500,000 Stock Units that are subject to performance-based vesting conditions be granted to any Participant in a single fiscal year of the Company, subject to adjustment in accordance with Article 11. A Stock Unit Agreement may provide for accelerated vesting in the event of the Participant's death, disability or retirement or other events. The Administrator may determine, at the time of granting Stock Units or thereafter, that all or part of such Stock Units shall become vested upon certain events, such as a Change in Control or certain terminations following a Change in Control. In addition, acceleration of vesting may be required under Section 11.3.

10.4 Voting and Dividend Rights. The holders of Stock Units shall have no voting rights. Prior to settlement or forfeiture, any Stock Unit awarded under the Plan may, at the Administrator's discretion, carry with it a right to dividend equivalents. Such right would entitle the holder to be credited with an amount equal to all cash dividends paid on one share of Stock while the Stock Unit is outstanding, which shall be subject to the terms of the Stock Unit Agreement. Dividend equivalents may be converted into additional Stock Units. Settlement of dividend equivalents may be made in the form of cash, in the form of shares of Stock, or in a combination of both. Prior to distribution, any dividend equivalents that are not paid shall be subject to the same conditions and restrictions as the Stock Units to which they attach.

10.5 Form and Time of Settlement of Stock Units. Settlement of vested Stock Units may be made in the form of (a) cash, (b) shares of Stock or (c) any combination of both, as determined by the Administrator. The actual number of Stock Units eligible for settlement may be larger or smaller than the number included in the original Award, based on predetermined performance factors. Methods of converting Stock Units into cash may include (without limitation) a method based on the average Fair Market Value of shares of Stock over a series of trading days. Vested Stock Units may be settled in a lump sum or in installments. The

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distribution may occur or commence when all vesting conditions applicable to the Stock Units have been satisfied or have lapsed, or it may be deferred to any later date. The amount of a deferred distribution may be increased by an interest factor or by dividend equivalents. Until an Award of Stock Units is settled, the number of such Stock Units shall be subject to adjustment pursuant to Article 11.

10.6 Death of Recipient. Any Stock Units Award that becomes payable after the recipient's death shall be distributed to the recipient's beneficiary or beneficiaries. Each recipient of a Stock Units Award under the Plan shall designate one or more beneficiaries for this purpose by filing the prescribed form with the Company. A beneficiary designation may be changed by filing the prescribed form with the Company at any time before the Award recipient's death. If no beneficiary was designated or if no designated beneficiary survives the Award recipient, then any Stock Units Award that becomes payable after the recipient's death shall be distributed to the recipient's estate.

10.7 Creditors' Rights. A holder of Stock Units shall have no rights other than those of a general creditor of the Company. Stock Units represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Stock Unit Agreement.

ARTICLE 11. ADJUSTMENTS, DISSOLUTION OR LIQUIDATION, REORGANIZATIONS.

11.1 Adjustments. In the event of a subdivision of the outstanding shares of Stock, a declaration of a dividend payable in shares of Stock or a combination or consolidation of the outstanding shares of Stock (by reclassification or otherwise) into a lesser number of shares of Stock, corresponding adjustments shall automatically be made in each of the following:

- (a) The number of Options, SARs, Restricted Shares and Stock Units available for future Awards under Article 3;
- (b) The limitations set forth in Sections 5.2, 8.2, 9.3 and 10.3;
- (c) The number of shares of Stock covered by each outstanding Option and SAR;
- (d) The Exercise Price under each outstanding Option and SAR;
- (e) The number of shares of Stock covered by an Option to be granted under Article 7; or
- (f) The number of Stock Units included in any prior Award that has not yet been settled.

In the event of a declaration of an extraordinary dividend payable in a form other than shares of Stock in an amount that has a material effect on the price of shares of Stock, a recapitalization, a spin-off or a similar occurrence, the Administrator shall make such adjustments as it, in its sole

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discretion, deems appropriate in one or more of the foregoing. Except as provided in this Article 11, a Participant shall have no rights by reason of any issuance by the Company of stock of any class or securities convertible into stock of any class, any subdivision or consolidation of shares of stock of any class, the payment of any stock dividend or any other increase or decrease in the number of shares of stock of any class.

11.2 Dissolution or Liquidation. To the extent not previously exercised or settled, Options, SARs and Stock Units shall terminate immediately prior to the dissolution or liquidation of the Company.

11.3 Reorganizations. In the event that the Company is a party to a merger or consolidation, all outstanding Awards shall be subject to the agreement of merger or consolidation, which does not have to provide that all outstanding Awards (or a portion thereof) be treated in an identical manner. Such agreement shall provide for one or more of the following:

(a) The continuation of any outstanding Awards by the Company (if the Company is the surviving corporation).

(b) The assumption of any outstanding Awards by the surviving corporation or its parent, provided that the assumption of Options or SARs shall comply with section 424(a) of the Code (whether or not the Options are ISOs).

(c) The substitution by the surviving corporation or its parent of new awards for any outstanding Awards, provided that the substitution of Options or SARs shall comply with section 424(a) of the Code (whether or not the Options are ISOs).

(d) Full exercisability of any outstanding Options and SARs and full vesting of the shares of Stock subject to such Options and SARs, followed by the cancellation of such Options and SARs. The full exercisability of any Options and SARs and full vesting of such shares of Stock may be contingent on the closing of such merger or consolidation. The Optionees shall be able to exercise such Options and SARs during a period of not less than five full business days preceding the closing date of such merger or consolidation, unless (i) a shorter period is required to permit a timely closing of such merger or consolidation and (ii) such shorter period still offers the Optionees a reasonable opportunity to exercise such Options and SARs. Any exercise of such Options and SARs during such period may be contingent on the closing of such merger or consolidation.

(e) The cancellation of any outstanding Options and SARs and a payment to the Optionees equal to the excess of (i) the Fair Market Value of the shares of Stock subject to such Options and SARs (whether or not such Options and SARs are then exercisable or such shares of Stock are then vested) as of the closing date of such merger or consolidation over (ii) their Exercise Price. Such

payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Options and SARs would have become exercisable or such shares of Stock would have vested. Such payment may be subject to vesting based on the Optionee's continuing Service, provided that the vesting schedule shall not be less favorable to the Optionee than the schedule under which such Options and SARs would have become exercisable or such shares of Stock would have vested. If the Exercise Price of the shares of Stock subject to such Options and SARs exceeds the Fair Market Value of such shares of Stock, then such Options and SARs may be cancelled without making a payment to the Optionees. For purposes of this Subsection (e), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

(f) The cancellation of any outstanding Stock Units and a payment to the Participants equal to the Fair Market Value of the shares of Stock subject to such Stock Units (whether or not such Stock Units are then vested) as of the closing date of such merger or consolidation. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Stock Units would have vested. Such payment may be subject to vesting based on the Participant's continuing Service, provided that the vesting schedule shall not be less favorable to the Participant than the schedule under which such Stock Units would have vested. For purposes of this Subsection (f), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

ARTICLE 12. AWARDS UNDER OTHER PLANS.

The Company may grant awards under other plans or programs. Such awards may be settled in the form of shares of Stock issued under this Plan. Such shares of Stock shall be treated for all purposes under the Plan like shares of Stock issued in settlement of Stock Units and shall, when issued, reduce the number of shares of Stock available under Article 3.

ARTICLE 13. PAYMENT OF DIRECTOR'S FEES IN SECURITIES.

13.1 Effective Date. No provision of this Article 13 shall be effective unless and until the Administrator has determined to implement such provision.

13.2 Elections to Receive NSOs, Restricted Shares or Stock Units. An Outside Director may elect to receive his or her annual retainer payments and/or meeting fees from the Company in the form of cash, NSOs, Restricted Shares or Stock Units, or a combination thereof, as determined by the Administrator. Such NSOs, Restricted Shares and Stock Units shall be issued under the Plan. An election under this Article 13 shall be filed with the Company on the prescribed form.

13.3 Number and Terms of NSOs, Restricted Shares or Stock Units. The number of NSOs, Restricted Shares or Stock Units to be granted to Outside Directors in lieu of annual retainers and meeting fees that would otherwise be paid in cash shall be calculated in a manner determined by the Administrator. The Administrator shall also determine the terms of such NSOs, Restricted Shares or Stock Units.

ARTICLE 14. LIMITATION ON RIGHTS.

14.1 Retention Rights. Neither the Plan nor any Award granted under the Plan shall be deemed to give any individual a right to remain an Employee, Outside Director or Consultant. The Company and its Parents, Subsidiaries and Affiliates reserve the right to terminate the Service of any Employee, Outside Director or Consultant at any time, with or without cause, subject to applicable laws, the Company's certificate of incorporation and by-laws and a written employment agreement (if any).

14.2 Stockholders' Rights. A Participant shall have no dividend rights, voting rights or other rights as a stockholder with respect to any shares of Stock covered by his or her Award prior to the time when a stock certificate for such shares of Stock is issued or, if applicable, the time when he or she becomes entitled to receive such shares of Stock by filing any required notice of exercise and paying any required Exercise Price. No adjustment shall be made for cash dividends or other rights for which the record date is prior to such time, except as expressly provided in the Plan.

14.3 Regulatory Requirements. Any other provision of the Plan notwithstanding, the obligation of the Company to issue shares of Stock under the Plan shall be subject to all applicable laws, rules and regulations and such approval by any regulatory body as may be required. The Company reserves the right to restrict, in whole or in part, the delivery of shares of Stock pursuant to any Award prior to the satisfaction of all legal requirements relating to the issuance of such shares of Stock, to their registration, qualification or listing or to an exemption from registration, qualification or listing.

ARTICLE 15. WITHHOLDING TAXES.

15.1 General. To the extent required by applicable federal, state, local or foreign law, a Participant or his or her successor shall make arrangements satisfactory to the Company for the satisfaction of any withholding tax obligations that arise in connection with the Plan. The Company shall not be required to issue any shares of Stock or make any cash payment under the Plan until such obligations are satisfied.

15.2 Share Withholding. To the extent that applicable law subjects a Participant to tax withholding obligations, the Administrator may permit such Participant to satisfy all or part of such obligations by having the Company withhold all or a portion of any shares of Stock that otherwise would be issued to him or her or by surrendering all or a portion of any shares of Stock that he or she previously acquired. Such shares of Stock shall be valued at their Fair Market Value on the date when they are withheld or surrendered.

ARTICLE 16. FUTURE OF THE PLAN.

16.1 Term of the Plan. The Plan, as set forth herein, shall become effective on the effective date of the IPO. The Plan shall remain in effect until the earlier of (a) the date when the Plan is terminated under Section 16.2 or (b) the 10th anniversary of the date when the Board adopted the Plan.

16.2 Amendment or Termination. The Board may, at any time and for any reason, amend or terminate the Plan. No Awards shall be granted under the Plan after the termination thereof. The termination of the Plan, or any amendment thereof, shall not affect any Award previously granted under the Plan.

16.3 Stockholder Approval. An amendment of the Plan shall be subject to the approval of the Company's stockholders only to the extent required by applicable laws, regulations or rules.

ARTICLE 17. DEFINITIONS.

17.1 "Administrator" means the Board or any of its Committees that will be administering the Plan, in accordance with Article 2.

17.2 "Affiliate" means any entity other than a Subsidiary, if the Company and/or one or more Subsidiaries own not less than 50% of such entity.

17.3 "Award" means any award of an Option, a SAR, a Restricted Share or a Stock Unit under the Plan.

17.4 "Board" means the Company's Board of Directors, as constituted from time to time.

17.5 "Change in Control" means:

(a) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if persons who were not stockholders of the Company immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (i) the continuing or surviving entity and (ii) any direct or indirect parent corporation of such continuing or surviving entity;

(b) The sale, transfer or other disposition of all or substantially all of the Company's assets;

(c) A change in the composition of the Board, as a result of which fewer than 50% of the incumbent directors are directors who either:

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(i) Had been directors of the Company on the date 24 months prior to the date of such change in the composition of the Board (the “Original Directors”); or

(ii) Were appointed to the Board, or nominated for election to the Board, with the affirmative votes of at least a majority of the aggregate of (A) the Original Directors who were in office at the time of their appointment or nomination and (B) the directors whose appointment or nomination was previously approved in a manner consistent with this Paragraph (ii); or

(d) Any transaction as a result of which any person is the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing at least 50% of the total voting power represented by the Company’s then outstanding voting securities. For purposes of this Subsection (d), the term “person” shall have the same meaning as when used in sections 13(d) and 14(d) of the Exchange Act but shall exclude (i) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Parent or Subsidiary and (ii) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the common stock of the Company.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company’s incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company’s securities immediately before such transaction.

17.6 “Code” means the Internal Revenue Code of 1986, as amended.

17.7 “Committee” means a committee appointed by the Board that consists of one or more Board members or other individuals satisfying all applicable laws.

17.8 “Company” means eHealth, Inc., a Delaware corporation.

17.9 “Consultant” means a consultant or adviser who provides bona fide services to the Company, a Parent, a Subsidiary or an Affiliate as an independent contractor.

17.10 “Employee” means a common-law employee of the Company, a Parent, a Subsidiary or an Affiliate.

17.11 “Exchange Act” means the Securities Exchange Act of 1934, as amended.

17.12 “Exercise Price,” in the case of an Option, means the amount for which one share of Stock may be purchased upon exercise of such Option, as specified in the applicable Stock Option Agreement. “Exercise Price,” in the case of a SAR, means an amount, as specified in the applicable SAR Agreement, which is subtracted from the Fair Market Value of one share of Stock in determining the amount payable upon exercise of such SAR.

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17.13 “Fair Market Value” means the market price of shares of Stock, determined by the Administrator in good faith on such basis as it deems appropriate. Whenever possible, the determination of Fair Market Value by the Administrator shall be based on the prices reported in The Wall Street Journal or as reported directly to the Company by Nasdaq or a stock exchange. Such determination shall be conclusive and binding on all persons.

17.14 “IPO” means the effective date of the registration statement filed by the Company with the Securities and Exchange Commission for its initial offering of Stock to the public.

17.15 “ISO” means an incentive stock option described in section 422(b) of the Code.

17.16 “NSO” means a stock option not described in sections 422 or 423 of the Code.

17.17 “Option” means an ISO or NSO granted under the Plan and entitling the holder to purchase shares of Stock.

17.18 “Optionee” means a person or estate who holds an Option or SAR.

17.19 “Outside Director” means a member of the Board who is not an Employee.

17.20 “Parent” means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

17.21 “Participant” means a person or estate who holds an Award.

17.22 “Plan” means this eHealth, Inc. 2006 Equity Incentive Plan, as amended from time to time.

17.23 “Restricted Share” means a share of Stock awarded under the Plan.

17.24 “Restricted Stock Agreement” means the agreement between the Company and the recipient of a Restricted Share that contains the terms, conditions and restrictions pertaining to such Restricted Share.

17.25 “SAR” means a stock appreciation right granted under the Plan.

17.26 “SAR Agreement” means the agreement between the Company and an Optionee that contains the terms, conditions and restrictions pertaining to his or her SAR.

17.27 “Service” means service as an Employee, Outside Director or Consultant.

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17.28 “**Stock**” means the Common Stock of the Company.

17.29 “**Stock Option Agreement**” means the agreement between the Company and an Optionee that contains the terms, conditions and restrictions pertaining to his or her Option.

17.30 “**Stock Unit**” means a bookkeeping entry representing the equivalent of one share of Stock, as awarded under the Plan.

17.31 “**Stock Unit Agreement**” means the agreement between the Company and the recipient of a Stock Unit that contains the terms, conditions and restrictions pertaining to such Stock Unit.

17.32 “**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 possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

17.33 “**Total and Permanent Disability**” means that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than one year.

APPENDIX A

PERFORMANCE CRITERIA FOR RESTRICTED SHARES AND STOCK UNITS

The performance goals that may be used by the Administrator may consist of: operating profits (including EBITDA), net profits, earnings, earnings per share, profit returns and margins, cash flow, revenues, stockholder return and/or value, stock price, return on capital, return on assets or net assets, return on investment, revenue, income or net income, operating income or net operating income, operating profit or net operating profit, operating margin, return on operating revenue, working capital, market share, contract awards or backlog, overhead or other expense reduction, growth in stockholder value relative to the moving average of the S&P 500 Index or a peer group index, credit rating, strategic plan development and implementation, improvement in workforce diversity, number of customers, submitted applications, sold applications or members, conversion yields achieved from website visitors to sold members (including any sub-yield in between), increase in membership, cost of acquiring members or applicants, retention of membership, business acquisition metrics, individual confidential business objectives, and any other similar criteria. Performance goals may be measured solely on an individual, corporate, subsidiary or business unit basis, or a combination thereof. Further, performance criteria may reflect absolute entity performance or a relative comparison of entity performance to the performance of a peer group of entities or other external measure of the selected performance criteria. Profit, earnings and revenues used for any performance goal measurement may exclude: gains or losses on operating asset sales or dispositions; asset write-downs; litigation or claim judgments or settlements; accruals for historic environmental obligations; effect of changes in tax law or rate on deferred tax liabilities, accounting principles or other such laws or provisions affecting reported results; accruals for reorganization and restructuring programs; uninsured catastrophic property losses; the cumulative effect of changes in accounting principles; and any extraordinary non-recurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial performance appearing in the Company's annual report to stockholders for the applicable year.

**THIRD AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

May 23, 2005

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THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

THIS THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT ("Agreement") is made as of the 23rd day of May, 2005, by and among eHealthInsurance Services, Inc., a Delaware corporation ("EHIS"), eHealth, Inc., a Delaware corporation (the "Company"), and the investors listed on Schedule A hereto, each of which is herein referred to as an "Investor."

RECITALS

WHEREAS, certain of the Investors hold (i) shares of EHIS Common Stock and/or securities exercisable therefor (the "EHIS Common Stock"), (ii) shares of EHIS Series A Preferred Stock and/or shares of Common Stock issued upon the conversion thereof (the "EHIS Series A Stock"), (iii) shares of EHIS Series B Preferred Stock and/or shares of Common Stock issued upon the conversion thereof (the "EHIS Series B Stock") and (iv) shares of the EHIS Series C Preferred Stock and/or shares of Common Stock issued upon the conversion thereof (the "EHIS Series C Stock"), and possess registration rights, information rights, rights of first offer and other rights granted pursuant to the terms of that certain Second Amended and Restated Investors' Rights Agreement dated December 29, 2000, by and among EHIS and the investors listed on the Schedule of Investors attached thereto;

WHEREAS, pursuant to the terms of the Agreement and Plan of Merger dated as of May 17, 2005, by and among EHIS, the Company and eHealth Merger Corp., a wholly-owned subsidiary of the Company ("Merger Sub"), Merger Sub will be merged with and into EHIS and EHIS will become a wholly-owned subsidiary of the Company (the "Merger");

WHEREAS, pursuant to the Merger, each share of EHIS Common Stock, EHIS Class A Nonvoting Common Stock, EHIS Series A Stock, EHIS Series B Stock and EHIS Series C Stock will be converted into one share of Company Common Stock (the "Common Stock"), Company Class A Nonvoting Common Stock (the "Class A Common Stock"), Company Series A Preferred Stock (the "Series A Stock"), Company Series B Preferred Stock (the "Series B Stock") and Company Series C Preferred Stock (the "Series C Stock"), respectively, and EHIS will assign and the Company will assume all the rights and obligations of EHIS under the Prior Agreement;

WHEREAS, pursuant to the terms of the Prior Agreement, (i) EHIS and the holders of two-thirds of then outstanding Registrable Securities (as such term is defined in the Prior Agreement) may amend the Prior Agreement and (ii) EHIS may assign its rights and obligations under the Prior Agreement with the consent of no less than a majority of the holders in interest of shares of EHIS Series C Stock (the "Assignment");

WHEREAS, in connection with the Merger, the Company, EHIS and a majority of the holders in interest of shares of EHIS Series C Stock desire to effect the Assignment, and EHIS, the Company and the Investors desire to enter into this Agreement and to amend the Prior Agreement to reflect such Assignment; and

WHEREAS, EHS, the Company and the undersigned Investors hereby agree that this Agreement shall govern the rights of the Investors to cause the Company to register shares of Common Stock issued or issuable to such persons, and certain other matters as set forth herein;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Registration Rights. The Company covenants and agrees as follows:

1.1 Definitions. For purposes of this Section 1:

(a) The term "Act" means the Securities Act of 1933, as amended.

(b) The term "Form S-3" means such form under the Act as in effect on the date hereof or any registration form under the Act subsequently adopted by the SEC that permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(c) The term "Holder" means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 1.12 hereof.

(d) The term "Initial Offering" means the Company's first firm commitment underwritten public offering of its Common Stock under the Act.

(e) The term "1934 Act" means the Securities Exchange Act of 1934, as amended.

(f) The term "register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Act, and the declaration or ordering of effectiveness of such registration statement or document.

(g) The term "Registrable Securities" means (i) the Common Stock issuable or issued upon conversion of the Series A Stock, Series B Stock or Series C Stock and (ii) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the shares referenced in (i) above, excluding in all cases, however, any Registrable Securities sold by a person in a transaction in which his rights under this Section 1 are not assigned.

(h) The number of shares of "Registrable Securities" outstanding shall be determined by the number of shares of Common Stock outstanding that are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities that are, Registrable Securities.

(i) The term "SEC" shall mean the Securities and Exchange Commission.

(j) The term “Series C Shares” means (i) the Common Stock issuable or issued upon conversion of the Series C Stock and (ii) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the shares referenced in (i) above, excluding in all cases, however, any Series C Shares sold by a person in a transaction in which his rights under this Section 1 are not assigned.

1.2 Request for Registration.

(a) Subject to the conditions of this Section 1.2, if at any time after the earlier of (i) April 16, 2004 or (ii) 180 days after the effective date of the Initial Offering, the Company shall receive a written request from the Holders of thirty-five percent (35%) or more of the Registrable Securities then outstanding (the “Initiating Holders”) that the Company file a registration statement under the Act covering the registration of Registrable Securities with an anticipated aggregate offering price of at least \$7,500,000, then the Company shall, within twenty (20) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 1.2, use all reasonable efforts to effect, as soon as practicable, the registration under the Act of all Registrable Securities that the Holders request to be registered in a written request received by the Company within twenty (20) days of the mailing of the Company’s notice pursuant to this Section 1.2(a).

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 1.2 and the Company shall include such information in the written notice referred to in Section 1.2(a). In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder’s participation in such underwriting and the inclusion of such Holder’s Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company (which underwriter or underwriters shall be reasonably acceptable to a majority in interest of the Initiating Holders). Notwithstanding any other provision of this Section 1.2, if the underwriter advises the Company that marketing factors require a limitation of the number of securities underwritten (including Registrable Securities), then the Company shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities on a pro rata basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders). Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(c) The Company shall not be required to effect a registration pursuant to this Section 1.2:

(i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, unless the Company is already subject to service in such jurisdiction and except as may be required under the Act; or

(ii) after the Company has effected two (2) registrations pursuant to this Section 1.2, and such registrations have been declared or ordered effective; or

(iii) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of the filing of, and ending on a date one hundred twenty (120) days following the effective date of, a Company-initiated registration subject to Section 1.3 below, provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective; or

(iv) if the Initiating Holders propose to dispose of Registrable Securities that may be registered on Form S-3 pursuant to Section 1.4 hereof; or

(v) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.2, a certificate signed by the Company's Chief Executive Officer or Chairman of the Board stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its shareholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders, provided that such right to delay a request shall be exercised by the Company not more than once in any twelve (12)-month period.

1.3 Company Registration.

(a) If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for shareholders other than the Holders) any of its stock or other securities under the Act in connection with the public offering of such securities (other than a registration relating solely to the sale of securities to participants in a Company stock plan, a registration relating to a corporate reorganization or other transaction under Rule 145 of the Act, a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities, or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of such notice by the Company in accordance with Section 3.5, the Company shall, subject to the provisions of Section 1.3(c), use all reasonable efforts to cause to be registered under the Act all of the Registrable Securities that each such Holder has requested to be registered.

(b) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 1.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The expenses of such withdrawn registration shall be borne by the Company in accordance with Section 1.7 hereof.

(c) Underwriting Requirements. In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under this Section 1.3 to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters) and enter into an underwriting agreement in customary form with an underwriter or underwriters selected by the Company, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, that the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling Holders according to the total amount of securities entitled to be included therein owned by each selling Holder or in such other proportions as shall mutually be agreed to by such selling Holders), but in no event shall (i) the number of shares of Registrable Securities to be included in such underwriting (excluding shares held by the Founder, as such term is defined in that certain Third Amended and Restated Right of First Refusal and Co-Sale Agreement of even date herewith among the Company and the signatories thereto) be reduced unless the shares held by such Founder, or any other stockholder other than a Holder, are first entirely excluded from such underwriting, (ii) the amount of securities of the selling Holders included in the offering be reduced below twenty percent (20%) of the total amount of securities included in such offering, unless such offering is the initial public offering of the Company's securities, in which case the selling Holders may be excluded if the underwriters make the determination described above and no other stockholder's securities are included, or (iii) notwithstanding (i) above, any shares being sold by a stockholder exercising a demand registration right similar to that granted in Section 1.2 be excluded from such offering. For purposes of the preceding parenthetical concerning apportionment, for any selling stockholder that is a Holder of Registrable Securities and that is a partnership or corporation, the partners, retired partners and stockholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate amount of Registrable Securities owned by all such related entities and individuals.

1.4 Form S-3 Registration. In case the Company shall receive from the Holders of at least five hundred thousand (500,000) shares (as adjusted for any stock splits, stock dividends, recapitalizations or the like) of the Registrable Securities a written request or requests that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company shall:

- (a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) use all reasonable efforts to effect, as soon as practicable, such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company, provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this section 1.4:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters' discounts or commissions) of less than \$2,000,000;

(iii) if the Company shall furnish to the Holders a certificate signed by the Chief Executive Officer or Chairman of the Board of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such Form S-3 Registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than one hundred twenty (120) days after receipt of the request of the Holder or Holders under this Section 1.4; provided, however, that the Company shall not utilize this right more than once in any twelve month period;

(iv) if the Company has, within the twelve (12) month period preceding the date of such request, already effected two registrations on Form S-3 for the Holders pursuant to this Section 1.4; or

(v) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required under the Act.

(c) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. Registrations effected pursuant to this Section 1.4 shall not be counted as requests for registration effected pursuant to Section 1.2.

1.5 Shelf Registration.

(a) In case the Company shall conduct an Initial Offering within six (6) months of the date of this Agreement, the Company shall use its commercially

reasonable efforts to cause to be declared effective, no later than one hundred eighty (180) days after the closing date of the Initial Offering, a registration statement with the SEC (the "Shelf Registration") pursuant to Rule 415 of the Securities Act for an offering of the shares of Common Stock issued upon conversion of the Series C Shares (the "Shelf Registration Shares") and, at the Company's sole discretion, permitting sales in the ordinary course brokerage or dealer transactions not involving any underwritten public offering; provided, however, that if a "lock up" or "black out" period is imposed on the Company pursuant to or in connection with any underwriting or purchase agreement, then the Company shall not be required to file such Shelf Registration until the end of such "lock up" or "black out" period; provided, further, that if the Company shall furnish to the Holders a certificate signed by the Chief Executive Officer or Chairman of the Board of the Company stating that in the good faith judgment of the Board of Directors of the Company that it would be seriously detrimental to the Company and its stockholders for such Shelf Registration to be effected at such time, the Company shall have the right to defer the filing of the Shelf Registration statement for a period of not more than thirty (30) days. The Company may only defer this right only once in every six (6) month period.

(b) In furtherance of the foregoing, the Company shall (i) notify the holders of the Shelf Registration Shares when a Shelf Registration is being prepared, (ii) prepare and file with the SEC a registration statement with respect to such Shelf Registration Shares and (iii) notwithstanding any other provision in this Agreement, keep such registration statement effective, subject to the provisions of subsection 1.6(a) hereof, until the earlier of (i) all Shelf Registration Shares held by any such holder are sold, and (ii) all Shelf Registration Shares held by any such holder are salable in any three (3)-month period pursuant to Rule 144 under the Act. Within ten (10) days after receipt by any holder of Shelf Registration Shares of such notice from the Company, such holder may request in writing that such holder's Shelf Registration Shares be included in such Shelf Registration and the Company shall include in the Shelf Registration the Shelf Registration Shares of any such holder requested to be so included (the "Included Shares"). Each such request by such other holders of Shelf Registration Shares shall specify the number of Included Shares proposed to be sold and the intended method of disposition thereof.

(c) The Company will notify the holders of Shelf Registration Shares promptly of (i) the issuance of any stop order suspending the effectiveness of the Shelf Registration or the institution or threatening of any proceeding for such purpose or (ii) the receipt by the Company of any notification with respect to the suspension of the qualification of the Shelf Registration Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose. Immediately upon receipt of any such notice, the holders of Shelf Registration Shares shall cease to offer and sell any Shelf Registration Shares pursuant to the Shelf Registration in the jurisdiction to which such stop order or suspension relates.

(d) The Company will notify the holders of Shelf Registration Shares promptly of the occurrence of any event or the existence of any state of facts that, in the judgment of the Company, should be set forth in the prospectus used in connection with the shelf Registration (the "Prospectus"). Immediately upon receipt of such notice, the holders of Shelf Registration Shares shall cease to offer or sell any Shelf Registration Shares pursuant to such Prospectus, cease to deliver or use such Prospectus and, if so requested by the Company, return to the Company, at its expense, all copies (other than permanent file copies) of such Prospectus.

The Company will, as soon as the information becomes available in a form such that it may be included in an amendment or supplement to the Prospectus, use its reasonable efforts to amend or supplement such Prospectus in order to set forth or reflect such event or state of facts; it being understood that in the event the Company determines in good faith that the disclosure of such information would be seriously detrimental to the Company or its shareholders, the Company shall be permitted to delay the filing of such an amendment or supplement to the Prospectus. The Company will furnish copies of such amendment or supplement to the Prospectus to the holders of Shelf Registration Shares.

(e) Each holder of Shelf Registration Shares agrees, if and for so long as such holder is affiliated with a member of the Company's Board of Directors, to comply with the Company's policy concerning the purchase and sale of securities of the Company.

1.6 Obligations of the Company. Whenever required under this Section 1 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use all reasonable efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the Registration Statement has been completed; provided, however, that (i) such 120-day period shall be extended for a period of time equal to the period the Holder refrains from selling any securities included in such registration at the request of an underwriter of Common Stock (or other securities) of the Company; and (ii) in the case of any registration of Registrable Securities on Form S-3 which are intended to be offered on a continuous or delayed basis, such 120-day period shall be extended, if necessary, to keep the registration statement effective until all such Registrable Securities are sold, provided that Rule 415, or any successor rule under the Act, permits an offering on a continuous or delayed basis, and provided further that applicable rules under the Act governing the obligation to file a post-effective amendment permit, in lieu of filing a post-effective amendment which (I) includes any prospectus required by Section 10(a)(3) of the Act or (II) reflects facts or events representing a material or fundamental change in the information set forth in the registration statement, the incorporation by reference of information required to be included in (I) and (II) above to be contained in periodic reports filed pursuant to Section 13 or 15(d) of the 1934 Act in the registration statement;

(b) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Act with respect to the disposition of all securities covered by such registration statement;

(c) furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them;

(d) use all reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering;

(f) notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Act or the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(g) cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed;

(h) provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration; and

(i) Use its commercially reasonable efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Section 1, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 1, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities, and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities.

1.7 Information from Holder. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities.

1.8 Expenses of Registration. All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Sections 1.2, 1.3, 1.4 and 1.5 including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of one counsel for the selling Holders shall be borne by the Company. Notwithstanding the foregoing, the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 1.2, Section 1.4 or Section 1.5 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all participating Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be requested in the withdrawn registration), provided, however, that if at the time of such withdrawal, the Holders have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness following disclosure by the Company of such material adverse change, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 1.2, 1.4 or 1.5.

1.9 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 1.

1.10 Indemnification. In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners or officers, directors and shareholders of each Holder, legal counsel and accountants for each Holder, any underwriter (as defined in the Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Act or the 1934 Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Act, the 1934 Act or any state securities laws, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws; and the Company will reimburse each such Holder, underwriter or controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this subsection 1.10(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation that occurs in

reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter or controlling person; provided further, however, that the foregoing indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of any Holder or underwriter, or any person controlling such Holder or underwriter, from whom the person asserting any such losses, claims, damages or liabilities purchased shares in the offering, if a copy of the prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such Holder or underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the shares to such person, and if the prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage or liability.

(b) To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Act, legal counsel and accountants for the Company, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Act, the 1934 Act or any state securities laws, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; provided, however, that the indemnity agreement contained in this subsection 1.10(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld), provided that in no event shall any indemnity under this subsection 1.10(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 1.10 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.10, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 1.10, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 1.10.

(d) If the indemnification provided for in this Section 1.10 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations; provided, however, that in no event shall any contribution by a Holder under this Subsection 1.10(d) exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 1.10 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 1, and otherwise.

1.11 Reports Under Securities Exchange Act of 1934. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in SEC Rule 144, at all times after ninety (90) days after the effective date of the Initial Offering;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Act and the 1934 Act; and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Act and the 1934 Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to such form.

1.12 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities that (i) is a subsidiary, parent, partner, limited partner, retired partner or shareholder of a Holder, (ii) is a Holder's family member or trust for the benefit of an individual Holder or family member, or (iii) after such assignment or transfer, holds at least 1,000,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations and other recapitalizations), provided: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including without limitation the provisions of Section 1.14 below; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Act.

1.13 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company that would allow such holder or prospective holder (a) to include such securities in any registration as to which Holders of Registrable Securities have demand or piggyback registration rights pursuant to this Agreement on a basis that is preferential to, or on parity with, the right of Holders to include Registrable Securities in such registration statement filed under Section 1.3 hereof, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the amount of the Registrable Securities of the Holders that are included or otherwise adversely affect the registration rights of the Holder's pursuant to this Agreement or (b) to demand registration of their securities.

1.14 "Market Stand-Off" Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company's initial public offering and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether such shares or any such securities are then owned by the Holder or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing provisions of this Section 1.14 shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Holders if all officers and directors

and greater than five percent (5%) shareholders of the Company enter into similar agreements. The underwriters in connection with the Company's initial public offering are intended third party beneficiaries of this Section 1.14 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

Notwithstanding anything herein to the contrary, this paragraph shall not be deemed to restrict Goldman, Sachs & Co. and its affiliates from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, merger advisory, financing, asset management, trading, market making, arbitrage and other similar activities conducted in the ordinary course of its or its affiliates' business; provided, however, that such activities shall not include any shares purchased pursuant to the Series B Preferred Stock Purchase Agreement, dated November 23, 1999, among the Company and the Schedule of Investors attached thereto or any shares purchased pursuant to the Series C Preferred Stock Purchase Agreement, dated December 29, 2000, among the Company and the Schedule of Investors attached thereto.

1.15 Termination of Registration Rights. No Holder shall be entitled to exercise any right provided for in this Section 1 after five (5) years following the consummation of the Initial Offering or, as to any Holder, such earlier time at which all Registrable Securities held by such Holder (and any affiliate of the Holder with whom such Holder must aggregate its sales under Rule 144) can be sold in any three (3)-month period without registration in compliance with Rule 144 of the Act.

2. Covenants of the Company.

2.1 Delivery of Financial Statements. The Company shall deliver to each Investor who holds at least 250,000 shares (as adjusted for stock splits, stock dividends, combinations and other recapitalizations) of Registrable Securities, each a ("Major Investor");

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Company, an income statement for such fiscal year, a balance sheet of the Company and statement of shareholder's equity as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles ("GAAP"), and audited and certified by independent public accountants of nationally recognized standing selected by the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, an unaudited income statement, statement of cash flows for such fiscal quarter and an unaudited balance sheet as of the end of such fiscal quarter.

(c) within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows and balance sheet for and as of the end of such month, in reasonable detail;

(d) as soon as practicable, but in any event at least thirty (30) days prior to the end of each fiscal year, a budget and business plan for the next fiscal year, prepared on a monthly basis, including balance sheets, income statements and statements of cash flows for such months and, as soon as prepared, any other budgets or revised budgets prepared by the Company;

(e) with respect to the financial statements called for in subsections (b) and (c) of this Section 2.1, an instrument executed by the Chief Financial Officer or President of the Company certifying that such financials were prepared in accordance with GAAP consistently applied with prior practice for earlier periods (with the exception of footnotes that may be required by GAAP) and fairly present the financial condition of the Company and its results of operation for the period specified, subject to year-end audit adjustment; and

(f) such other information relating to the financial condition, business, prospects or corporate affairs of the Company as the Investor or any assignee of the Investor may from time to time request, provided, however, that the Company shall not be obligated under this subsection (f) or any other subsection of Section 2.1 to provide information that it deems in good faith to be a trade secret or similar confidential information.

2.2 Inspection. The Company shall permit each Major Investor, at such Investor's expense, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Investor; provided, however, that the Company shall not be obligated pursuant to this Section 2.2 to provide access to any information that it reasonably considers to be a trade secret or similar confidential information.

2.3 Termination of Information and Inspection Covenants. The covenants set forth in Sections 2.1 and 2.2 shall terminate as to Investors and be of no further force or effect when the sale of securities pursuant to a registration statement filed by the Company under the Act in connection with the firm commitment underwritten offering of its securities to the general public is consummated or when the Company first becomes subject to the periodic reporting requirements of Sections 12(g) or 15(d) of the 1934 Act, whichever event shall first occur.

2.4 Right of First Offer. Subject to the terms and conditions specified in this paragraph 2.4, the Company hereby grants to each Major Investor a right of first offer with respect to future sales by the Company of its Shares (as hereinafter defined). For purposes of this Section 2.4, Investor includes any general partners and affiliates of an Investor. An Investor shall be entitled to apportion the right of first offer hereby granted it among itself and its partners and affiliates in such proportions as it deems appropriate.

Each time the Company proposes to offer any shares of, or securities convertible into or exchangeable or exercisable for any shares of, any class of its capital stock ("Shares"), the Company shall first make an offering of such Shares to each Major Investor in accordance with the following provisions.

(a) The Company shall deliver a notice to the Major Investors in accordance with Section 3.5 ("Notice") not later than 20 days prior to the date of issuance of such shares stating (i) its bona fide intention to offer such Shares, (ii) the number of such Shares to be offered, and (iii) the price and terms upon which it proposes to offer such Shares.

(b) By written notification received by the Company, within twenty (20) calendar days after receipt of the Notice, the Major Investor may elect to purchase or obtain, at the price and on the terms specified in the Notice, up to that portion of such Shares that equals the proportion that the number of shares of Common Stock issued and held, or issuable upon conversion of the Series A Stock, Series B Stock and Series C Stock then held, by such Major Investor bears to the total number of shares of Common Stock of the Company then outstanding (assuming full conversion and exercise of all convertible and exercisable securities)(the "Pro Rata Share"); provided, however, that if the Company proposes to offer its Shares for an aggregate price in excess of thirty million dollars (\$30,000,000), the Sprout Entities may elect to purchase, in the aggregate, up to that number of shares equal to the sum of (A) its Pro Rata Share for those shares subject to the offer with an aggregate value of up to thirty million dollars (\$30,000,000), and (B) twenty percent (20%) of the portion of such Shares that have an aggregate value that exceeds thirty million dollars (\$30,000,000). For purposes of this Section 2.4 (b), the "Sprout Entities" means the DLJ Capital Corp., Sprout Capital VIII, L.P. DLJ ESC II, L.P. Sprout Venture Capital, L.P.

(c) If all Shares that Investors are entitled to obtain pursuant to subsection 2.4(b) are not elected to be obtained as provided in subsection 2.4(b) hereof, the Company may, during the ninety (90) day period following the expiration of the period provided in subsection 2.4(b) hereof, offer the remaining unsubscribed portion of such Shares to any person or persons at a price not less than, and upon terms no more favorable to the offeree than those specified in the Notice. If the Company does not enter into an agreement for the sale of the Shares within such period, or if such agreement is not consummated within ninety (90) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Shares shall not be offered unless first reoffered to the Major Investors in accordance herewith.

(d) The right of first offer in this paragraph 2.4 shall not be applicable to (i) the issuance or sale of up to (A) 12,400,000 shares of Common Stock and (B) 1,600,000 shares of Class A Common Stock, including any shares of Common Stock issued or issuable upon conversion of the Class A Common Stock (or options therefor) to employees, directors and consultants pursuant to the Company's 1998 Stock Plan or 2004 Stock Plan for eHealth China, Inc., for the primary purpose of soliciting or retaining their services; provided, however, that an issuance may exceed this maximum if such issuance is approved by at least one of the directors appointed by the holders of Series A Stock, Series B Stock or Series C Stock, (ii) the issuance of securities pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock registered under the Act, (iii) the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities, (iv) the issuance of securities in

connection with a bona fide business acquisition of or by the Company, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, (v) the issuance of up to 750,000 shares of the Company's stock or warrants or other securities or rights to acquire the Company's stock to persons or entities pursuant to credit, license, joint venture or corporate partnering transactions to which the Company is a party, provided such issuance are for other than primarily equity financing purposes; provided, however, that an issuance may exceed this maximum if such issuance is approved by at least one of the directors appointed by the holders of Series A Stock, Series B Stock or Series C Stock, or (vi) securities of the Company issued pursuant to the Merger.

2.5 Termination of Certain Covenants. The covenants set forth in Section 2.4 shall terminate and be of no further force or effect upon the consummation of the Initial Offering provided that such offering results in the conversion of all outstanding preferred stock.

2.6 Assignment of Company's Right of First Refusal. The Company shall not waive its right of first refusal to purchase vested shares of stock held by employees not so purchased by the Company, or allow such right to lapse, without first offering to assign such right to the Investors on a pro rata basis.

2.7 Standstill Agreement. Until the Initial Offering, and notwithstanding any other provision of this Agreement, including the right of first offer in Section 2.4 hereof, without the prior written Consent of the Board of Directors of the Company, each Investor covenants and agrees that neither it nor any of its affiliates will acquire or agree, offer, seek or propose to acquire, cause to be acquired or commence any tender or exchange offer seeking to acquire beneficial ownership of more than 20% of the Company's capital stock on a fully-diluted, as-converted basis.

3. Miscellaneous.

3.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any shares of Registrable Securities). Notwithstanding the foregoing, the Company shall not assign its rights and obligations under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of no less than a majority of the holders in interest of the shares of Series C Preferred Stock (including the shares of Common Stock issuable upon conversion thereof), and any such assignment by the Company contrary to the terms hereof shall be null and void and of no force and effect. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

3.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents entered into and to be performed entirely within California.

3.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3.4 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

3.5 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified or upon delivery by confirmed facsimile transmission, nationally recognized overnight courier service, or upon deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address indicated for such party on the signature page hereof, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties.

3.6 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

3.7 Entire Agreement; Amendments and Waivers. This Agreement (including the Exhibits hereto, if any) constitutes the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of two-thirds of the Registrable Securities. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities each future holder of all such Registrable Securities, and the Company.

3.8 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

3.9 Aggregation of Stock. All shares of Registrable Securities held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

3.10 Prior Agreement. The Prior Agreement is hereby superseded by this Agreement.

3.11 Specific Performance. In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each Investor shall be entitled to specific performance of the agreements and obligations of the Company hereunder and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

Schedule A
Schedule of Investors

Series A Investors:

KPCB Holding, Inc., as nominee
Weiss Peck & Greer L.L.C.
WPG Enterprise Fund III, L.L.C.
Weiss Peck & Greer Venture Associates IV, L.L.C.
WPG Information Sciences Entrepreneur Fund, L.P.
Weiss Peck & Greer Venture Associates IV, Cayman, L.P.

Series B Investors:

KPCB Holding, Inc., as nominee
Weiss Peck & Greer Venture Associates V, L.L.C.
Weiss Peck & Greer Venture Associates V-A, L.L.C.
Weiss Peck & Greer Venture Associates V Cayman, L.P.
WPG Enterprise Fund III, L.L.C.
Weiss Peck & Greer Venture Associates IV, L.L.C.
WPG Information Sciences Entrepreneur Fund, L.P.
Weiss Peck & Greer Venture Associates IV Cayman, L.P.
DLJ Capital Corp.
DLJ ESC II, L.P.
Sprout Capital VIII, L.P.
Sprout Venture Capital, L.P.
GS Capital Partners III, L.P.
GS Capital Partners III Offshore, L.P.
Goldman, Sachs & Co.
 Verwaltungs GmbH
LSC Fund II, L.P.
DLJ Capital Corp.
DLJ ESC II, L.P.
Sprout Capital VIII, L.P.
Sprout Venture Capital, L.P.
Ranjan Lal
Anderson eHealth, L.P.
G&H Partners
Brobeck, Phleger & Harrison LLP
Andrew Chase and Laura Chase, TTEEs of the Chase 1991 Revocable Trust dtd 4/2/91
Frank L. Walters, Jr.
Johnson Revocable Trust U/A/D 7/2/97

Stanford University
Edward M. Brown
Richard A. Petit, Trustee Petit Family Trust, UAD 4-25-96
Tim Emanuels
L. Steven Ashley
Gary O'Neall
Peri A. Soyugenc

Series C Investors:

KPCB Holding, Inc., as nominee
Weiss Peck & Greer Venture Associates V, L.L.C.
Weiss Peck & Greer Venture Associates V-A, L.L.C.
Weiss Peck & Greer Venture Associates V Cayman, L.L.C.
WPG Information Sciences Entrepreneur Fund II, L.L.C.
WPG Information Sciences Entrepreneur Fund II-A, L.L.C.
DLJ Capital Corp.
DLJ ESC II, L.P.
Sprout Capital IX, L.P.
QuestMark Partners, L.P.
QuestMark Partners Side Fund, L.P.
Wellpoint Health Networks
G & H Partners
Anderson eHealth, L.P.
L. Steven Ashley
Andrew Chase and Laura Chase, TTEEs of the Chase 1991 Revocable Trust dtd 4/2/91
The Goldman Sachs Group, Inc.
HEWM Investors, LLp – Fund VI
Craig R. Johnson and Nichola Jo Johnson Trustees or Successor Trustees under the Johnson Revocable Trust Dated 7/2/97
Don C. Brain Jr.
Kevin McQuillan and Deirdre McQuillan, Trustees of Kevin McQuillan and Deirdre McQuillan Trust DTD 12/9/95
Palmer & Cay, Inc.
Richard A. Petit Trustee Petit Family Trust Trustee Petit Family Trust, AUD 4-25-96
Peri A. Soyugenc
WPG Enterprise Fund III, L.L.C.
Weiss, Peck & Greer Venture Associates IV, L.L.C.
WPG Information Sciences Entrepreneur Fund, L.P.
Weiss, Peck & Greer Venture Associate IV Cayman, L.P.

**Blue Cross of California and Affiliates
AGENT AGREEMENT**

Under this Agreement (the “Agreement”), effective October 1, 2000, and subject to all terms thereof, eHealthinsurance Services, Inc., (hereinafter referred to as “EHI”), a Delaware corporation, with an office located at 281 East Java Drive, Sunnyvale, CA 94089 is authorized to market and solicit applications from members of the general public residing in California, Nevada, Texas, Georgia, Illinois, Indiana, and Virginia for only those products specified herein written or sold by Blue Cross of California, (or any other Blue Cross company owned by WellPoint), a health care service plan licensed under the Knox-Keene Act (Health and Safety Code Section 1340, et. seq.) BC Life and Health Insurance Company, a life and disability insurance company operating under a Certificate of Authority issued by the California Department of Insurance, a California Corporation, and UNICARE Life and Health Insurance Company, a Delaware domiciled insurance company licensed in Georgia, Texas, Illinois, Indiana, Kentucky, Ohio, Virginia, and Nevada with an office located at 2000 Corporate Center Drive, Newbury Park, California 91320 (hereinafter collectively referred to as “Company”).

To the extent any activities of EHI in any way related to an affiliate of “Company” or a program of such affiliate –

- Each and every duty or obligation owed by EHI to “Company” under the Agreement shall be owed to such affiliate.
- Each and every right accruing “Company” against EHI under the Agreement shall accrue to, and be enforceable by, such affiliate.
- Any obligation owed to EHI by “Company” under the Agreement shall be owed solely by such affiliate; and
- Any right or claim accruing in favor of EHI under the Agreement shall be enforceable against each affiliate.
- “Company” as used in this Agreement refers jointly and severally to Blue Cross of California, any other Blue Cross company owned by WellPoint, BC Life and Health Insurance Company, UNICARE Life and Health Insurance Company, and its affiliates, as the context and circumstances may require. As used above, the term “affiliate” refers to Blue Cross of California, BC Life and Health Insurance Company, and UNICARE Life and Health Insurance Company.

ARTICLE I - GENERAL PROVISIONS

- 1.1 “Company” and EHI shall comply with all laws and regulations applicable to their businesses, their licenses and the transactions into which they enter in connection with this Agreement.
- 1.2 EHI agrees that in performing under this Agreement, EHI is acting in a fiduciary capacity to “Company”. EHI will not knowingly induce, or attempt to induce, the replacement of “Company” coverage or any individuals with the coverage of another carrier, unless it is clearly in the best interests of such individuals.
- 1.3 This Agreement or the right to receive money under this Agreement may not be assigned by EHI without the prior written consent of “Company” which shall not unreasonably withheld, and any assignment made contrary to this provision shall be void as to “Company”. This Agreement is personal to EHI, and duties hereunder shall not be delegated or subcontracted by EHI. EHI shall not use subagents in connection with this Agreement except in strict accordance with paragraph 1.4 below.
- 1.4 Subject to the following, EHI may use subagents in EHI’s performance under this Agreement:
- a. EHI will inform “Company” of the identity of those Representatives whom EHI intends to use as subagents, and EHI will not use, or will cease to use, any Representative as a subagent upon the reasonable request of “Company”, and
 - b. EHI will use its commercially reasonable efforts to ensure that any Representative used by EHI as a subagent in performance under this Agreement is properly licensed to act in such capacity. EHI shall, at EHI’ sole cost and expense, file whatever documents with the California Department of Insurance as are necessary for any subagent to lawfully act in that capacity. Furthermore, should

**CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS OF THIS DOCUMENT
HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION.**

“Company” instruct EHI to discontinue the use of any subagent for a valid business reason, EHI shall be responsible, at EHI’ sole cost and expense, for filing any documents with the California Department of Insurance as may be required to properly terminate a subagent’s authority to so act.

- c. EHI shall submit to “Company” and “Company” shall promptly execute and file with the applicable state insurance regulatory authorities a Representative Application for Appointment which form shall be supplied by “Company”; no other form of application for appointment will be accepted by “Company”. EHI shall be responsible for the accuracy and completeness of such application submitted and shall ensure that each person for whom such application is submitted shall have read, understood and personally signed such application.
 - d. EHI shall be responsible for the payment of any and all compensation, of whatever kind, including, but not limited to, commissions, service fees or expense allowances due to or claimed by any subagent of EHI. EHI agrees to indemnify, defend and save “Company” harmless from and against any claim for reimbursement, compensation or other payment made by a subagent of EHI.
 - e. EHI shall be responsible for the appropriate training and guidance of its subagents to the extent that subagents are used in the marketing of “Company” products. EHI will be responsible to “Company” for the acts or omissions of subagents.
 - f. EHI agrees that if it is required under this Agreement to procure and maintain a certain level of Errors and Omissions Insurance in a form reasonably satisfactory to “Company” such requirement shall apply to subagents. EHI shall insure that each subagent used in the marketing of “Company” products procures and maintains any required Errors and Omissions Insurance, or EHI shall include each subagent as an additional named insured under EHI’ coverage or otherwise ensure that this requirement is satisfied by each subagent used in the marketing of “Company” products.
- 1.5 Any notice required from “Company” under this Agreement shall be deemed given on the day such notice is deposited in the United States mail first class postage pre-paid and addressed to eHealthInsurance Services, Inc., 1150 Iron Point Road, Suite 100, Folsom, California 95630, Attn: Vice-President . Any notice required from EHI shall be deemed given on the day after such notice is deposited in the United States mail with first class postage pre-paid and addressed to Blue Cross of California, 2000 Corporate Center Drive, Newbury Park, California, 91320.
- 1.6 This Agreement is the entire contract between the parties on this subject matter and supersedes any and all prior understandings or agreements between the parties whether oral or in writing on this subject matter. Subject to “Company’s” right of modification set out in paragraph 6.3, no modification or amendment to this Agreement shall be effective unless it is in writing, attached to and made a part of this Agreement, and is executed by a duly authorized representative of EHI and by an officer of “Company”.
- 1.7 EHI expressly agrees that this Agreement supersedes any prior agreement(s) between EHI and “Company” for business placed by EHI in “Company” after the effective date of this Agreement.
- 1.8 In this Agreement the words “shall” and “will” are used in the mandatory sense. Unless the context otherwise clearly requires, any one gender includes all others, the singular includes the plural, and the plural includes the singular.
- 1.9 The fact that “Company” may not have insisted upon strict compliance with this Agreement with respect to an act or transaction of EHI shall not relieve EHI from the obligation to perform strictly in accordance with the terms of this Agreement, with regard to any other act or transaction “Company” shall at all times be entitled to expect EHI to perform strictly in accordance with the terms of this Agreement.
- 1.10 The fact that EHI may not have insisted upon strict compliance with this Agreement with respect to an act or transaction of “Company” shall not relieve “Company” from the obligation to perform strictly in accordance with the terms of this Agreement, with regard to any other act or transaction EHI shall at all times be entitled to expect “Company” to perform strictly in accordance with the terms of this Agreement.
- 1.11 EHI and Company will implement Rapid Processing in accordance with Attachment C.

ARTICLE II – OBLIGATIONS OF EHI

- 2.1 EHI shall use commercially reasonable efforts to solicit from members of the general public residing in states in which “Company” is authorized to transact insurance and in which “Company” have authorized EHI to solicit on “Company’s” behalf applications for “Company” Individual Enrollment Plan programs, Small Group Plan programs and Medicare Supplement Plan programs identified in the commission schedules attached to and made part of this Agreement. EHI is not authorized to solicit on behalf of “Company”, nor will EHI earn commissions for conversion programs or any other programs that “Company” shall decline to offer through EHI. EHI shall generally perform under this Agreement as described in such administrative guidelines, bulletins, directives, manuals or the like as “Company” may publish for agents and has delivered to EHI from time to time, which do not conflict with any term or provision of this Agreement.
- 2.2 EHI will service “Company” members enrolled through applications submitted by EHI or assigned by “Company”. Such service will include the following:
- a. acting as liaison between the member and “Company” if requested by “Company” or the member, and including but not limited to, the following:
 - i. Assisting the member to take the proper action in connection with “Company” coverage when there is a change of address, change in marital status or change in dependent status.
 - ii. Assisting a family member/dependent obtain coverage when he or she is no longer entitled to coverage as a family member, e.g., when a dependent child reaches the limiting age, or upon a divorce or dissolution of marriage.
 - b. maintaining a working and current knowledge of “Company” products and the ability to explain benefits and/or coverage.
- For any members assigned to EHI by “Company”, EHI shall receive compensation from “Company” in accordance with the provisions of this Agreement.
- 2.3 EHI agrees to maintain such licenses as are necessary to transact business on behalf of “Company”. EHI further agrees to notify “Company” immediately of any expiration, termination, suspension or other action of the California Insurance Department, California Department of Corporations, any other Department of Insurance or insurance regulator, or any other government agency against or affecting said license. By entering into this Agreement, EHI represents that no license of EHI, or any director or officer of, or owner of 25% or more equity interest in, EHI has previously been subject to any suspension, termination or other disciplinary action by any governmental authority, and that EHI has never been convicted of a felony or a misdemeanor involving theft or misappropriation of monies.
- 2.4 EHI agrees to comply with the reasonable rules of “Company” relating to the completion and submission of applications, and to make no representation with respect to the benefits of any Plan offered by “Company” not in conformity with the material prepared and furnished to EHI for that purpose by “Company”. EHI shall use best efforts to ensure that each application is fully and truthfully completed by the applicant and the completed application fully and accurately reflects and discloses the circumstances, including the health, or persons for whom coverage is sought in the application. EHI further agrees to inform every applicant that “Company” will rely upon said health representations in the underwriting process, and that the subsequent discovery of material facts known to applicant and either not disclosed or misrepresented on the health statement may result in the rescission of any contract entered into by “Company”, and that in no event will the applicant have any coverage unless and until it is reviewed and approved by “Company” and a contract is issued, or if “Company” requires a written waiver, until the applicant agrees to accept coverage subject to the terms of such waiver. Nonetheless, “Company” understands and acknowledges that EHI may not directly speak with every applicant.

- 2.5 EHI is not authorized to, and agrees not to, enter into, alter, deliver or terminate any contract on behalf of “Company”, extend the time for payment of charges, or bind “Company” in any way without the prior written approval of “Company”. EHI further agrees that “Company” reserves the right to reject any and all applications submitted by EHI. “Company” will not treat applications from EHI differently from applications submitted by other agents.
- 2.6 Monies received by EHI for or on behalf of “Company” shall be received and held by EHI in a fiduciary capacity, shall not be commingled by EHI with personal funds of EHI, and shall be remitted to “Company” by no later than [***] ([***)] calendar days from the day of receipt by EHI.
- 2.7 Forms and Advertising
- a. EHI agrees to use only such material as provided by “Company” or approved in writing by “Company” before use (including billing forms, all advertising, promotional materials, reprints and enrollment forms). EHI shall not make use of any advertisement or any other material in which the name or logo of “Company”, or any service mark of “Company” is used without the “Company’s” written consent. “Company” agrees that such consent shall not be unreasonably withheld.
- b. **LIQUIDATED DAMAGES:** EHI agrees that any use of “Company’s” name or logo, or any service mark of “Company” will injure “Company” although the amount of damage would be difficult to determine. Therefore, should EHI fail to cure a misuse within [***] ([***)] days following notice, EHI agrees to pay “Company”, as liquidated damages and not as a penalty, \$[***] for each use of “Company’s” service mark(s), name or logo without “Company’s” prior written consent plus \$[***] for each day of each such unauthorized use. (For the purpose of assessing the \$[***] per day per use damages, each individual unauthorized appearance of “Company’s” service mark(s), name or logo shall be a separate unauthorized appearance of “Company’s” service mark(s), and name or logo shall be a separate unauthorized use. For example, and not limiting the generality of the foregoing, each individual copy of a newspaper advertisement containing an unauthorized use published on any one day shall be a separate unauthorized use and each individual copy of any edition of a telephone directory containing an unauthorized use on each day between the initial distribution of that edition and its replacement with another edition shall be a separate unauthorized use.)
- c. **INTERNET MARKETING** – “Company” will have approval rights over any Internet marketing materials that use the name, logo or other identifier of “Company”. EHI will be solely responsible for the generic marketing and advertising related to the EHI website.
- d. **GENERAL MARKETING** – As part of this agreement, EHI agrees to design, advertise and market to promote the “Company’s” products as part of EHI’s overall marketing efforts to generate revenue for its insurer supplier partners.
- 2.8 EHI agrees to maintain complete records (1) of all transactions pertaining to applications submitted to and accepted by “Company”, (2) as may be required by the California Department of Insurance, or California Department of Corporations, any Department of Insurance or any other governmental entity, (3) in connection with EHI’ relationship with “Company”. Any and all records described above or as may otherwise relate to EHI’ activities in connection with “Company” business shall be accessible and available to representatives of “Company” who may audit them from time to time while this Agreement is in effect or within one (1) year after termination reasonably thereof. “Company shall notify EHI of its intention to conduct an audit no less than [***] weeks prior to the date of the audit. Any audit shall take place at EHI’s office during normal business hours. “Company” or its agents shall not copy or duplicate any records without the prior written consent of EHI. Any audit shall be conducted at “Company’s” sole expense unless the audit reveals an act of fraud by EHI.
- 2.9 Within [***] ([***)] days of a request by “Company”, but not later than the effective date of this Agreement EHI agrees to obtain and maintain Errors and Omissions Insurance in force in the amount of \$[***] for each occurrence and \$[***] general aggregate from a carrier with a Best rating of B or better and proof of which will be supplied to “Company” upon request. Once “Company” has requested that EHI obtain and maintain such insurance, the obtaining and maintenance of such insurance shall be a material

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requirement of this Agreement. Failure of EHI to obtain and maintain such insurance reasonably satisfactory to “Company”, once requested by “Company”, shall be a material failure to comply with a provision of this Agreement.

- 2.10 EHI agrees that “Company” has the right to discontinue, to modify, or exercise all lawful rights in connection with, any of its benefit contracts, or programs without liability to EHI by providing EHI at least [***] days prior written notice. EHI may sell only those products specifically authorized.
- 2.11 EHI shall seek compensation for performing under this Agreement only from “Company”. EHI is an independent contractor and shall have no claim to compensation except as provided in this Agreement and shall not be entitled to reimbursement from “Company” for any expenses incurred in performing this Agreement. EHI further agrees that to the extent of any indebtedness of EHI to “Company”, “Company” shall have a first lien, against any commissions due EHI from “Company”, and such indebtedness may be deducted at the “Company’s” option from commissions due to EHI, in the event that such action is deemed appropriate.
- 2.12 EHI agrees to maintain the confidentiality of any trade secret or proprietary information of “Company”. EHI’ obligations under this paragraph 2.12 shall survive termination of this Agreement. “Company” agrees to keep all trade secrets, proprietary information, agreements, financial arrangements, and technology activities of EHI strictly confidential. “Company’s” obligations under this paragraph 2.12 shall survive termination of this Agreement.
- 2.13 EHI will keep regular and accurate records of all transactions related to this Agreement which records shall be reserved for a period of at least [***] ([***) years and, upon request, shall be open to examination and available for copying by “Company”. Any manuals, applications, and all supplies furnished by “Company” shall remain the property of “Company” and at the request of “Company”, said property shall immediately be returned to “Company” upon termination of this Agreement.
- 2.14 “Company” agrees to send, at “Company’s” sole expense, within 30 days after the date of this Agreement a training representative out to EHI’ headquarters for an initial product training session.
- 2.15 EHI agrees that, except for brand or product differentiation purposes stating the benefits of its own services to consumers, it will not undertake any marketing, promotion or other public messages that directly criticizes the existing broker distribution network or existing broker distribution channels used by the “Company”.
- 2.16 EHI will waive any start-up and/or maintenance fees for “Company” for the placement of “Company” products on the EHI website (www.ehealthinsurance.com).
- 2.17 EHI shall make available to “Company”, (a) customer data generated by consumers who apply for products offered by “Company”. EHI shall make available to “Company”, consistent with EHI’s customer privacy policies and subject to EHI’s fiduciary duties to “Company”, (b) general aggregated customer data that EHI makes generally available to health insurance carriers which offer insurance products and services through EHI. Notwithstanding anything else in this Agreement, each party agrees to comply with any and all relevant State and Federal laws, regulations, and other governmental agency guidelines relating to (i) disclosure of personal and medical information (ii) security of personal and medical information that is maintained by either party or transmitted between the parties, and (iii) insurance application related privacy issues. Each party shall negotiate in good faith an agreement for the design of screens that provide additional value-added benefits of “Company”, if such additional services are reasonably requested by “Company”.
- 2.18 EHI will ensure that all prospects are aware of options available to them via the Health Insurance Portability and Accounting Act.

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- 2.19 As part of EHI's activities to market and sell health insurance products, including "Company's" products, EHI may enter into marketing agreements with other parties (e.g., associations, employers and other "affinity groups"). Such agreements may include the placement or syndication of EHI's website within another party's site, or the placement of links from another party's site to EHI's website. Any such activities or agreements in any way related to or in connection with the "Company", this Agreement, or EHI's performance hereof shall be in strict compliance with this Agreement. Furthermore, EHI shall be responsible to "Company" for the acts or omissions of such other parties.

ARTICLE III – OBLIGATIONS OF "Company"

- 3.1 "Company" will pay EHI first year and renewal commissions on "Company" enrollment at the rates set out in Attachment A resulting from applications obtained by EHI, and accepted by "Company", and in the case of any group business for which EHI has been designated Agent of Record in writing, applications obtained by EHI, and accepted by "Company", for products "Company" has authorized EHI to market. Furthermore, "Company" reserves the right, in its sole and absolute discretion, to refuse to recognize any change in Agent of Record designation by a group having coverage with "Company" through an association having an arrangement with "Company". If EHI submits an application for a person, or group, with prior "Company" coverage, no commission shall be payable unless prior coverage has been lapsed for at least [***] ([***)] months in the case of individual or Medicare supplement programs, or at least [***] ([***)] months in the case of group programs; except that if EHI submitted the original application, renewal commissions only shall be payable. Such commissions shall be based on the commission schedule(s) in Attachment A. After [***] months following the effective date of this contract, EHI and "Company" agree to review the commission schedule listed in Attachment A and EHI's book of business and determine whether any adjustments to the commission schedule in Attachment A are necessary. Such modifications or replacement to Attachment A shall apply to all new enrollment with an original effective date following the effective date of modifications or replacement of Attachment A. If after [***] months following the effective date of this agreement no changes are necessary or both parties cannot mutually agree upon terms for modifying or replacing Attachment A, the commission schedule in Attachment A effective at the time this Agreement was executed will remain in effect for the duration of this agreement.

3.2 Renewal Commissions:

Renewal commissions for all products sold by EHI in connection with this Agreement shall be payable to EHI by "Company" as long as all of the following conditions are satisfied:

- a. "Company" retains the enrollment produced by EHI (such retention being at the "Company's" option);
- b. EHI will continue to receive all commissions due on renewal business for as long as the business remains on the books and [***];
- c. At least six (6) individual and/or Medicare supplement programs, or in the case of group business at least six (6) covered employees under "Company" benefit agreements written through EHI remain in effect; and
- d. In the case of group business, no other Agent is designated in writing as Agent of Record by the group.

3.3 Assignment Rights

Assignment rights apply only to Individual Enrollment Plan Programs, and commissions on no other programs shall be assignable.

- a. If all the following conditions are satisfied, EHI may assign any or all business written under this Agreement to another licensed agent:
 - i. The assignment must be in writing, permanent and irrevocable, notarized and in a form acceptable to "Company";

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- ii. The terms of the assignment must be determined by “Company” not to prejudice the interests of “Company”;
 - iii. Under the terms of the assignment the agent to whom the business is assigned must expressly agree to assume all EHI’s obligations and responsibilities to “Company” with respect to the business assigned;
 - iv. The loss ratio of Agent’s business in the aggregate, and, in the case of an assignment of only a portion of Agent’s business, the loss ratio of both the portion retained and the portion assigned, must be no worse than “Company’s average loss ratio for individual plan business;
 - v. The Agent to whom the business would be assigned either has a standard “Company” Individual Plans Agent Agreement in force and good standing, an e-Agent Agreement in good standing, or is acceptable to “Company”, qualifies for and enters into a standard Individual Plans Agent Agreement with “Company”;
 - vi. At the time of assignment, at least six (6) individual “Company” benefit agreements written by EHI are in force in EHI’s book of “Company” business.
- b. Since any agent to whom EHI’s business may be assigned would represent the interests of “Company” with respect to said business, “Company” reserves the right to decline to approve, in its sole and absolute discretion, any assignment. In event of the sale or merger of EHI, “Company” will not unreasonably withhold assignment notwithstanding subparagraph a., except that the acquiring or merging company has either a standard “Company” Individual Plans Agent Agreement in force and good standing, or an e-Agent agreement in good standing, or is acceptable to “Company”, qualifies for and enters into a standard Individual Plans Agent Agreement or an e-Agent Agreement with “Company”.
 - c. Any purported assignment of, or transfer of any interest in, any or all of EHI’s business other than in strict compliance with subparagraph a. of this paragraph shall be void as to “Company” and shall be a material failure to comply with provisions of this Agreement.
- 3.4 “Company” will pay to EHI compensation due within thirty (30) days following the end of each calendar month based on subscription charges actually received and reconciled by “Company”, and either due or received and reconciled by “Company”, whichever is later, during the calendar month on EHI generated business, except that “Company” reserves the right to accumulate commissions until commissions due equal at least \$[***]. If a return subscription charge is due on EHI generated business, “Company” will charge back to EHI the amount of commission previously paid to EHI on the amount of returned subscription charge.
- Compensation payments by “Company” will be accompanied by sufficient detail to permit EHI to identify the name and address of each insured or group for which compensation is being paid, as well as the amount of premium paid by such insured or group on which the payment is based.
- 3.5 Except to the extent responsibility is expressly and explicitly delegated under this Agreement, “Company” shall be responsible for, and may exercise its discretion in connection with, all aspects of the underwriting and administration of any “Company” products including, but not limited to, the following:
- a. the design, benefit configuration and rates or such products;
 - b. the establishment of underwriting procedures and criteria to be used in the acceptance or rejection of risks;
 - c. the establishment and holding of reserves;
 - d. the payment or denial of claims’; and
 - e. the preparation and issuance of benefit agreements and benefit certificates.
- 3.6 EHI shall have the ability to use Internet, telephonic, mail and print support to market, sell and service “Company’s” products otherwise in accordance with the terms hereof.

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- 3.7 For maintenance purposes, “Company” shall provide EHI with updated health plan information including, but not limited to, health plan applications, rates, benefit summaries, provider directories and other content which EHI may require to comply with “Company’s” general updates for all agents. EHI recognizes that such health plan information may be preliminary and shall be subject to final approval by the relevant regulatory agencies in the states where the “Company” will offer updated health plan products. Such health plan information shall be provided to EHI no less than 30 days prior to their effective date. “Company” shall have approval rights over the health plan information, but such approval shall not be unreasonably withheld. “Company” shall permit EHI to link the EHI website to “Company’s” web pages as necessary to provide potential applicants with health plan information in a manner acceptable to “Company”.

ARTICLE IV – DISPUTE RESOLUTION

- 4.1 “Company” and EHI agree to meet and confer in good faith on all matters affecting this Agreement. The parties agree that any unresolved dispute will be resolved by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association.

ARTICLE V – INDEMNITY

- 5.1 Neither “Company” nor EHI shall be liable to any third party for an act or failure to act of the other party to this Agreement.
- 5.2 EHI agrees to indemnify and save “Company”, including directors, officers, corporate affiliates, shareholders and employees “Company”, harmless from any and all liability, losses, damages, costs or expenses arising out of any and every claim, demand, lawsuit or cause of action asserted against “Company” by a third party, which claim, demand, lawsuit or cause of action results from or arises in connection with any negligent or otherwise intentional wrongful act or omission of EHI, including any breach of this Agreement, or of any director, officer, or employee of Agent. Such indemnity shall include reasonable attorney fees.
- 5.3 “Company” agrees to indemnify and save EHI, including partners, directors, officers, corporate affiliates, shareholders and employees of EHI harmless from any and all liability, losses, damages, costs or expenses arising out of any and every claim, demand, lawsuit or cause of action asserted against EHI by a third party, which claim, demand, lawsuit or cause of action results from or arises in connection with any negligent or otherwise wrongful act or omission of “Company”, including any breach of this Agreement, or of any director, officer or employee of “Company”. Such indemnity shall include reasonable attorney fees.
- 5.4 Should “Company” and EHI each claim indemnity from the other under paragraphs 5.2 and 5.3 of this ARTICLE V hereof and should it be determined that each is entitled to some indemnity from the other under the terms of said paragraphs, then the amount of indemnity due from each to the other shall be determined according to comparative fault principles.
- 5.5 The obligations of this ARTICLE V will survive termination of this Agreement as to acts or omissions committed during the term of this Agreement.

ARTICLE VI – TERM, TERMINATION & EXCLUSIVITY

- 6.1 This agreement shall become effective following execution by EHI on the date approved by a duly authorized representative of “Company”.
- 6.2 Termination – Subject to Section 6.4, this Agreement will remain in force for a period of [***] year ([***] years) from the date signed on the contract marked by “Company”. Thereafter, either party may elect to terminate this Agreement, without cause, by giving the other party [***] days written notice.
- 6.3 Modifications – Modifications to this Agreement shall be put in writing and agreed to by both parties, excluding such modifications that are identified in other sections of this agreement.

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- 6.4 Termination for cause: A party to this Agreement may terminate this Agreement for the other party's material failure to comply with any provisions of this Agreement (including any amendments) if the failing party does not cure the material failure upon [***] ([***)] days prior receipt of written notice of a failure to comply. A party's failure to comply with any provision of this Agreement shall, unless otherwise specifically provided, be material if such failure affects the party's ability to perform under this Agreement or if the other party could reasonably be expected to be materially prejudiced or injured by the particular failure. A party may immediately, upon written notice to the other party, terminate this Agreement upon the other party's commission of any act of fraud or dishonesty, or breach of any fiduciary duty. The right to terminate this Agreement for cause shall not be exclusive, but shall be cumulative with all other remedies available by law or in equity. A failure to terminate this Agreement for cause shall not be a waiver of the rights to do so at any future defaults.
- 6.5 Notwithstanding anything else in the Agreement, "Company" shall have the right to terminate this contract upon [***] ([***)] days written notice if EHI implies to the public they are not a licensed agent and disparages, ridicules, or demeans insurance agents and the services they provide to customers. EHI shall be in material breach if it does not cure a failure to comply within [***] ([***)] business days of receiving notice of a failure to comply.

IN WITNESS WHEREOF, this Agreement has been duly executed in duplicate by the parties.

BLUE CROSS OF CALIFORNIA
on its behalf and behalf of its affiliates
comprising the "Company"

eHealthinsurance Services, Inc.
281 East Java Drive
Sunnyvale, CA 94089

BY: [***]
NAME: [***]
TITLE: Senior Vice President
DATE: Illegible

BY: /s/ Gary Lauer
NAME: Gary Lauer
TITLE: President & CEO
DATE: 10/6/00

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1. Definitions

- 1.1 “Implement.” For purposes of this Agreement, Implement, Implemented, or Implements shall mean that Rapid Processing is fully functional between EHI and “Company” such that conforming applications for coverage submitted to “Company” may be provisionally approved using Rapid Processing.
- 1.2 “Rapid Processing.” For purposes of this Agreement, Rapid Processing is defined as the online provisional approval by “Company” for individual health insurance applications which do not require additional physician information, which shall be further defined as i) instant provisional approval for individual health applications conforming to the “Company’s” requirements using any available technology or processing to provide this functionality, and which instant provisional approval should occur in less than [***] [***], and ii) rapid approval for non-conforming applications which can be underwritten in accordance with “Company’s” policies and guidelines without additional physician information, using any available technology or processing to provide this functionality, and which provisional approval should occur in less than [***] [***]. Provisional Approval or Provisional Approved is defined when “Company” commits to binding insurance coverage for applicants pending “Company’s” receipt of a signed application and initial premium payment, EHI maintaining an application with “signature on file” and sending the initial premium payment

2. EHI Responsibilities

- 2.1 EHI agrees to license Rapid Processing through its [***] capability, based upon “Company’s” request, for online processing of conforming health insurance applications at no cost to “Company”, except that “Company” shall be responsible for its own hardware, software, customization, implementation, integration and maintenance costs, pursuant to this Agreement. If “Company” utilizes EHI’s [***] “Company” agrees it will not be used in other sales distribution channels without the prior written consent of EHI.
- 2.2 EHI agrees to implement and strictly follow “Company’s” policies and guidelines for determining those applications that qualify for Rapid Processing.
- 2.3 EHI agrees that all applications that do not qualify for Rapid Processing will not be provisionally approved.
- 2.4 EHI agrees to diligently respond to any failures or performance issues related to EHI’s systems and processes as they concern the ability to continue to perform Rapid Processing.
- 2.5 EHI agrees to use only such material, including forms of notice and other communications with prospects and applicants as provided by “Company” or approved in writing by “Company” as it relates to Rapid Processing. EHI agrees to make changes to the guidelines “Company” establishes for provisional approval based upon “Company’s” request.
- 2.6 EHI agrees to provide an identifier on their web-site indicating “Company” has Rapid Processing processes in place.
- 2.7 EHI and “Company” agree to follow a mutually agreed upon process for Rapid Processing.

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3. Company's Responsibilities

- 3.1 "Company" agrees to diligently proceed to implement Rapid Processing on the schedule attached hereto as Attachment C.
- 3.2 "Company" agrees to diligently respond to any failures or performance issues related to "Company's" systems as they concern the ability to continue to perform Rapid Processing.
- 3.3 "Company" shall provide content reasonably requested by EHI that is necessary to providing Rapid Processing.
- 3.4 "Company" agrees to provide provisional approval for applications strictly satisfying the "Company's" policies and guidelines that are submitted by EHI. "Company" has the right to change these policies and guidelines at any time, in any way, and at its sole and absolute discretion. Provisional approval will be based upon those policies and guidelines that "Company" provides to EHI. All applications receiving provisional approval are subject to (i) "Company" checking claim history, and (ii) applicant meeting guidelines established by "Company" that do not require "Company" to obtain additional medical information.

4. Termination of Rapid Processing

The "Company" may, upon [***] days prior written notice to EHI at any time after [***] ([***)] months following the implementation date of Rapid Processing, terminate the Rapid Processing program hereunder while retaining the Agent Agreement in effect.

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**AMENDMENT ONE
TO
AGENT AGREEMENT**

WHEREAS, Blue Cross of California, and BC Life and Health Insurance Company (collectively, "Company") and eHealthInsurance Services, Inc. ("EHI") are parties to an Agent Agreement dated October 1, 2000 (the "Agreement").

WHEREAS, the parties desire to clarify and expand some of the parties' obligations under the Agreement.

WHEREAS, this Amendment One is entered into pursuant to Article 6.3 of the Agreement, which states that modifications to the Agreement shall be put in writing and agreed to by both parties. When signed below by an authorized representative of each party, this Amendment shall constitute such a writing. All unmodified terms and conditions of the Agreement shall remain in full force and effect. Wherever possible, the terms of this Amendment shall be read in such a manner so as to avoid conflict with the Agreement, but in the event of an unavoidable conflict, the terms of this Amendment shall control over the terms and conditions of the Agreement. All capitalized terms set forth herein shall have the same meaning as defined in the Agreement or this Amendment.

WHEREAS, the Company hereby authorizes EHI to implement the following processes in a commercially reasonable manner to enable prospective health insurance applicants to: 1) electronically sign the [***] of the Company's health insurance application, 2) electronically receive all of an applicant's data as entered by the applicant on [***] located at [***] by EHI, 3) electronically transmit such data to the Company as a secured transmission via the Internet, 4) archive the applicants' electronically signed [***], and 5) archive the [***] screens viewed by an applicant.

NOW THEREFORE, the parties mutually agree to the following:

1. EHI Responsibilities

1.1 Electronic Signature

EHI shall enable a health insurance applicant to electronically sign the [***] version of the Company's health insurance application in a manner consistent with the federal Electronic Signatures in Global and National Commerce Act and other applicable laws. EHI and the Company shall mutually agree on a commercially reasonable process to evidence an applicant's intent a) to warrant that the information provided by the

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applicant is true, accurate and complete, b) to authorize the obtaining of or release of medical information, c) to agree to the terms and conditions within the insurance application, d) to authorize the initial premium payment by credit card and subsequent premium payments by the method the applicant selects on the insurance application, and e) to bind themselves to other terms and conditions required by the Company in its standard insurance application.

1.2 Electronic Receipt

EHI shall use a methodology which will not permit an applicant who chooses to electronically sign his application, or anyone else, to change any data entered by the applicant once the applicant takes the appropriate action to submit the data to EHI. Any subsequent changes to the data shall be completed in writing by the applicant on a paper medium. EHI shall initially utilize [***] or better to ensure data integrity and security during the electronic transmission of the data from the applicant to EHI. EHI shall archive the applicant's data and the [***] seen by the applicant when entering the data.

1.3 Electronic Transmission

EHI shall not modify or in any way alter the data received from an applicant although EHI personnel may review the applicant's data for completeness. EHI shall promptly transmit to Company, in a form and manner satisfactory to Company, the applicant's insurance application in [***] utilizing [***] or better to ensure data integrity and security during the electronic transmission of the data from EHI to the Company.

1.4 Archive PDF

EHI shall archive a copy of each applicant's electronically signed [***] of the applicant's application for a period of no less than [***] ([***) years from the date the application is submitted to the Company. Such archived [***] shall be accessible to the Company via a [***], if Company elects to use the [***] or via written request to EHI. EHI shall fulfill any request to receive an archived application within [***] ([***) business days. On or before [***] ([***) years, EHI shall offer a copy of an archived [***] in [***] form and any associated records to the Company prior to permanently removing the archived [***] from EHI's [***].

1.5 Archive HTML

EHI shall archive the code creating the [***] viewed by an applicant for a period of no less than [***] ([***) years. Each time an [***] is [***], EHI shall archive the version of the [***] prior to making any [***]. EHI shall provide an archived [***] of an [***] to the Company within [***] ([***) days of receiving

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a written request from the Company. On or before [***] ([***) years, EHI shall offer a copy of an archived [***] and any associated records to the Company prior to permanently removing the archived [***] from EHI's [***].

1.6 Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

EHI acknowledges that pursuant to HIPAA the United States Department of Health and Human Services has promulgated some, and is in the process of promulgating other, regulations, becoming effective in the future, relating to the privacy of individually identifiable health information and the security of such information when transmitted by electronic means and further that such regulations may require that contracts contemplating the collection of individually identifiable health information and/or the transmission of such information electronically include certain provisions. Therefore, EHI agrees that: (a) its activities shall comply with all such regulations applicable, when and as they become effective; (b) this Amendment shall be interpreted to meet at least the minimum requirements of such regulations when and as they become effective; and (c) upon the request of Company EHI shall execute such further amendments as the Company may reasonably determine are required by such regulations.

2. Company Responsibilities

2.1 Company agrees to cooperate with EHI to implement the processes described above in a commercially reasonable time period.

3. Modification and Term. The parties may modify any provision of this Amendment pursuant to a written instrument signed by both parties. The term of this Amendment shall be coextensive with the term of the Agreement, except that either party may terminate this amendment, with or without cause, without terminating the Agreement, upon [***] days ([***) days prior written notice to the other.

4. Severability. If any provision of this Amendment is determined by a court to be unenforceable, all other provisions of this Amendment shall remain in full force and effect, unless such severance would cause this Amendment to fail its essential purpose.

5. Effective Date. The Effective Date of this Amendment shall be the date on which it is signed by both parties, or, if signed on different dates, the later of such dates.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS HEREOF, the parties have caused this Amendment One to be executed as of the dates set forth below.

eHealthInsurance Services, Inc.

By: /s/ Gary Lauer
Name: Gary Lauer
Title:

Date: 6/19/01

Blue Cross of California

on its behalf and on behalf of its affiliates
comprising the "Company"

By: [***]
Name: [***]
Title: Senior Vice President

Date: 6/13/01

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**AMENDMENT TWO
TO
AGENT AGREEMENT**

WHEREAS, Blue Cross of California, BC Life and Health Insurance Company and UNICARE Life & Health Insurance Company (collectively, "Company") were the original parties, along with eHealthInsurance Services, Inc. ("EHI"), to an Agent Agreement dated October 1, 2000 (the "Agreement").

WHEREAS, the original parties to the Agreement desire to expand the definition of "Company" to include UNICARE Health Insurance Company of the Midwest and UNICARE Health Plans of the Midwest, Inc. as parties to the Agreement.

WHEREAS, the parties desire to clarify and expand some of the parties' obligations under the Agreement.

WHEREAS, this Amendment One is entered into pursuant to Article 6.3 of the Agreement, which states that modifications to the Agreement shall be put in writing and agreed to by both parties. When signed below by an authorized representative of each party, this Amendment shall constitute such a writing. All unmodified terms and conditions of the Agreement shall remain in full force and effect. Wherever possible, the terms of this Amendment shall be read in such a manner so as to avoid conflict with the Agreement, but in the event of an unavoidable conflict, the terms of this Amendment shall control over the terms and conditions of the Agreement. All capitalized terms set forth herein shall have the same meaning as defined in the Agreement or this Amendment.

WHEREAS, the Company hereby authorizes EHI to implement the following processes in a commercially reasonable manner to enable prospective health insurance applicants to: 1) electronically sign the [***] of the Company's health insurance application, 2) electronically receive all of an applicant's data as entered by the applicant on [***] located at [***] by EHI, 3) electronically transmit such data to the Company as a secured transmission via the Internet, 4) archive the applicants' electronically signed [***], and 5) archive the [***] screens viewed by an applicant.

NOW THEREFORE, the parties mutually agree to the following:

The foregoing recitals are hereby incorporated into and made a part of this Amendment.

[***] **CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

1. EHI Responsibilities

1.1 Electronic Signature

EHI shall enable a health insurance applicant to electronically sign the [***] version of the Company's health insurance application in a manner consistent with the federal Electronic Signatures in Global and National Commerce Act and other applicable laws and regulations. EHI and the Company shall mutually agree on a commercially reasonable process to evidence an applicant's intent a) to warrant that the information provided by the applicant is true, accurate and complete, b) to authorize the obtaining of or release of medical information, c) to agree to the terms and conditions within the insurance application, d) to authorize the initial premium payment by credit card and subsequent premium payments by the method the applicant selects on the insurance application, and e) to bind themselves to other terms and conditions required by the Company in its standard insurance application.

1.2 Electronic Receipt

EHI shall use a methodology which will not permit an applicant who chooses to electronically sign his application, or anyone else, to change any data entered by the applicant once the applicant takes the appropriate action to submit the data to EHI. Any subsequent changes to the data shall be completed in writing by the applicant on a paper medium. EHI shall initially utilize [***] or better to ensure data integrity and security during the electronic transmission of the data from the applicant to EHI. EHI shall archive the applicant's data and the [***] seen by the applicant when entering the data.

1.3 Electronic Transmission

EHI shall not modify or in any way alter the data received from an applicant although EHI personnel may review the applicant's data for completeness. EHI shall promptly transmit to Company, in a form and manner satisfactory to Company, the applicant's insurance application in [***] utilizing [***] or better to ensure data integrity and security during the electronic transmission of the data from EHI to the Company.

1.4 Archive [***]

EHI shall archive a copy of each applicant's electronically signed [***] of the applicant's application for a period of no less than [***] ([***) years from the date the application is submitted to the Company. Such archived [***] shall be accessible to the Company via a [***] if Company elects to use the [***], or via written request to EHI. EHI shall fulfill any request to receive an archived application within [***] ([***) business days. On or before [***] ([***) years, EHI shall offer a copy of an archived [***] in [***] form and any associated records to the Company prior to permanently removing the archived application from EHI's database.

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

1.5 Archive HTML

EHI shall archive the code creating the [***] viewed by an applicant for a period of no less than [***] ([***) years. Each time an [***] is [***], EHI shall archive the version of the [***] prior to making any [***]. EHI shall provide an archived [***] of an [***] to the Company within [***] ([***) days of receiving a written request from the Company. On or before [***] ([***) years, EHI shall offer a copy of an archived [***] and any associated records to the Company prior to permanently removing the archived code from EHI's [***].

1.6 Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

EHI acknowledges that pursuant to HIPAA the United States Department of Health and Human Services has promulgated some, and is in the process of promulgating other, regulations, becoming effective in the future, relating to the privacy of individually identifiable health information and the security of such information when transmitted by electronic means and further that such regulations may require that contracts contemplating the collection of individually identifiable health information and/or the transmission of such information electronically include certain provisions. Therefore, EHI agrees that: (a) its activities shall comply with all such regulations applicable, when and as they become effective; (b) this Amendment shall be interpreted to meet at least the minimum requirements of such regulations when and as they become effective; and (c) upon the request of Company EHI shall execute such further amendments as the Company may reasonably determine are required by such regulations.

2. Company Responsibilities

2.1 Company agrees to cooperate with EHI to implement the processes described above in a commercially reasonable time period.

3. Modification and Term. The parties may modify any provision of this Amendment pursuant to a written instrument signed by both parties. The term of this Amendment shall be coextensive with the term of the Agreement, except that either party may terminate this amendment, with or without cause, without terminating the Agreement, upon [***] days ([***) days prior written notice to the other.

4. Severability. If any provision of this Amendment is determined by a court to be unenforceable, all other provisions of this Amendment shall remain in full force and effect, unless such severance would cause this Amendment to fail its essential purpose.

5. Effective Date. The Effective Date of this Amendment shall be the date on which it is signed by both parties, or, if signed on different dates, the later of such dates.

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

IN WITNESS HEREOF, the parties have caused this Amendment One to be executed as of the dates set forth below.

eHealthInsurance Services, Inc.

By: /s/ Gary Lauer

Name: Gary Lauer

Title: _____

Date: _____

**Blue Cross of California, BC Life and Health Insurance Company,
UNICARE Life & Health Insurance Company, UNICARE Health Insurance
Company of the Midwest, and UNICARE Health Plans of the Midwest, Inc.**

on behalf of themselves and on behalf of their affiliates
comprising the "Company"

By: ***

Name: ***

Title: Senior Vice President

Date: 7/26/01

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

AMENDMENTS THREE, FOUR AND FIVE TO THE AGENT AGREEMENT BETWEEN BLUE CROSS OF CALIFORNIA, BC LIFE AND HEALTH INSURANCE COMPANY, UNICARE LIFE & HEALTH INSURANCE COMPANY AND eHEALTHINSURANCE SERVICES, INC., DATED OCTOBER 1, 2000, AND THE EXHIBITS THERETO, ARE EXPIRED ON THEIR TERMS, ARE NO LONGER VALID OR ENFORCEABLE AND HAVE THEREFORE NOT BEEN INCLUDED AS PART OF THIS FILING.

**AMENDMENT to
Blue Cross of California and Affiliates
AGENT AGREEMENT**

This amendment is entered into, as of October 1, 2001 between Blue Cross of California and its Affiliates (collectively, "Company") and e-HealthInsurance Services, Inc. ("Agent").

RECITALS

- A. Company and Agent have previously entered into a Blue Cross of California and Affiliates Agent Agreement ("Agreement"), effective October 1, 2000.
- B. Pursuant to Section 6.3 of the Agreement, the parties now desire to modify the Agreement.

NOW, THEREFORE, IT IS AGREED:

The sale of any UNICARE Life & Health Insurance Company medical plan in the State of Georgia shall not count toward entitlement for any production bonus to be paid by Company to Agent.

Attachment A of the Agreement, attached hereto and incorporated herein by reference, outlining the compensation paid by Company to Agent, shall replace any and all prior versions of Attachment A.

Upon acceptance by the parties, this Amendment, as of the date specified above, shall become a part of the Agreement, and all provisions of the Agreement not specifically inconsistent herewith shall remain in full force and effect.

Company

BY: /s/ [***]
NAME: [***]
TITLE: SVP, Sales Development
DATE: November XX, 2002

Agent

BY: _____
NAME: _____
TITLE: _____
DATE: _____

[*] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

ATTACHMENT A IS EXPIRED ON ITS TERMS, IS NO LONGER VALID OR ENFORCEABLE AND HAS THEREFORE NOT BEEN INCLUDED AS PART OF THE FILING.

**AMENDMENT to
Blue Cross of California and Affiliates
AGENT AGREEMENT**

This amendment is entered into, as of February 1, 2003 between Blue Cross of California and its Affiliates (collectively, "COMPANY") and eHealthInsurance Services, Inc. ("EHI").

RECITALS

- A. Company and EHI have previously entered into a Blue Cross of California and Affiliates Agent Agreement ("Agreement"), effective October 1, 2001.
- B. Pursuant to Section 6.3 of the Agreement, the parties now desire to modify the Agreement.

NOW, THEREFORE, IT IS AGREED:

- I. **The following paragraph shall be added in its entirety as paragraph two of section 1.1 of ARTICLE I – GENERAL PROVISIONS**

Confidentiality and Disclosure of Patient Information: EHI acknowledges that as a result of its relationship with "COMPANY" it may create, have access to or receive confidential protected health and non-public personal financial information ("PHI"), including, but not limited to, social security numbers, medical records and other individual member identifying information. EHI agrees that it (a) will not use or further disclose PHI other than as permitted by this Agreement or required by law; (b) will protect and safeguard from any oral and written disclosure all confidential information, both medical and financial, regardless of the type of media on which it is stored (e.g., paper, fiche, etc.) with which it may come into contact; (c) use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement or required by law; (d) will ensure that all of its subcontractors and sub-agents to which it provides PHI pursuant to the terms of this Agreement shall agree to all of the same restrictions and conditions to which EHI is bound; (e) will report to "COMPANY" any unauthorized use or disclosure immediately upon becoming aware of it; (f) will indemnify and hold "COMPANY" harmless from all liabilities, costs and damages arising out of or in any manner connected with the disclosure by EHI or its agents of any PHI; (g) make available PHI in accordance with 45 CFR § 164.254; (h) make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526; (i) make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528; (j) make its internal practices, books and records relating to the use and disclosure of PHI received from or created for "COMPANY" available to the Secretary of Health and Human Services, governmental officers and agencies and "COMPANY" as required for purposes of determining compliance with 45 CFR §§ 164.500-534; (k) upon termination of this Agreement for whatever reason, EHI will return or destroy all PHI, if feasible, received from or created for "COMPANY" which EHI maintains in any form, and will retain no copies of such information, or if such return or destruction is not feasible, to extend the precautions of this Agreement to the information and limit further uses and disclosures to those purposes that make the return

or destruction of the information infeasible; (1) will comply with all applicable laws and regulations, specifically including the privacy and security standards of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (45 C.F.R Parts 160-164), Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 *et. seq.*) and applicable state legislation and regulations, as amended from time to time, and (m) EHI will not develop any list, description or other grouping of individuals using financial information received from or on behalf of "COMPANY", except as permitted by this agreement or in writing by "COMPANY". EHI recognizes that any breach of confidentiality or misuse of information found in and/or obtained from records may result in the termination of this Agreement and/or legal action. Unauthorized disclosure may give rise to irreparable injury to the member or to the owner of such information and accordingly the member or owner of such information may seek legal remedies against EHI.

If EHI and "COMPANY" exchange data electronically, EHI will comply, and will require any subcontractor or sub-agent involved in the electronic exchange of data, to comply with the following:

- a. EHI shall provide, and shall require its sub-agents and subcontractors to provide, security for all data that is electronically exchanged between "COMPANY" and EHI.
- b. EHI shall implement and maintain, and shall require its sub-agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between "COMPANY" and EHI, including access to data as provided herein.
- c. EHI and any sub-agents and subcontractors shall keep all security measures current and shall document its security measures implemented pursuant to this Section V in written policies, procedures or guidelines.

II **ARTICLE IV – DISPUTE RESOLUTION Section 4.1 shall be replaced in its entirety with the following:**

4.1 "Company" and EHI agree to meet and confer in good faith on all matters affecting this Agreement. The parties agree that any unresolved dispute will be resolved by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association or equivalent.

III The attached commission schedule, attached as Attachment A, and incorporated herein by reference, shall replace the existing commission schedule.

eHealthInsurance Services, Inc.

By: /s/ Nitin M. Patel
Name: Nitin M. Patel
Title: Vice President
Date: 3/13/03

Blue Cross of California

on its behalf and on behalf of its affiliates
comprising the "Company"

By: _____

Name: [***]

Title: Senior Vice President

Date: _____

UNICARE Life & Health Insurance Company

on its behalf and on behalf of its affiliates
comprising the "Company"

By: _____

Name: [***]

Title: Senior Vice President

Date: _____

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**Attachment A
COMPENSATION**

Blue Cross of California

<u>Individual Medical Plans (<64.5)</u>	<u>First Year</u>	<u>*** & *** Year</u>	<u>*** Year and longer</u>
Level I	[***]%	[***]%	[***]%
Level I+20	[***]%	[***]%	[***]%
Level I+50	[***]%	[***]%	[***]%
Level I+75	[***]%	[***]%	[***]%
Level I+100	[***]%	[***]%	[***]%
Level III	[\$***][***] commission		
[***] Medical Plans	[***]%	[***]	[***]
HIPAA Guarantee Issue	[***]%	[***]%	[***]%

	<u>First Year</u>		<u>Renewal</u>
BC Life & Health Term Life Insurance	[***]%		[***]%
Dental Plan	[***]%		[***]%

	<u>Annualized Premium</u>		<u>First Year/Renewal</u>
Small Group Medical Plans ([***] or fewer employees)	[***]-[***]		[***]%
	[***]-[***]		[***]%
	[***]-[***]		[***]%
	[***]-[***]		[***]%
	[***]-[***]		[***]%
	[***]-[***]		[***]%
	[***]-and over		[***]

Group Dental			[***]%
Group Life			[***]%

UNICARE Life & Health Insurance Company

<u>Individual Medical Plans (<64.5)</u>	<u>First Year</u>	<u>*** & *** Year</u>	<u>*** Year and longer</u>
[***] Medical Plans	[***]%	[***]%	[***]%
HIPAA Guarantee Issue (Nevada and Virginia ONLY)	[***]%	[***]	[***]
	[***]%	[***]%	[***]%

	<u>First Year</u>		<u>Renewal</u>
UNICARE Term Life Insurance	[***]%		[***]%
Dental Plan	[***]%		[***]%

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

	Annualized Premium	First Year/ Renewal
Small Group Medical Plans (50 or fewer employees)	[***]-[***] [***]-[***] [***]-[***] [***]-[***] [***]-[***] [***]-[***]	[***]% [***]% [***]% [***]% [***]% [***]
Group Dental		[***]%
Group Life		[***]%

[***] Bonus

Company will pay EHI a [***] bonus based upon the following:

Year [***] [***]

A bonus of \$[***] per subscriber will be paid [***] upon EHI selling between [***] and [***] [***] contracts within the [***] [***] months of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within the [***] [***] months of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling [***] or more [***] contracts within the [***] [***] months of this Agreement.

Year [***] [***]-[***]

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR,**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling [***] or more [***] contracts within months [***] through [***] of this Agreement.

Year [***] [***]

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] or more [***] contracts within months [***] through [***] of this Agreement.

All [***] contracts must be in force for at least [***] days. Retroactive cancellations back to the original effective date are not eligible. [***] sales are not counted toward bonus thresholds.

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**AMENDMENT SIX
TO
AGENT AGREEMENT**

WHEREAS, Blue Cross of California, and BC Life and Health Insurance Company, UNICARE Life & Health Insurance Company, UNICARE Health Insurance Company of the Midwest and UNICARE Health Plans of the Midwest (collectively, "Company") and eHealthInsurance Services, Inc. ("EHI") are parties to an Agent Agreement dated October 1,2000 (the "Agreement").

WHEREAS, this Amendment six is entered into pursuant to Article 6.3 of the Agreement, which states that modifications to the Agreement shall be put in writing and agreed to by both parties. When signed below by an authorized representative of each party, this Amendment shall constitute such writing. All unmodified terms and conditions of the Agreement shall remain in full force and effect. Wherever possible, the terms of this Amendment shall be read in such a manner so as to avoid conflict with the Agreement, but in the event of an unavoidable conflict, the terms of the Agreement shall control over the terms of this Amendment. All capitalized terms set forth herein shall have the same meaning as defined in the Agreement or this Amendment.

NOW THEREFORE, the parties mutually agree to the following:

1. **Performance Bonus.** As additional compensation, Company will pay EHI a Performance Bonus incentive in the amount set forth in Exhibit A of this Amendment, which is attached to and made part of the Agreement.

2. **Term.** The Effective Date of this Amendment shall be January 1,2004. This Amendment will terminate on December 31, 2006 without terminating the Agreement.

IN WITNESS HEREOF, the parties have caused this Amendment Four to be executed as of the dates set forth below.

eHealthInsurance Services, Inc.

By: /s/ Robert L. Fahlman
Name: Robert L. Fahlman
Title: Senior Vice President - COO
Date: 4.9.04

Blue Cross of California

on its behalf and on behalf of its affiliates
comprising the "Company"

By: [***] _____

Name: [***]

Title: Senior Vice President

Date: 3-24-04

UNICARE Life and Health Insurance Company

on its behalf and on behalf of its affiliates
comprising the "Company"

By: [***] _____

Name: [***]

Title: Senior Vice President

Date: 3-24-04

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

EXHIBIT A
PERFORMANCE BONUS

[*] Bonus Incentive**

Effective January 1, 2004 through December 31, 2006

Company will pay EHI a [***] bonus based upon the following:

Blue Cross of California/BC Life & Health Insurance Company [*] Bonus (based on [***] for both companies) ([***], excluding [***]).**

Year [***]

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within the [***] [***] months of this Agreement **OR**

A bonus of \$[***] per [***] will be paid one time upon EHI selling between [***] and [***] [***] contracts within the [***] [***] months of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling [***] or more [***] contracts within the [***] [***] months of this Agreement.

Year [***]

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling [***] or more [***] contracts within months [***] through [***] of this Agreement.

Year [***]

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] individual contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling [***] or more [***] contracts within months [***] through [***] of this Agreement.

BC Life & Health Insurance Company [*] Policies**

To be determined if eHealthInsurance.com is interested in actively pursuing sales of BC Life & Health Insurance Company [***] policies.

[*] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

UNICARE [*] Bonus (based on aggregate production for [***] UNICARE [***] [***]).([***], excluding [***]).**

Year [***]

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within the [***] [***] months of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within [***] [***] months of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling [***] or more [***] contracts within the [***] [***] months of this Agreement.

Year [***]

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling [***] or more [***] contracts within months [***] through [***] of this Agreement.

Year [***]

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling between [***] and [***] [***] contracts within months [***] through [***] of this Agreement **OR**

A bonus of \$[***] per [***] will be paid [***] upon EHI selling [***] or more [***] contracts within months [***] through [***] of this Agreement.

UNICARE Production Bonus [*] products**

To be determined if eHealthInsurance.com is interested in actively pursuing sales of UNICARE [***] policies.

All [***] contracts must be in force for at least [***] days. Retroactive cancellations back to the original effective date and rescissions are not eligible and will be debited from production.

[***] **CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

**Blue Cross of California and Affiliates
Amendment to
AGENT AGREEMENT**

Certain Agent Agreement(s) by and among Blue Cross of California, BC Life and Health Insurance Company and Affiliates (collectively, "Company") and eHealthInsurance Services, Inc. ("Agent") for valuable consideration the adequacy and sufficiency of which is acknowledged by the parties is hereby amended effective December 1, 2005 as follows:

RECITALS

- A. This Amendment outlines support and limitations to support from Company with regards to electronic applicant data being passed from Agent to Company. This Amendment amends the current Agent Agreements for each Company brand and the Blue Cross of California and Affiliates Strategic Partnership Agreement currently in force and as may later otherwise be amended and shall be a part thereof. All provisions thereof not specifically inconsistent herewith shall remain in full force and effect. Any and all such agreements shall be referred to herein as the "Agreement."
- B. Company as used in this Agreement refers jointly and severally to Blue Cross of California, BC Life and Health Insurance Company and their affiliates, and any other WellPoint subsidiaries that are a party to the Agreement, as the context and circumstances may require.

ARTICLE I – GENERAL PROVISIONS

- A. Company and Agent shall comply with all laws and regulations applicable to their businesses, their licenses, appointments and the transactions into which they enter in connection with this Agreement.
- B. Neither Company nor Agent shall be liable to any third party for an act or failure to act of the other party to this Agreement.

ARTICLE II – OBLIGATIONS OF AGENT

- A. When Agent and Company exchange data electronically, Agent will comply with the following:
 - 1. Agent shall comply, and shall require its sub-agents and subcontractors to comply with the following data transmission specifications and security standards specified by Company for all data that is electronically exchanged between Company and Agent: Agent to transmit application data to Company via [***] in format specified in [***] (dated October 21, 2003) and WellPoint [***] to connect securely to the Agent site to obtain [***]. Both exchanges to use [***] with [***]., and to comply with all legislative and regulatory requirements including, but not limited to, HIPAA.
 - 2. Agent shall implement and maintain, and shall require its sub-agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Company and Agent, including access to

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

data as provided herein. Agent shall assume sole responsibility for ensuring all data electronically transmitted to Company exactly matches the data provided in the application image sent to Company.

3. Agent and any sub-agents and subcontractors shall keep all security measures in accordance with Agent's responsibilities under the Amendment to Blue Cross of California and Affiliates Agent Agreement dated February 1, 2003 (Business Associate Agreement).
- B. Agent agrees to immediately suspend data transmission activity whenever technical issues arise that could result in loss of data integrity, and correct the issues before resuming data transmission.

ARTICLE III – OBLIGATIONS OF Company

- A. Agent shall have the opportunity to transmit applicant data to Company to expedite the Underwriting process.
- B. Company will provide Agent with requirements for data to be transmitted. Requirements include data format, required fields, security standards, and manner of submission.

ARTICLE III – TERM & TERMINATION:

- A. This Amendment shall become effective following execution by Agent on the date approved by a duly authorized representative of Company as indicated below, and shall continue in effect until terminated as described below.
- A. Termination and Modification: This Amendment may be terminated at any time by Agent or Company by giving [***] ([***)] days prior written notice thereof to the other party. Any such termination of this Amendment shall not necessarily terminate the Agreement.
- C. Either Party may terminate this Amendment immediately upon written notice to the other Party at any time for such Party's failure to comply with any provision of this Amendment, the Agreement, or commission of fraud, dishonesty, or breach of any fiduciary duty. Such termination shall, at the terminating Party's option also constitute termination of the Agreement for cause.

To signify agreement, the authorized parties have signed below:

Company

BY: [***]
NAME: [***]
TITLE: Staff Vice President, Strategic Sales
DATE: 12/27/05

Agent/Agency

BY: /s/ Robert L. Fahlman
NAME: Robert L. Fahlman
TITLE: Sr. VP & COO
DATE: 1.3.05

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

INTERNET MARKETING SERVICE AGREEMENT
BETWEEN
GOLDEN RULE INSURANCE COMPANY
AND
EHEALTHINSURANCE SERVICES, INC.

THIS MARKETING SERVICE AGREEMENT is made by and between Golden Rule Insurance Company, an Illinois-domiciled health insurer and EHealthInsurance Services, Inc., a Delaware corporation ("Broker").

In accordance with the terms of this Agreement, the Broker may submit applications through Broker's Internet based marketing system to Golden Rule for Golden Rule's health insurance products.

1. Licensing and Appointment.

Broker will ensure that it and all of its employees and agents involved in the marketing of Golden Rule's health insurance products and submission of applications are properly licensed and appointed as required under the law of each state in which applications will be submitted.

For all persons submitting applications on Broker's behalf, Broker will conduct all required background investigations including investigation required by the Violent Crime Control Act.

In addition, Broker shall ensure that all persons submitting applications on behalf of Broker maintain errors and omissions insurance coverage covering Golden Rule's health insurance products. If any person's errors and omissions coverage is terminated during the term of this Agreement, Broker will immediately discontinue submitting applications through that person.

Broker will ensure that all persons submitting applications on its behalf will not make any representations concerning Golden Rule's health insurance products except for those representations contained in the sales literature, advertising material, or insurance policy provided or specifically pre-approved by Golden Rule.

Broker is responsible for all appointment fees and related expenses. However, as an administrative convenience, Golden Rule shall pay initial appointment fees subject to reimbursement by Broker via set-off from any other fees due Broker from Golden Rule.

**CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS OF THIS DOCUMENT
HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION.**

2. Marketing Requirements.

(a) Broker will designate and supply at least one trainer who may be either Broker's employee or agent who must become knowledgeable in the Golden Rule health insurance products and applicable rules for marketing of the health insurance products. Broker must ensure that all of its employees and agents involved in the marketing of Golden Rule's health insurance products are adequately trained by Broker's designated trainer in those products and rules.

Initial and recurrent training of Broker's designated trainer will be conducted by Golden Rule as needed with regard to Golden Rule's health insurance products. In turn, Broker's designated trainer is responsible to provide that training with regard to Golden Rule's health insurance products to all other persons involved in Broker's marketing of Golden Rule's health insurance products.

(b) Broker, Broker's employees, and Broker's agent must:

- (i) Transmit any Applications and gross consideration received by Broker to Golden Rule at its designated office within three working days.
- (ii) Submit Applications only when Broker or Broker's employee or agent is licensed and appointed to sell that type of insurance product in the state where the applicant resides.
- (iii) Not make any representations about the designated products, except those representations contained in the sales literature and advertising material provided by Golden Rule or previously approved by Golden Rule in writing.

(c) Broker will utilize Golden Rule-supplied rate calculation computer programs or another mutually agreeable format to derive rates quoted to prospective applicants.

Broker and Golden Rule will agree to proper site hosting of materials to the extent possible. Golden Rule's sites will be used to host sales materials to facilitate maintaining currency.

Broker must incorporate Golden Rule's product premium rate changes within [***] days of notification of the changes by Golden Rule, so long as Golden Rule timely provides the necessary information and timely conducts its verification activities.

(d) Broker will make available to Golden Rule specific site addresses that can be accessed by Golden Rule personnel to determine the accuracy of materials being offered. Also, Broker will permit Golden Rule [***] to Broker's [***] so that Golden Rule personnel can test for the use of the proper version of [***].

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

3. Marketing Compliance Responsibility.

In all communications with third parties, including site visitors and applicants for insurance, Broker has complete and sole responsibility for ensuring that all applicable federal and state insurance and other laws and regulations are complied with in all applicable jurisdictions. This responsibility includes compliance with all applicable laws and regulations governing Internet and insurance marketing, advertising, and market conduct activities in connection with health insurance products.

Broker will ensure that Broker's Internet site will not contain representations concerning Golden Rule's health insurance products except for those representations contained in the sales literature, advertising material, or insurance policy provided or specifically pre-approved by Golden Rule.

4. Available Products.

The health insurance products available to the Broker for marketing will be designated from time to time by Golden Rule in its sole discretion. The products initially available to Broker are listed in Appendix 1. Later addition or deletion of products by Golden Rule will take effect [***] days after Golden Rule provides Broker with written notice of the addition or deletion. If the addition or deletion is necessitated by a change in the legal or regulatory environment, then an earlier effective date may be designated.

5. Use of Name, Service Mark, and Product Names.

Broker may not use Golden Rule's name, service marks, or health insurance product names in any visual or electronic form unless Broker has first obtained written authorization to do so. For any specific use authorized by Golden Rule, Broker must again obtain Golden Rule's advance written authorization if that use is changed in any way following the initial authorization. Broker must retain throughout the term of this Agreement and for [***] years thereafter,

- (1) a [***] copy of [***] electronic item that it creates,
- (2) documentation of the [***] of its [***] to Golden Rule's [***],
- (3) any advertisement or promotional item, and
- (4) any printed materials

that contain Golden Rule's name, service mark or health insurance product name. In Golden Rule's discretion, it may direct Broker to immediately remove any electronic material available to the public that displays Golden Rule's name, service mark, or health insurance product name even if Golden Rule had previously authorized the item.

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

Golden Rule will retain dated electronic copies of the data contained in each page in its web site to which Broker links, so long as Broker has timely notified Golden Rule of those links.

6. Limitations on Authority.

Broker, Broker's employees, and Broker's agents may not represent to any person or entity that Broker represents Golden Rule for any purpose other than those purposes described in this Agreement. Golden Rule does not delegate to Broker any authority or responsibility to make policy or judgment decisions for or on behalf of Golden Rule. Broker will not accept any responsibility, interpret any insurance policy provision, give advice, or prepare any documents related to the administration of any policy issued as a result of an Application. Broker is not authorized to extend the time for payment of any premium, waive or extend any obligation or condition, or receive any money due Golden Rule.

7. Golden Rule Information.

All confidential information furnished to Golden Rule by Broker must be held secure and may not be disclosed to third persons. Confidential information (original and all copies) must be returned to Broker upon demand or upon termination of this Agreement. Confidential information is: (1) Broker's [***], and (2) any information marked "Confidential" by Broker in 16 point type.

All confidential information furnished to Broker by Golden Rule must be held secure and may not be disclosed to third persons. Confidential information (original and all copies) must be returned to Golden Rule upon demand or upon termination of this Agreement. Confidential information is: (1) Golden Rule's rate scenarios and solutions for rate scenarios, and (2) any information marked "Confidential" by Golden Rule in 16 point type.

Marketing and rate information is proprietary. No proprietary information may be distributed by Broker except in furtherance of Broker's marketing of Golden Rule's individual health products. All proprietary information (original and all copies) must be returned to Golden Rule on demand or on termination of this Agreement.

Broker will not disclose Golden Rule's rates including those in electronic form to anyone other than persons who access Broker's Internet site requesting an individual health coverage premium rate specific to that person's personal circumstances.

Broker will not disclose to third parties any aggregate or specific data regarding site activity specifically relating to Golden Rule.

[*] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

8. Application Suspension.

Golden Rule in its discretion may suspend acceptance of Applications upon [***] days advance notice to Broker. If legal or regulatory conditions require suspension of Application acceptance will take effect immediately upon notice.

9. Compensation.

For business issued as a result of applications submitted by Broker, Broker's employees, or Broker's agents ("Applications"), Golden Rule will pay to Broker a commission in accordance with the commission schedule in Appendix 1. For Applications submitted in a jurisdiction in which Broker is not properly licensed and appointed, Golden Rule will instead pay the commission to the properly licensed and appointed employee or agent.

The percentages listed in Appendix 1 are percentages based on premiums actually received by Golden Rule on business issued in response to Applications. Golden Rule at any time may increase or decrease the commission by providing at least [***] days notice. This change in commission will apply to policies dated on or after the effective date of the change established by Golden Rule. No change in commission will be made during the [***] [***] of this Agreement.

With regard to any specific payment of commissions, Broker must notify Golden Rule of any dispute regarding that payment within [***] days or else be barred from disputing that payment.

Golden Rule may set-off against any compensation due under this Agreement for any debts to Golden Rule from Broker. After the first year of this Agreement, if the amount of compensation earned and payable to Broker in any month is less than [***] dollars (\$[***]) Golden Rule may accumulate that compensation without interest from month to month until the amount due and payable is [***] dollars (\$[***].00).

If Golden Rule refunds premium on any policy resulting from an Application for any reason, Broker shall repay Golden Rule the amount of all compensation received by Broker or Broker's employees or agents related to the returned premium.

This provision will survive termination of this Agreement.

10. Reports.

At Golden Rule's request, Broker will provide the following aggregate data to Golden Rule in a [***] [***] form. Broker need not provide this data more than [***] annually. Broker need not provide the data, even if Golden Rule requests it, until after the first month in which Broker submits at least [***] [***] to Golden Rule. Broker, however, is not required to provide Golden Rule the [***] or the [***] of [***] for which Site visitors [***] a [***] or an [***].

[***] **CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

Data to be provided:

- a) [***] [***] by all [***] collected by Broker, including but not limited to [***].
- b) The [***] taken by [***] who [***] a [***] for Golden Rule products but did not request an [***], including:
 - 1) Whether the [***] requested an [***] from [***] [***] [***], including type of [***] for which an [***] was requested);
 - 2) Whether the [***] [***] without requesting any [***] and
 - 3) The difference in [***] between the [***] [***] and the [***].
- c) Other [***] ordinarily collected by [***] regarding [***] and [***].

11. Notice of Suit or Regulatory Action.

Each party will immediately notify the other of any notice of regulatory action, lawsuit, or any other complaint, inquiry, claim, or other correspondence related to a policy issued as a result of an Application.

This provision will survive termination of this Agreement.

12. Applicable Law.

This Agreement shall be governed by the laws of the state of Illinois without application of its conflict and choice of laws provisions.

13. Indemnification.

Broker will indemnify and hold harmless Golden Rule, its officers, directors, employees, and agents from and against any and all liability, damages and expenses whatsoever directly or indirectly resulting from any claim or demand arising out of in part or in whole from the acts or omissions of Broker, its employees or its agents in connection with this Agreement or in breach of any term of this Agreement. However, if a portion of the liability is adjudged attributable to Golden Rule, Golden Rule will itself retain responsibility for that portion of the liability.

Golden Rule will indemnify and hold harmless Broker, its officers, directors, employees, and agents from and against any and all liability, damages and expenses whatsoever directly or indirectly resulting from any claim or demand arising out of the administration of any policies issued as a result of Applications submitted by Broker, Broker's employees or Broker's agents.

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

However, if a portion of the liability is adjudged attributable to Broker, Broker will itself retain responsibility for that portion of the liability.

This provision will survive termination of this Agreement.

14. Arbitration.

If any disputes or differences of opinion arise between Golden Rule and Broker, the parties must designate a high-ranking official authorized to make decisions on the company's behalf to engage in good faith discussions for the purpose of reconciling the dispute or difference of opinion.

If this effort has been unsuccessful after [***] days, the dispute will be submitted for binding arbitration before a panel of three arbitrators in accordance with the Commercial Rules of the American Arbitration Association. The panel members must be disinterested current or former executive officers of insurance companies writing medical expense insurance. All arbitration hearings shall take place in San Francisco, California unless another location is agreed to by the parties.

This provision will survive termination of this Agreement.

15. Term.

This Agreement is effective on October 1, 1999, and shall continue in effect for [***] year unless terminated earlier in accordance with this Agreement.

16. Termination.

Upon termination, the rights and obligations of the parties shall also terminate except for those provisions designated as surviving termination. After termination, each party shall reasonably cooperate with the other to transfer necessary information and records to the other regarding the activities conducted under this Agreement.

During the initial term, either party may terminate this Agreement if the other party breaches any of this Agreement's provisions. In this circumstance, the effective date of the termination shall be [***] days after the non-breaching party provides notice to the breaching party and the breaching party fails to cure the breach within that [***] days.

Until all policies issued as a result of Applications have terminated, Broker shall receive any compensation due related to those policies so long as at least [***] dollars (\$[***]) compensation is due in any calendar year and so long as Broker remains agent of record for those policies.

[***] **CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

If either party becomes bankrupt or insolvent, the other party may immediately terminate this Agreement after providing written notice to the bankrupt or insolvent party.

After the initial term this Agreement shall continue until either party provides [***] days notice of termination.

17. Notice.

Any notices required to be given under this Agreement must be given, return receipt requested, by U.S. Mail or reputable courier service. Notices must be directed as indicated below or as directed from time to time by either party.

To: EHealthInsurance Services, Inc.
c/o Vipool M. Patel, CEO
1390 Borregas Avenue
Sunnyvale, CA 94089

To: Golden Rule Insurance Company
c/o [***], Vice President
7440 Woodland Drive
Indianapolis, IN 46278-1719

18. Assignment.

Neither party may assign this Agreement except with the advance written approval of the other party which approval may not be unreasonably withheld.

19. Amendment.

Neither party will be bound by any statements made by the other party unless the statement is reduced to writing and signed by an officer of both parties.

This Agreement is accepted and agreed to by the parties as evidenced by the signatures below of the authorized representative of each.

GOLDEN RULE INSURANCE COMPANY

EHEALTHINSURANCE SERVICES, INC.

By: [***]

[***]
Vice President

By: /s/ Vipool M. Patel

Vipool M. Patel
CEO

Date: 11/12/99

Date: 11/22/99

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

APPENDIX I
TO THE AGREEMENT
BETWEEN
GOLDEN RULE INSURANCE COMPANY
AND
EHEALTHINSURANCE.COM
VOLUME INCENTIVE PROGRAM
PRODUCT AND COMMISSION SCHEDULE

(For Issue Age under Age 60):

Inflation GuardSM, Inflation Guard II, Shared Risk[®],
Plan 80SM, Basic PlanSM, Plan100[®], Copay Plans,
and MSA

	<u>First Year</u> (Percentage of first year premium)	<u>Renewal Years</u> (Percentage of first year premium)
No. of policies issued in previous [***] months with Term Life Rider		
[***]-[***] Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]-[***] Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]-[***] Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]+ Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
No. of policies issued in previous [***] months without Term Life Rider		
[***]-[***] Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]-[***] Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]-[***] Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]+ Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

(For Issue Age over Age 60):

Inflation GuardSM, Inflation Guard II, Shared Risk[®], Plan 80SM, Basic PlanSM, Plan 100[®], Copay Plans, and MSA

		<u>First Year</u> (Percentage of first year premium)	<u>Renewal Years</u> (Percentage of first year premium)
No. of policies issued in previous [***] months with Term Life Rider			
[***]-[***]	Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]-[***]	Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]-[***]	Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]+	Issued Applications	[***]%	[***]%(Years [***]) [***]% (Years [***]+)
No. of policies issued in previous [***] months without Term Life Rider			
[***]-[***]	Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]-[***]	Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]-[***]	Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)
[***]+	Issued Applications	[***]%	[***]% (Years [***]) [***]% (Years [***]+)

Inflation Guard II Plan 80, Basic Plan, Shared Risk, Copay Plans, Plan 100, and MSA (the “Policies”) will, in some cases, be marketed pursuant to agreements by GOLDEN RULE and various associations for the purpose of making the Policies available to members of such associations. To that extent, in addition to the duties imposed on eligible brokers by the Brokerage Service Agreement, eligible brokers will be responsible for taking Policy applications for membership in such associations, collecting the initial membership dues along with Policy applications and initial premium to GOLDEN RULE. Amounts remitted for dues shall be separate from amounts remitted for premium. Membership dues will not be regarded as premium for any purpose.

Commission is based on standard medical rate and optional benefits selected. Medical ratings and future rate adjustments do not impact commission. Commission percentage will be based upon number of Golden Rule [***] in prior [***] months.

First year commission will be based upon the total number of affected policies/certificates, as noted above, issued during the preceding [***] months. The [***] month period is a rolling [***] months and the commission adjustments affect all designated policies/certificates paying first year commission as of the adjustment month. Renewal commissions will be based on the total first year premium. Ratings assessed in underwriting and future rate adjustments do not impact commission.

[*] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

**AMENDMENT #1
TO INTERNET MARKETING SERVICE AGREEMENT
BETWEEN
GOLDEN RULE INSURANCE COMPANY
AND
eHEALTHINSURANCE SERVICES, INC.**

THIS AMENDMENT modifies the Internet Marketing Service Agreement between Golden Rule Insurance Company and eHealthInsurance Services, Inc.

Section 4, Available Products, is amended by replacing that section in its entirety with the following:

4. Available Products.

The health insurance products available to the Broker for marketing will be designated from time to time by Golden Rule in its sole discretion. The products initially available to Broker are listed in Appendix 1. Later addition or deletion of products by Golden Rule will take effect [***] days after Golden Rule provides Broker with written notice of the addition or deletion. If the addition or deletion is necessitated by a change in [***] legal or regulatory environment, then an earlier effective date may be designated.

Broker will notify Golden Rule of the available products it intends to offer at its Web Site. If Broker later removes or adds available products at its Site, Broker will notify Golden Rule at least [***] [***] days in advance, giving its reasons for the removal or addition.

Section 9, Compensation, is amended by replacing that section in its entirety with the following:

9. Compensation.

For business issued as a result of applications submitted by Broker, Broker's employees, or Broker's agents ("Applications"), Golden Rule will pay to Broker a commission in accordance with the commission schedule in Appendix 1. For Applications submitted in a jurisdiction in which Broker is not properly licensed and appointed, Golden Rule will instead pay the commission to the properly licensed and appointed employee or agent.

The percentages listed in Appendix 1 are percentages based on premiums actually received by Golden Rule on business issued in response to Applications. Golden Rule may increase or decrease the commission percentages upon [***] days written notice provided that (1) the parties mutually agree to the increase or decrease, or (2) Golden Rule changed the commission schedule for all of its independent Internet brokers who conduct fulfillment. Any change in commission percentages will apply to policies with an effective date on or after the effective date of the change established by Golden Rule.

With regard to any specific payment of commissions, Broker must notify Golden Rule of any dispute regarding that payment within [***] days or else be barred from disputing that payment.

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

Golden Rule may set-off against any compensation due under this Agreement for any debts to Golden Rule from Broker. After the first year of this Agreement, if the amount of compensation earned and payable to Broker in any month is less than [***] dollars (\$[***) Golden Rule may accumulate that compensation without interest from month to month until the amount due and payable is [***] dollars (\$[***)).

If Golden Rule refunds premium on any policy resulting from an Application for any reason, Broker shall repay Golden Rule the amount of all compensation received by Broker or Broker's employees or agents related to the returned premium.

This provision will survive termination of this Agreement.

Section 15, Term, is amended by replacing that section in its entirety with the following:

15. Term.

This Agreement is effective on October 1, 1999, and shall continue in effect through September 30, 2003 unless terminated earlier in accordance with this Agreement.

Section 16, Termination, is amended by replacing that section in its entirety with the following:

16. Termination.

Upon termination, the rights and obligations of the parties shall also terminate except for those provisions designated as surviving termination. After termination, each party shall reasonably cooperate with the other to transfer necessary information and records to the other regarding the activities conducted under this Agreement.

Until September 30, 2003, either party may terminate this Agreement if the other party breaches any of this Agreement's provisions. In this circumstance, the effective date of the termination shall be [***] days after the non-breaching party provides notice to the breaching party and the breaching party fails to cure the breach within that [***] days.

Before September 30, 2003, Golden Rule may elect to terminate this Agreement if E-Health does not submit at least [***] health applications per month, on the average, measured on a rolling [***] [***] basis.

Until all policies issued as a result of Applications have terminated, Broker shall receive any compensation due related to those policies so long as at least [***] dollars (\$[***) compensation is due in any calendar year and so long as Broker remains agent of record for those policies.

If either party becomes bankrupt or insolvent, the other party may immediately terminate this Agreement after providing written notice to the bankrupt or insolvent party.

After September 30, 2003, this Agreement shall continue until either party provides [***] days notice of termination.

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

Section 17, Notice, is amended by replacing that section in its entirety with the following:

17. Notice.

Any notices required to be given under this Agreement must be given, return receipt requested, by U.S. Mail or reputable courier service. Notices must be directed as indicated below or as directed from time to time by either party.

To: eHealthInsurance Services, Inc.
c/o Gary Lauer, CEO
281 Java Drive
Sunnyvale, CA 94089

To: Golden Rule Insurance Company
c/o [***], Vice President
7440 Woodland Drive
Indianapolis, IN 46278-1719

This Agreement is accepted and agreed to by the parties as evidenced by the signatures below of the authorized representative of each.

GOLDEN RULE INSURANCE COMPANY

eHEALTHINSURANCE SERVICES, INC.

By: [***]

[***]
Vice President

By: /s/ Gary Lauer

Gary Lauer
CEO

Date: 10/13/00

Date: 10/25/00

_____ **[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

**AMENDMENT #2
TO INTERNET MARKETING SERVICE AGREEMENT BETWEEN
GOLDEN RULE INSURANCE COMPANY
AND
eHEALTHINSURANCE SERVICES, INC.**

SUBMISSION OF ELECTRONICALLY SIGNED HEALTH INSURANCE APPLICATIONS

THIS AMENDMENT modifies the Internet Marketing Service Agreement between Golden Rule Insurance Company (“GRIC”) and -E Health Insurance Services, Inc. (“EHI”) dated October 1, 1999, as amended, to allow EHI to submit electronically signed applications to Golden Rule for health insurance coverage on behalf of EHI’s customers.

1. Electronically signed application procedures.
 - 1-1. From a prospective applicant, EHI will collect the data necessary for completion of an application for Golden Rule health insurance. In collecting the data, EHI must pose the same questions to the applicant as the questions on the application approved by the appropriate state regulatory agency, although the order and format of the questions may vary slightly. For example, an application question with a lead- in and six sub-parts could be posed by EHI as six stand-alone questions with the same lead-in to each question. EHI will import that collected data accurately into an electronic application configuration. The electronic application will be formatted and displayed to appear the same as the application approved by the appropriate state regulatory agency that was given to EHI by GRIC. The completed application configuration and content will be electronically available to the prospective applicant for his or her approval. The process used by EHI to obtain the applicant’s approval of the electronic application must be the pre-approved GRIC process and must be securely operated by EHI to prevent alteration or corruption of the application configuration and its content once the applicant has approved it as stored in a [***] ([***]).
2. EHI’s Disclosure obligations.

Prior to each applicant’s submission of an electronically signed application, EHI must, at a minimum, adequately disclose (in conformance with applicable law):

 - 2-1 An applicant’s rights to access a copy of the application.
 - 2-2 The applicant’s rights to receive a non-electronic form or copy of the electronically signed application and to withdraw consent to its use.
 - 2-3 The process for an applicant to withdraw his consent to use of the electronically signed application and the consequences of withdrawing consent.
 - 2-4 The applicant’s option to receive electronic or non-electronic notices.
4. Security of Applicant Data.
 - 4-1 EHI warrants and represents that the applicant data content and electronic application configuration as stored in a [***] ([***]) by EHI, printed and mailed to Golden Rule, will be unaltered in EHI systems at all times following the applicant’s approval and submission of the electronic application.
 - 4-2 EHI will fully cooperate with Golden Rule’s quality assurance activities designed to ensure that the completed applications stored at the EHI server are the same as the

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

completed applications printed and mailed by EHI to Golden Rule. Golden Rule's [***] may require that EHI provide Golden Rule [***] to its [***] or other [***] and on-site documents. EHI will promptly [***] any [***] identified.

- 4-3 EHI must document and archive its security procedures that ensure that:
 - 4-3-1 Each electronic configuration of the application displayed by EHI to the prospective applicant is in all ways the same as the application for which Golden Rule has obtained approval from state regulatory agencies.
 - 4-3-2 Each electronic application approved by an applicant is maintained at EHI's server or electronic storage media in retrievable form for at least [***] years after the application was first printed and mailed to Golden Rule. If Golden Rule instructs EHI to preserve specific records related to a specific application related dispute that became known to Golden Rule during this [***]-year period, EHI will preserve those specific records until the dispute related to that application is finally adjudicated.
 - 4-3-3 The electronic form of applications approved and electronically signed by an applicant is the same as the printed application sent to Golden Rule.
- 4-4 EHI shall at all times have adequate disaster recovery capability to prevent loss of applications and applicant data.

5. Required Pre-Approvals and Documentation.

- 5-1 EHI must obtain Golden Rule's express pre-approval before each and every web page materially connected with the Golden Rule version of the electronic application process is displayed to the public for the first time. In addition, any previously-approved page that is altered by EHI must be again expressly pre-approved by Golden Rule before EHI displays that altered page to the public for the first time. EHI will be solely responsible for compliance with applicable state insurance advertising laws and will indemnify, defend, and hold Golden Rule harmless from EHI's failure to comply with applicable state insurance advertising laws unless Golden Rule has affirmatively approved the non-complying page in writing, via e-mail or other form of written communication.
- 5-2 After the pages to be displayed are approved by Golden Rule, EHI will provide Golden Rule with an initial full set of [***] ("[***]") and [***] format of all [***] for Golden Rule insurance would [***] during the [***]. Any time EHI makes a [***] in any of these [***], an [***] and [***] of each [***] must be provided to Golden Rule. "[***]" and "[***]" [***] and [***] of the [***] each [***] was [***] to the [***] must be [***] as well.
- 5-3 Initially, EHI will send printed applications to Golden Rule. If agreed to at some future date by EHI and Golden Rule, EHI will provide Golden Rule with all applicant data consisting of each applicant's questions and individual responses plus that data displayed on the Golden Rule state-approved application. Transmission of applicant data will begin on a date mutually agreed upon by Golden Rule and EHI. The data will be transmitted to Golden Rule in the format specified by Golden Rule. The format will be [***], [***] printable, or other format mutually agreed upon by the parties. Upon mutual agreement Golden Rule may change the format to another standard format. The [***] will be supplied by Golden Rule.

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

6. Regulatory Investigation and Litigation Support.

- 6-1 Golden Rule may be subjected to litigation or regulatory action related to a policy that was issued from an electronically signed application submitted by EHI. If requested by Golden Rule, EHI will, at its expense, cooperate fully with Golden Rule and supply the necessary evidence to prove that the [***], as [***] and [***] or [***] to Golden Rule and stored by EHI, was [***] after the applicant approved the [***] and [***]. This includes but is not limited to supplying [***], documentary [***], and [***].
- 6-2 EHI will not be responsible to prove what happened to the [***] and [***] or [***] [***] after it was [***] by Golden Rule. However, EHI will provide reasonable assistance at Golden Rule's expense if requested to do so.
- 6-3 If EHI fails to supply the proof set forth in paragraph 6.1, it will indemnify and hold harmless Golden Rule from any damages or liabilities resulting from that litigation or regulatory action.
- 6-4 If EHI supplies that proof but Golden Rule fails to [***] the [***] of [***] that the [***] was not [***] after [***] by the applicant, EHI will indemnify and hold Golden Rule harmless from any damages or liabilities resulting from the [***] [***], subject to the following: Golden Rule will request specific findings from the court or regulatory agency on whether the [***] [***] by the applicant was the same as the [***] [***] and [***] [***] [***] to Golden Rule. If the specific finding is "no", EHI's obligation to indemnify and hold Golden Rule harmless is triggered. If the specific finding is "yes", EHI has no obligation to hold Golden Rule harmless. If the court or regulatory agency refuses to issue a specific finding and the parties fail to agree on whether EHI is required to hold Golden Rule harmless, the issue of whether EHI must indemnify Golden Rule under the standards of this provision will be submitted for binding arbitration before the American Arbitration Association for determination.

7. Annual [***].

- 7-1 EHI will cause periodic [***] to be conducted by a competent [***] EHI's selection of the [***] is subject to Golden Rule's approval which approval may not be unreasonably withheld. The [***] is to be authorized to provide a copy of that [***] to Golden Rule.
- 7-2 The first [***] will be conducted within [***] days after EHI begins submitting electronically signed applications to Golden Rule. Golden Rule and EHI will determine the specific time. Thereafter, EHI must conduct a [***] every [***] months.
- 7-3 The [***] is to provide a [***] regarding each of the following questions - Did EHI's [***] (design and operation):
 - 7-3-1 Obtain verification of the [***] provided in the [***] by comparing [***] [***] and [***] to the [***] and [***] obtained from [***] [***].
 - 7-3-2 Protect the integrity of the [***] designed to [***] the [***] [***] of the [***] to EHI

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7-3-3 Protect the [***] of the [***] status of the [***] [***] [***] approved and [***] by the [***] to EHI

7-4 EHI shall at all times meet or exceed the standards and requirements set forth in paragraphs 7-3-1 through 7-3-3.

8. Compliance with Privacy Policies and Laws.

Both parties will comply with State, Federal or other governmental agency regulations applicable to that party pertaining to medical information disclosure, electronic signature and insurance application-related privacy issues.

9. Applicant Data.

GRIC and EHI are joint owners of the GRIC applicant data.

10. Termination.

10-1 Golden Rule may withdraw its authorization for EHI to submit electronically signed applications for any state by providing [***] business days notice. However, the [***] days will be shortened as necessary to comply with the law.

10.2 If the Internet Marketing Service Agreement is terminated, this Amendment will automatically terminate concurrently.

11. Record-keeping.

Except for those records referenced in Section 4-3-2, all other records required to be kept under this Amendment must be accurately maintained by the party required to maintain the record and be accessible to the other party until this Amendment terminates and for [***] full years thereafter.

12. Definitions.

Terms used in this Amendment that are defined in the Federal Electronic Signatures in Global and National Commerce Act or the Uniform Electronic Transactions Act shall be given the same meaning in this Amendment.

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13. Communications and Notices.

The primary point of contact for implementation and operational issues related to this Addendum is [***] for Golden Rule and [***] for EHI. Any notices required to be given under this Amendment shall be directed to [***] or [***] as applicable.

This Amendment is accepted and agreed to by the parties as evidenced by the signatures below of the authorized representative of each.

Golden Rule Insurance Company

eHealthInsurance Services, Inc.

By: [***]
[***], Vice President

By: /s/ Bob Fahlman
Bob Fahlman, Vice President

Date: 10-15-01

Date: 10.11.01

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**AMENDMENT NUMBER 3 TO THE
BROKERAGE SERVICE AGREEMENT
between
EHEALTHINSURANCE SERVICES, INC.
and
GOLDEN RULE INSURANCE COMPANY**

Golden Rule Insurance Company (“GRIC”) and ehealthinsurance Services, Inc. (“Business Associate”) (collectively the “Parties”) have entered into the Brokerage Service Agreement, dated November 12, 1999, (the “Contract”) under which the Business Associate regularly uses and/or receives Protected Information in its performance of the Services described below. Both Parties are committed to complying with the Financial Services Modernization Act of 1999 and the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any applicable state privacy laws (collectively, the “Privacy Laws”). This Amendment to the Contract (“Amendment”) sets forth the terms and conditions pursuant to which “nonpublic personal information” and “individually identifiable health information” that is received by the Business Associate, from GRIC (collectively, the “Protected Information”), will be handled between the Business Associate and GRIC and with third parties during the term of the Contract and after its termination. Protected Information shall have the meanings as set out in their definitions at 15 U.S.C. § 6809 and 45 C.F.R. § 164.501 as currently drafted and as they are subsequently updated, amended or revised. Information which is independently obtained by the Business Associate is not considered Protected Information under this Amendment.

1. PERMITTED USES AND DISCLOSURES OF PROTECTED INFORMATION

Pursuant to the Contract, the Business Associate provides services (“Services”) for GRIC that involve the use and receipt of Protected Information. Except as otherwise specified herein, the Business Associate may use the Protected Information as necessary to perform services and its obligations under the Contract. All other uses not authorized by this Contract are prohibited. Either party may terminate the Contract at any time with at least [***] ([***)] days prior written notice for an uncorrected material breach of this Amendment, provided, the breaching party was allowed a reasonable opportunity to remedy the material breach and it was not corrected during that time.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED INFORMATION

A. Responsibilities of Business Associate and GRIC. With regard to its use and/or disclosure of Protected Information, GRIC and the Business Associate hereby agree to do the following:

1. use and/or disclose the Protected Information only as permitted or required by this Contract or as otherwise permitted or required by law.

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2. report in writing, any use and/or disclosure of the Protected Information that is not permitted or required by the Contract as soon as GRIC or the Business Associate discover such unauthorized use and/or disclosure.
3. use commercially reasonable efforts to maintain the confidentiality and security of the Protected Information and to prevent unauthorized use and/or disclosure of such Protected Information.
4. require all, subcontractors and agents that receive, use, or have access to, Protected Information under the Contract to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Information that apply to GRIC or the Business Associate pursuant to section 2 of this Amendment.
5. make all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Information available to regulatory authorities for purposes of determining compliance with the Privacy Laws, subject to attorney-client and other applicable legal privileges.
6. upon written request, agree to provide access to the Protected Information to the individual to whom such Protected Information relates (or his or her authorized representative) in order to meet a request by such individual.
7. upon written request, agree to make any amendment(s) to the Protected Information.
8. upon written request, provide such information as is requested to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Information.
9. not further disclose customer or consumer account numbers to conduct telemarketing, direct mail marketing or other electronic mail marketing to the customer or consumer.
10. within [***] ([***)] business days of the termination of the Contract, to destroy or return, the Protected Information in its possession and retain no copies (which for purposes of the Contract shall mean destroy all backup tapes), if it is feasible to do so. If it is not feasible to return or destroy said Protected Information, provide notification in writing. GRIC and the Business Associate further agree to extend any and all protections, limitations and restrictions contained in this Amendment to its use and/or receipt of any Protected Information retained after the termination of the Contract.
11. to recover any Protected Information in the possession of its subcontractors or agents. If it is infeasible for the GRIC or the Business Associate to obtain any Protected Information from any subcontractor or

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agent, GRIC or the Business Associate must: (i) provide a written explanation; and (ii) require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Amendment to any Protected Information retained after the termination.

This Section shall survive termination of the Contract or this Amendment.

- B. Responsibilities of GRIC. With regard to the use and/or disclosure of Protected Information by the Business Associate, GRIC agrees:
1. to provide the Business Associate a copy of GRIC's privacy notice currently in use and any future versions if there is a material change.
 2. to inform the Business Associate of any relevant opt-outs exercised by any individual from marketing activities of GRIC.
 3. to notify the Business Associate of any restrictions on use and/or disclosure of Protected Information agreed to by GRIC that may impact the use and/or disclosure of Protected Information by the Business Associate under this Contract.

This Amendment shall be effective upon execution.

All other terms and conditions of the Contract shall remain in full force and effect.

This Amendment may be executed separately by the parties in counterparts.

Agreed and accepted:

GOLDEN RULE INSURANCE COMPANY

EHEALTHINSURANCE SERVICES, INC.

By: [***]
Signature
Print Name: [***]
Print Title: Vice President
Date: 4/29/02

By: /s/ Nitin M. Patel
Signature
Print Name: Nitin M. Patel
Print Title: Vice President
Date: 6/27/02

_____ **[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

**AMENDMENT NUMBER 4 TO THE
INTERNET MARKETING SERVICE AGREEMENT**

**between
EHEALTHINSURANCE SERVICES, INC.
and
GOLDEN RULE INSURANCE COMPANY**

In consideration of the continuation of the mutual covenants and conditions contained therein, the Internet Marketing Service Agreement ("Agreement") effective October 1, 1999, by and between Golden Rule Insurance Company, an Illinois-domiciled health insurer ("Golden Rule") and eHealthInsurance Services, Inc., a Delaware corporation ("eHealth") is amended as follows.

1. The following is added to Section 7 **Golden Rule Information**:

Golden Rule is authorized to provide access to the confidential information in the event there is a regulatory request. Golden Rule shall notify eHealth prior to disclosure to permit eHealth to intervene to satisfy the disclosure requirement or seek appropriate relief from the regulatory agency or a court. Satisfaction of the disclosure requirement by eHealth or seeking appropriate relief will be at the eHealth's expense. eHealth will hold Golden Rule harmless from any damages or penalties incurred by their intervention to satisfy the disclosure requirement or seeking appropriate relief from the regulatory agency or court. This provision survives the termination of this agreement.

2. This Amendment shall be effective upon execution.

3. All other terms and conditions of the agreement shall remain in full force and effect except where superseded by this Amendment.

IN WITNESS WHEREOF the parties have executed this Amendment through their authorized representatives as of the dates written below:

EHealthInsurance Services, Inc.

Golden Rule Insurance Company

By: /s/ Nitin M. Patel

By: ***

Printed Name: Nitin M. Patel

Printed Name: ***

Title: Vice President

Title: Vice President

Date: 3/25/03

Date: 3/11/03

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**AMENDMENT NUMBER 5
TO THE INTERNET MARKETING SERVICE AGREEMENT
BETWEEN
GOLDEN RULE INSURANCE COMPANY
AND
eHEALTHINSURANCE SERVICES, INC.**

The Internet Marketing Service Agreement (“the Agreement”) by and between Golden Rule Insurance Company (“GRIC”) and eHealthInsurance Services, Inc. (“EHI”) dated October 1, 1999, as previously amended, is further amended by addition of the following paragraphs:

1. EHI shall develop an “EHI site” to which certain visitors to one or more other web sites, owned and/or operated by GRIC or entities with whom GRIC has a relationship (“Other Web Site(s)”), may be transferred or directed. In EHI’s sole discretion, the EHI site may be a dedicated portion of its general retail web site, namely <http://www.ehealthinsurance.com>, or a separate, dedicated web site. The initial launch of the EHI site will be approved by the Parties subsequent to the execution of this Amendment and only upon the prior written approval of GRIC will the EHI site include the trademarks or servicemarks of GRIC. Generally, however, the parties intend that visitors to the Other Web Site(s), who express an interest in receiving information about, or purchasing, products that GRIC does not have available, shall be given the opportunity to be transferred to, or shall be directed to, the EHI site. Except as expressly provided herein, the EHI site shall at all times have at least the same functionality as offered on EHI’s general retail web site. Except as otherwise set forth herein, EHI shall be solely responsible, at its own expense, for the development, operation and maintenance of the EHI site.
2. For purposes of accomplishing the visitor transfers/directions from the Other Web Site(s) to the EHI site, GRIC shall create, or cause to be created, one or more hypertext links (“Links”) to the EHI site, no later than [***] ([***)] days following the date the EHI site is fully functional in accordance with Paragraph 1 above. The Parties may agree, on a case-by-case basis, that other methods of transfer/direction are acceptable or preferable under circumstances presented. For purposes of this Amendment, “Links” shall include all of those other methods.
3. During the term of this Amendment, the EHI site may advertise or make available any: (a) health insurance; or (b) health-related or insurance-related products or services (“Related Products”) that are offered on EHI’s general retail web site. The EHI site shall disclose the lack of relationship between GRIC and those health insurance or Related Products or services in language that is mutually agreeable to the Parties. EHI will use GRIC advertising material on the EHI site only after receiving prior written approval of the use from GRIC.

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4. EHI shall provide visitors to the EHI site with the equivalent toll free telephone and online support by licensed health insurance producers that it provides to visitors to or customers of its general retail web site.

5. For those states in which GRIC is licensed to offer health insurance products, EHI will pay the "Referral Fees" [a percentage of all first year and renewal commissions received by EHI (net of refunds and/or chargeback's)], as set forth in Exhibit A attached hereto, for the duration of any coverage that is issued and accepted in response to a health insurance application initiated by a visitor to the EHI site, without regard to the underwriter and/or issuer of such coverage. Referral Fees shall be paid by EHI to GRIC for visitors to the EHI site who:

- A. initiate an application for health insurance through the EHI site, regardless of the method used to submit such application; and
- B. are residents of states, territories and/or protectorates of the United States of America in which GRIC has an active license to transact health insurance business, but in which GRIC does not, at the time of such initiated application, have any health insurance products available for issuance to such residents.

Referral Fees shall not be payable on any coverage issued by GRIC.

6. EHI shall pay to GRIC a one-time "Linking Fee", in accordance with Exhibit A attached hereto, for each application initiated through the EHI site and Fully Submitted by a resident [***] or by a resident of any territories and/or protectorates of the United States of America in which GRIC does not have an active license to transact health insurance business at the time each such application is Fully Submitted. "Fully Submits" (or a "Fully Submitted" application) shall be defined as a visitor that: (a) completes an online or paper application; (b) manually or electronically signs the completed application; and (c) in the case of electronically signed applications, clicks "submit" or otherwise electronically transmits the application to EHI, or, in the case of paper applications, delivers or causes them to be delivered to EHI, along with any additional required forms and/or applications fully executed and accompanied by the first period's premium payment, or similar initial cost. The Referral Fee and the Linking Fee shall be collectively referred to as "the Fee(s)". With regard to Related Products the term "application" includes a request for such product if an application *per se* is not used.

In the event of termination of this Amendment for any reason other than termination by EHI under Paragraph 16(C.)(ii) hereof:

- A. EHI's obligation under paragraph 5 above shall survive such termination with regard to any and all coverage that was issued at any time prior to such termination and on account of which EHI receives, or is entitled to receive, first year or renewal commission; and

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B. EHI's obligations under paragraph 6 above shall survive such termination with regard to any and all applications that were Fully Submitted at any time prior to such termination.

7. Fees are due and payable on a monthly basis, and shall be paid to GRIC on or before the thirtieth (30th) day following the last day of the month in which the Fee(s) is/are earned. Referral Fees are earned when EHI receives a commission payment (or any other compensation that is in lieu of commission) from the insurance carrier that issued or underwrote the coverage, and the effective date of the coverage has passed. Linking Fees are earned when a visitor Fully Submits an application and EHI receives it. Fee checks shall be accompanied by a report setting forth the calculation of the Fees. EHI reserves the right to engage a third party entity to process and pay any Fees earned pursuant to this Amendment. The Fees may not be set-off against any compensation due EHI from GRIC under the Agreement.

8. EHI shall keep and maintain accurate books and records with regard to the Fees due under this Amendment. An independent, nationally recognized CPA firm selected by GRIC (bound in confidence not to disclose any information except to inform GRIC of discrepancies) shall be entitled to review and audit such books and records from time to time (but no more than once in any twelve (12) month period) during normal business hours upon reasonable notice to EHI. All reviews and/or audits shall be at GRIC's expense, provided that EHI will bear any such expense if the review or audit shows an underpayment of Fees to GRIC of more than ten percent (10%) for the applicable period.

9. Within thirty (30) days of the EHI site being made available to the public, EHI shall provide GRIC access to an extranet website through which GRIC will be able to access its account via a unique password. This extranet shall be substantially similar to Exhibit C and shall contain, subject to the limitations of EHI's privacy policy and any applicable law, rule, or regulation: (a) for individual, family, and short-term plans: the number of [***]; and (b) for small group plans: the [***]. Further, the Parties will mutually agree upon additional reporting for GRIC of [***] on a [***] basis. Such data shall include, at a minimum, the information set forth in Exhibit D and shall be in a format mutually agreed upon by the parties. EHI shall own all sales related data on the extranet and/or provided in written format to GRIC and it shall be subject to all privacy and confidentiality provisions of the Agreement.

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10. Each party agrees to comply with all state or federal laws and regulations applicable to that party and to indemnify the other party for any losses incurred by the other party due to noncompliance, unless the other party was also involved in the noncompliance.

11. The Parties shall not permit a link to the EHI site from any website or Email that contains any content or material that is sexual or offensive in nature or that in any way promotes or encourages hatred, violence, or discrimination. GRIC shall not use any deceptive means, including, but not limited to, misleading advertising, to refer visitors to the EHI site.

12. EHI will use commercially reasonable efforts to ensure that the EHI Site is operational during the term of this Amendment at least [***] percent ([***]%) of each month, excluding downtime for regularly scheduled maintenance, which shall be performed during off-peak hours.

13. Each Party agrees to give the other Party commercially reasonable notice of any system change or upgrade that may require a system change or upgrade by the other Party or with respect to the Other Web Site(s). EHI recognizes that GRIC has no ownership of, or operational or maintenance responsibility for, the Other Web Site(s), and, therefore, is only required to use its best efforts to fulfill the obligations of this paragraph and paragraphs 2 and 11 above.

14. EHI grants to GRIC a non-exclusive, non-transferable license (without right to sublicense) to use and display, during the term of this Amendment, the name, logo and other identifiers as set forth on Exhibit B attached hereto (the "EHI Licensed Marks"), solely for the purposes of allowing GRIC to perform its obligations under this Amendment. GRIC agrees that the EHI Licensed Marks are and will remain the sole property of EHI and GRIC agrees not to contest the ownership of such EHI Licensed Marks, nor misappropriate such EHI Licensed Marks for its own use. GRIC also agrees that its use of the EHI Licensed Marks shall be in accordance with EHI's policies regarding the usage of its trademarks to the extent such policies are not in conflict with this Amendment.

15. Excluding any trade or service marks, or other intellectual property, that GRIC specifically allows EHI to display on the EHI site for purposes of this Amendment, EHI shall retain all right, title and interest in the EHI site and all intellectual property rights therein. GRIC shall retain all right, title, and interest in its trade or service marks or other intellectual property.

16. This Amendment will remain in effect throughout the term of the Agreement by and between the Parties, but may be removed from the Agreement by either Party:

- A. without cause upon at least [***] ([***)] calendar days prior written notice to the other Party;

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- B. upon [***] ([***)] calendar days written notice of a material breach of the provisions of this Amendment by the other Party, provided such breach is not cured within such [***] day period;
- C. notwithstanding B. above, immediately if:
 - (i) the Party not initiating the removal action breaches paragraph 11 above, or otherwise engages in conduct that is likely to damage the other Party's reputation; or
 - (ii) either Party presents or causes to be presented to the other any incomplete, misleading or false information regarding, associated with, or contained in, any Fully Submitted Application; or
 - (iii) EHI presents or causes to be presented to GRIC any incomplete, misleading or false information under Paragraph 9 above.

This Amendment may also be removed from the Agreement by further written agreement of the Parties.

Removal of this Amendment under any circumstances shall not affect the remaining provisions of the Agreement.

Upon termination of this Amendment for any reason GRIC shall, as soon as reasonably possible, disconnect or cause to be disconnected the Links to the EHI site, and EHI shall, as soon as reasonably possible, remove from the EHI site all trade or service marks, or other intellectual property, that GRIC allowed EHI to display on the EHI site for purposes of this Amendment.

17. This Amendment shall be effective upon the latter of the dates written below.

All terms and conditions of the Agreement remain in full force and effect unless specifically changed by this Amendment.

This Amendment is accepted and agreed to by the Parties this as evidenced by the signatures below of their respective authorized representatives.

GOLDEN RULE INSURANCE COMPANY

eHEALTHINSURANCE SERVICES, INC.

By: [***]
[***]

By: /s/ Bruce Telkamp
Bruce Telkamp

Title: Vice President of Sales

Title: Senior Vice President

Date: 2/22/05

Date: 2/24/05

[*] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

EXHIBIT A

(Fees)

I. Referral Fees (Licensed States)

EHI will pay GRIC the Referral Fees set forth below based on the [***] plan [***] the [***] to date.

[***]	[***]%
[***]	[***]%
[***]	[***]%
[***]	[***]%

II. Linking Fees (Unlicensed States and Related Products)

[***] Plans	\$	[***]
Dental Plans	\$	[***]
Individual & Family Plans	\$	[***]
Small Group Plans ([***] employees)	\$	[***]
Small Group Plans ([***] employees)	\$	[***]
Small Group Plans ([***] employees)	\$	[***]
Small Group Plans ([***] employees)	\$	[***]
Small Group Plans ([***] employees)	\$	[***]
Small Group Plans ([***] employees)	\$	[***]
Additional Products Added to the eHealth Site		eHealth's then standard Linking Fee for such product

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EXHIBIT C
(Partner [*])**

Partner Reporting
Monthly Summary

Company Name Test
Brand Name Test ABC
Alliance ID Tes11111
Report Date 01-11-2001

Individual, Family & Medicare Supplemental Plans (IFP/MS):

MONTH	[***]	[***]	[***]	[***]	[***]	[***]
2001/01	12345	1234	1025	155	111	188
2000/12	23456	1234	1025	155	111	188
2000/11	45678	1234	1025	155	111	188
2000/10	56789	1234	1025	155	111	188
2000/09	78901	1234	1025	155	111	188
2000/08	12345	1234	1025	155	111	188
2000/07	11111	1234	1025	155	111	188
2000/06	22222	1234	1025	155	111	188
2000/05	33333	1234	1025	155	111	188

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*** Medical Insurance (***):

MONTH	***	***	***	***	***	***
2001/01	12345	1234	1025	155	111	188
2000/12	23456	1234	1025	155	111	188
2000/11	45678	1234	1025	155	111	188
2000/10	56789	1234	1025	155	111	188
2000/09	78901	1234	1025	155	111	188

*** Plans (***):

MONTH	***	***	***	***	***	***
2001/01	555	20	8	5	28	18
2000/12	555	20	8	5	28	18
2000/11	555	20	8	5	28	18
2000/10	555	20	8	5	28	18
2000/09	555	20	8	5	28	18
2000/08	555	20	8	5	28	18
2000/07	555	20	8	5	28	18
2000/06	555	20	8	5	28	18
2000/05	555	20	8	5	28	18
2000/05	555	20	8	5	28	18

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EXHIBIT D
(Additional Reports)

- I. Monthly Report on [***] sold as a result of [***] to eHealth insurance to include the following information:
- a. [***] Type
 - i. [***];
 - ii. [***];
 - iii. [***];
 - iv. [***]; and
 - v. [***].
 - b. [***] including the combination of [***] including, but not limited to:
 - i. [***];
 - ii. [***]
 - iii. [***]
 - iv. [***]; and
 - v. [***].
 - c. Example:
 - #1 [***].

[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**AMENDMENT NUMBER 6
TO THE INTERNET MARKETING SERVICE AGREEMENT
BETWEEN
GOLDEN RULE INSURANCE COMPANY
AND
eHEALTHINSURANCE SERVICES, INC.**

The Internet Marketing Service Agreement (“the Agreement”) by and between Golden Rule Insurance Company (“GRIC”) and eHealthInsurance Services, Inc. (“EHI”) dated October 1, 1999, as previously amended, is further amended by as follows:

Section 1 of Amendment 5 is hereby amended and restated in its entirety to read as follows:

EHI shall develop an “EHI site” to which certain visitors to one or more other web sites, owned and/or operated by GRIC or entities with whom GRIC has a relationship (“Other Web Site(s)”), may be transferred or directed. In EHI’s sole discretion, the EHI site may be a dedicated portion of its general retail web site, namely <http://www.ehealthinsurance.com>, or a separate, dedicated web site. The initial launch of the EHI site will be approved by the Parties subsequent to the execution of this Amendment and only upon the prior written approval of GRIC will the EHI site include the trademarks or servicemarks of GRIC. Generally, however, the parties intend that visitors to the Other Web Site(s), who express an interest in receiving information about, or purchasing, products that GRIC or its affiliates do not have available, shall be given the opportunity to be transferred to, or shall be directed to, the EHI site. Except as expressly provided herein, the EHI site shall at all times have at least the same functionality as offered on EHI’s general retail web site. Except as otherwise set forth herein, EHI shall be solely responsible, at its own expense, for the development, operation and maintenance of the EHI site.

The parties acknowledge that the initial launch of the EHI site occurred in connection with the execution of Amendment Number 5 to the Agreement. This Amendment shall be effective upon the latter of the dates written below.

All terms and conditions of the Agreement remain in full force and effect unless specifically changed by this Amendment.

This Amendment is accepted and agreed to by the Parties this as evidenced by the signatures below of their respective authorized representatives.

GOLDEN RULE INSURANCE COMPANY

eHEALTHINSURANCE SERVICES, INC.

By: [***]
 [***]

By: /s/ Bruce Telkamp
 Bruce Telkamp

Title: Vice President of Sales

Title: Senior Vice President

Date: 3/15/06

Date: March 7, 2006

_____ **[***] CONFIDENTIAL MATERIAL REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

EHEALTHINSURANCE SERVICES, INC.
1390 Borregas Avenue
Sunnyvale, California 94089

November 30, 1999

Mr. Gary Lauer

Dear Gary:

eHealthInsurance Services, Inc. (the "Company") is pleased to offer you employment on the following terms. This offer, if not accepted, will expire at the close of business on December 8, 1999. To accept this offer, you must start employment with the Company by December 31, 1999.

1. Position. You will serve in a full-time position as President and Chief Executive Officer. You will report to the Company's Board of Directors (the "Board"). By signing this letter, you confirm to the Company that you are under no contractual or other legal obligations that would prohibit you from performing your duties for the Company.

2. Base Salary. You will be paid a starting base salary at the rate of \$250,000 per year, payable in accordance with the Company's standard payroll schedule, and you will be eligible for annual increases at the discretion of the Board.

3. Bonus. You will be eligible to be considered for an annual incentive bonus with a target amount equal to 50% of your base salary. Such bonus (if any) shall be awarded based on objective or subjective criteria reasonably established in advance by the Board. The reasonable determinations of the Board with respect to such bonus shall be final and binding.

4. Stock Options.

(a) Option Grant. Subject to the approval of the Company's Board of Directors, you will be granted an option to purchase 1,400,000 shares of the Company's Common Stock (the "Option Shares") on the first date of your employment with the Company. The exercise price per share will be equal to the fair market value per share on the date the Option Shares are granted. The Option Shares will be subject to the terms and conditions applicable to options granted under the Company's 1998 Stock Plan ("Plan"), as described in that Plan and the applicable stock option agreement, provided that the terms and conditions of this letter agreement shall apply to the extent they may be inconsistent with those documents. The option will be immediately exercisable, but the purchased shares will be subject to repurchase by the Company at the exercise price in the event that your service terminates before you vest in the shares. You will vest in 25% of the Option Shares after 12 months of continuous service, and the

balance will vest in monthly installments over the next 36 months of continuous service, as described in the applicable stock option agreement.

(b) Loan. Upon the date that the Option Shares are granted to you, the Company will loan you up to 100% of the amount needed to purchase your Option Shares; however, under Delaware law, you will have to pay the par value of the Option Shares in cash, and the par value is equal to \$0.0001/share. Repayment of the principal amount and accrued interest under this loan agreement is due upon the earliest of the date that is (a) 30 days following a termination of employment for any reason, (b) 12 months following an initial public offering of the Company's securities or (c) the third anniversary of the loan origination date. The loan is full-recourse and will be secured by the Option Shares that you purchase with the loan, as evidenced in a Stock Pledge Agreement. The interest rate of the loan will be equal to the lowest minimum rate necessary to avoid imputed interest income. The terms of the loan will be evidenced by a promissory note agreement in the form attached hereto as Exhibit A.

(c) Change in Control. In the event of a Change in Control, you will become vested in an additional 50% of all of your then unvested Option Shares. In the event your employment is terminated without Cause by the Company or its successor within thirteen (13) months following a Change in Control, you will become fully vested in all of the Option Shares. For the purposes of this agreement, "Change in Control" shall mean (1) the consummation of a merger or consolidation of the Company with or into another entity or any other corporate transaction, if persons who were not shareholders of the Company immediately prior to such merger, consolidation or other transaction own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (A) the continuing or surviving entity and (B) any direct or indirect parent corporation of such continuing or surviving entity; or (2) the sale, transfer or other disposition of all or substantially all of the Company's assets. A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(d) Cause. For all purposes under this employment agreement, "Cause" shall mean the commission of any act of fraud, embezzlement or dishonesty; conviction of a felony under the laws of the United States or any state thereof; continued failure to perform assigned duties for 30 days after receiving written notification from the Board, any unauthorized use or disclosure of confidential information or trade secrets of the Company, or any other intentional misconduct provided that the act in question adversely affects the business of the Company in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Company may consider as grounds for your dismissal or discharge from the Company.

(e) Parachute Payments. If any payment or benefit you would receive pursuant to a Change in Control from the Company or otherwise ("Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue

Code of 1986, as amended (the "Code"), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then such Payment shall be reduced to the Reduced Amount. The "Reduced Amount" shall be either (x) the largest portion of the Payment that would result is no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order unless you elect in writing a different order (*provided, however*, that such election shall be subject to Company approval if made on or after the effective date of the Change in Control): reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of your stock awards unless you elect in writing a different order for cancellation.

The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and you within fifteen (15) calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) or such other time as requested by the Company or you. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish the Company and you with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and you.

5. Proprietary Information and Inventions Agreement. Like all Company employees, you will be required, as a condition to your employment with the Company, to sign the Company's standard Proprietary Information and Inventions Agreement, a copy of which is attached hereto as Exhibit A.

6. Employment Relationship. Employment with the Company is for no specific period of time. Your employment with the Company will be "at will", meaning that either you or the Company may terminate your employment at any time and for any reason, with or without

cause. Any contrary representations which may have been made to you are superseded by this offer. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a member of the Board.

7. Severance. If you are terminated by the Company without Cause, you shall be paid a severance payment equal to your then base salary for a 12-month period following such termination and such severance payment will be payable in equal monthly installments over the 12-month period following such termination; the Company will pay for your COBRA health insurance premiums, if any, for a 12-month period following such termination; and the Company will pay to you cash payment(s) equal to the Company's contributions, if any, made on your behalf for any employee benefits (other than health benefits) that you were receiving before your termination for this 12-month period. In addition, if you are terminated by the Company without Cause, you will become vested in an additional 25% of the then unvested Option Shares. To receive any of the severance payments and vesting acceleration described in this Section 7, you must execute a general release (in a form attached by the Company as Exhibit B) of all known and unknown claims that you may then have against the Company or persons affiliated with the Company and agree not to prosecute any legal action or other proceeding based upon any of such claims.

8. Relocation. The Company shall pay for the reasonable transaction and closing costs directly incurred by you in connection with the sale of your current home and the purchase of your new residence in the Bay Area. The Company agrees to use a relocation firm in both the sales and purchase transactions to assist you in reducing the tax impact of these transactions to you. In addition, the Company shall pay the reasonable expenses that you incur in moving yourself, your family and your household to the Bay Area. The Company shall also pay for the reasonable expenses incurred for your temporary housing in the Bay Area from the first date of your employment with the Company through August 31, 2000. The Company shall pay for the reasonable costs of transporting you to Santa Barbara, California to visit your family until August 31, 2000, and the reasonable associated costs of transporting your family to the Bay Area prior to August 31, 2000 for the purpose of arranging their relocation and the selection of and admission to schools for your children. You agree that you and your family will not receive reimbursement for any travel or temporary housing expenses incurred after August 31, 2000. Any reimbursements pursuant to this Section 8 may be subject to the approval of the Board. You agree that you will use your best efforts to move you and your family permanently to the Bay Area by August 31, 2000.

9. Outside Activities. While you render services to the Company, you agree that you will not engage in any other employment, consulting or other business activity without the written consent of the Company. However, you may participate in nonprofit civic and charitable activities, and you may serve on the board of directors for up to two companies (provided they do not compete with the Company) without the consent but with notification of the Company's board. While you render services to the Company, you also will not assist any person or entity in

competing with the Company, in preparing to compete with the Company or in hiring any employees or consultants of the Company.

10. Withholding Taxes. All forms of compensation referred to in this letter are subject to reduction to reflect applicable withholding and payroll taxes.

11. Entire Agreement. This letter supersedes and replaces any prior understandings or agreements, whether oral or written, between you and the Company regarding the subject matter described in this letter.

We hope that you find the foregoing terms acceptable. You may indicate your agreement with these terms and accept this offer by signing and dating both the enclosed duplicate original of this letter and the enclosed Proprietary Information and Inventions Agreement and returning them to me. As required by law, your employment with the Company is also contingent upon your providing legal proof of your identity and authorization to work in the United States.

If you have any questions, please call me.

Very truly yours,

EHEALTHINSURANCE SERVICES, INC.

By: /s/ Vip Patel

Title: Chairman

I have read and accept this employment offer:

/s/ Gary Lauer

Signature of Gary Lauer

Dated: 12/8/99

Attachment

Exhibit A: Proprietary Information and Inventions Agreement

Exhibit B: Form Release Agreement

eHealthInsurance.com

281 East Java Drive
Sunnyvale
California
94089
Ph 408.542.4800
Fax 408.541.0882
www.ehealthinsurance.com

August 22, 2000

Gary Lauer

Stuart Huizinga
eHealthInsurance Services, Inc.
281 E. Java Drive
Sunnyvale, CA 94089

Re: Terms of Employment

Dear Stuart:

This letter serves to clarify the terms of your employment with eHealthInsurance Services, Inc. (the "Company") and supplements your Offer Letter, dated May 4, 2000 ("Offer Letter"). Except as expressly provided this letter agreement, all terms of your Offer Letter shall remain in full force and effect.

The provision in your Offer Letter providing for accelerated vesting upon a change of control of the Company shall be revised as follows:

You will be included in a group of executives who will be given a change of control provision for vesting of stock options. This provision will allow your initial option grant to fully vest immediately after a change of control, provided that within the first twelve months of this change of control, any of the following occur: (1) you are terminated for reasons other than misconduct, (2) your position or responsibilities with the Company are materially reduced, (3) your base salary is reduced by more than 5%, or (4) your place of employment is relocated by more than 50 miles.

YOUR ULTIMATE RESOURCE FOR HEALTH INSURANCE

The Company greatly appreciates your continued contribution.

Very truly yours,

eHealthInsurance Services, Inc.

/s/ Gary Lauer

Gary Lauer

Chief Executive Officer and President

Agreed and Accepted:

/s/ Stuart Huizinga

Name: Stuart Huizinga

Date: 8/22/00

YOUR ULTIMATE RESOURCE FOR HEALTH INSURANCE

May 4, 2000

Stuart Huizinga

Re: Terms of Employment

Dear Mr. Huizinga

This letter will confirm the terms of eHealthInsurance Services, Inc. ("the Company") offer of at-will employment to you. Such terms are as follows:

1. **Position and Responsibilities.** You will serve in the position of Chief Financial Officer, reporting to Gary Lauer. You will assume and discharge such responsibilities as Gary Lauer may direct. You shall also be responsible to assist sales and marketing efforts as needed and to address customer requirements.

During the term of your employment, you shall devote your full time, skill and attention to your duties and responsibilities and shall perform them faithfully, diligently and completely. In addition, you shall comply with and be bound by the operating policies, procedures and practices of the Company in effect from time to time during your employment. All work completed on behalf of the Company shall exclusively remain the property of the Company.

2. **At-Will Employment.** You acknowledge that your employment with the Company is for an unspecified duration that constitutes at-will employment. Either you or the Company may terminate this relationship without cause upon two weeks prior written notice. Company may immediately terminate employment given cause.

3. **Compensation.**

- (a) Effective upon your start date of May 31, 2000 at eHealthInsurance Services, Inc., you will be paid a base salary of \$15,833.34 per month (\$190,000 annualized) or prorata amount, less any deductions, payable bi-weekly in accordance with the Company's standard payroll practices.
- (b) In addition to your base salary, you will be eligible to earn an annual \$50,000 performance bonus based on objectives mutually agreeable to you and the Company.
- (c) If your employment is terminated by the Company for any reason, with or without cause, or if you resign your employment voluntarily, no compensation or other payments will be paid or provided to you for periods following the date when such a termination of employment is effective, provided that any rights you may have under the benefit plans of the Company shall be determined under the provision of those plans. If your employment terminates as a result of your death, no compensation or payment will be made to your estate other than those to which your estate may otherwise be entitled under the benefit plans of the Company.

1390 Borregas Avenue Sunnyvale, California 24089 Tel 408.541.4180 Fax 408.541.0882 www.eHealthInsurance.com

4. **Other Benefits.** You will be entitled to receive the standard employee benefits made available to employees of similar positions and with comparable seniority to the full extent of your eligibility therefore, beginning on the first of the month at least 30 days from the start of employment. You will accrue, on a monthly basis 10 days of paid vacation for every full year of employment. However, no employee shall accumulate vacation days in excess of 20 days. During your employment, you shall be permitted, to the extent eligible, to participate in any benefit plan of the Company, including a profit sharing pool that is available to employees generally. Participation in any such plan shall be consistent with your rate of compensation to the extent that compensation is a determinative factor with respect to coverage under any such plan.
5. **Stock Options.** Subject to the approval of the Company's Board of Directors or its Compensation Committee, you will be granted an option to purchase 250,000 shares of the Company's Common Stock. The exercise price per share will be equal to the fair market value per share on the date the option is granted or on your first day of employment, whichever is later. The option will be subject to the terms and conditions applicable to options granted under the Company's 1998 Stock Plan, as described in that Plan and the applicable stock option agreement. The option will be immediately exercisable, but the purchased shares will be subject to repurchase by the Company at the exercise price in the event that your service terminates before you vest in the shares. You will vest in 25% of the option shares after 12 months of continuous service, and the balance will vest in monthly installments over the next 36 months of continuous service, as described in the applicable stock option agreement.

You will be included with a group of executives who will be given a change of control provision for vesting of stock options. For the first 13 months after change of control, if you are involuntarily terminated for reasons other than misconduct, under this provision, 50% of your unvested options will fully vest. Additionally, if your responsibilities are materially reduced resulting in a reduction in excess of 15% of base salary or if you are required to relocate more than 100 miles as a result of the change of control, you will also qualify for 50% of your unvested options to fully vest.

If you are terminated in your first 12 months of employment for reasons other than cause, the company will provide you a 6-month salary severance and vest 12.5% of your original stock option grant. If you are terminated after your 12th month of employment for reasons other than cause, you will receive a 6-month salary severance.
6. **Additional Agreement.** You agree that your employment is contingent upon your execution of, and delivery to the Company of a Proprietary Information and Inventions Agreement utilized by the Company.
7. **Conflicting or Competing Employment.** You agree that, during the term of your employment with the Company, you will not engage in any other employment, occupation, consulting or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to the Company. You agree that for a one year period after your employment with the Company that you will not directly or indirectly enter into or attempt to enter into the Company's Restricted Business as defined as "Internet-based software or services for insurance industry or health care industry", and you will not induce or attempt to persuade any former, current or future employee or consultant to enter into any relationship with yourself.

8. General Provisions.

- (a) This offer letter and the terms of your employment will be governed by the laws of the State of California.
- (b) This offer letter and corresponding Agreement supersede all prior verbal discussions between you and the Company. Any subsequent change or changes in your duties, salary, or other compensation will not affect the validity or scope of this agreement. Any change to the at-will term of this agreement must be executed in writing and signed by you and the President of the Company.
- (c) This agreement will be binding upon your heirs, executors, administrators, and other legal representatives and will be for the benefit of the Company and its respective successors and assigns.

Please acknowledge and confirm your acceptance of this letter by filling in your effective date, signing and returning one copy of this offer letter, and the Additional Agreement as soon as possible. This offer expires on May 8, 2000. Any changes or modifications to this offer can only be made in writing and signed by the President and Chief Executive Officer. If you have any questions about this offer letter, please call Human Resources.

eHealthInsurance Services, Inc.

By /s/ Gary Lauer
Gary Lauer
President and Chief Executive Officer

ACCEPTANCE:

I accept the terms of my employment with eHealthInsurance Services, Inc. as set forth, herein. I understand that this offer letter does not constitute a contract of employment for any specified period of time, and that my employment relationship may be terminated by either party, with or without cause.

/s/ Stuart Huizinga
Stuart Huizinga

eHealthInsurance.com

281 East Java Drive
Sunnyvale
California
94089
Ph 408.542.4800
Fax 408.541.0882
www.ehealthinsurance.com

August 24, 2000

Gary Lauer

Sheldon Wang
eHealthInsurance Services, Inc.
281 E. Java Drive
Sunnyvale, CA 94089

Re: Terms of Employment

Dear Sheldon:

This letter serves to clarify the terms of your employment with eHealthInsurance Services, Inc. (the "Company") and supplements your Offer Letter, dated July 26, 1999 ("Offer Letter"). Except as expressly provided this letter agreement, all terms of your Offer Letter shall remain in full force and effect.

In the event your employment is involuntary terminated without cause, you shall receive (i) the equivalent of your regular salary for a period of six (6) months from the date of your termination, and (2) the equivalent of your health insurance benefits with the Company for a period of six (6) months from the date of your termination. Customary payroll taxes and income tax withholdings will be deducted from the salary continuation payments.

Cause shall be defined as (i) any intentional misconduct, fraud, or bad faith on your part in the performance of your duties; (ii) conviction of, or the entry of a plea of guilty or no contest to, any felony; (iii) your continued demonstrable failure to perform any reasonable duties assigned to you by the Company, if such failure is not cured within ten (10) days after you receive written notice of such failure; or, (iv) your inability to perform the material duties of your position as a result of illness or injury, if you remain unable to perform such duties for a total of ten (10) consecutive weeks, as certified by a physician.

YOUR ULTIMATE RESOURCE FOR HEALTH INSURANCE

The Company greatly appreciates your continued contribution.

Very truly yours,

eHealthInsurance Services, Inc.

/s/ Gary Lauer

Gary Lauer

Chief Executive Officer and President

Agreed and Accepted:

/s/ Sheldon Wang

Name: Sheldon Wang

Date: 8/28/00

YOUR ULTIMATE RESOURCE FOR HEALTH INSURANCE

eHealthInsurance.com

281 East Java Drive
Sunnyvale
California
94089
Ph 408.542.4800
Fax 408.541.0882
www.ehealthinsurance.com

August 7, 2000

Gary Lauer
gary@ehealthinsurance.com
Direct Dial: 408.542.4850

Bruce A. Telkamp
eHealthInsurance Services, Inc.
281 E. Java Drive
Sunnyvale, CA 94089

Re: Terms of Employment

Dear Bruce:

This letter serves to clarify the terms of your employment with eHealthInsurance Services, Inc. (the "Company") and supplements your Offer Letter, dated April 6, 1999 ("Offer Letter"). Except as expressly provided this letter agreement, all terms of your Offer Letter shall remain in full force and effect.

First, if your employment is involuntarily or constructively terminated without cause, then: (1) twenty-five (25%) of your initial stock option grant shall immediately vest (and the Company's right of repurchase shall lapse), and (2) you shall receive a severance payment equal to six (6) months of your base compensation then in effect, including all bonuses that you would have been eligible to receive during this period. You shall be deemed constructively terminated if you lose your position as a Vice President and/or General Counsel of the Company or the Company materially diminished your responsibilities as Vice President and General Counsel.

YOUR ULTIMATE RESOURCE FOR HEALTH INSURANCE

Additionally, the provision in your Offer Letter providing for accelerated vesting upon a change of control of the Company shall be revised as follows:

You will be included in a group of executives who will be given a change of control provision for vesting of stock options. This provision will allow your option grant(s) to fully vest immediately after a change of control, provided that within the first twelve months of this change of control, any of the following occur: (1) you are terminated for reasons other than misconduct, (2) your position or responsibilities with the Company are materially reduced, (3) your base salary is reduced by more than 5%, or (4) your place of employment is relocated by more than 50 miles.

The Company greatly appreciates your continued contribution.

Very truly yours,

eHealthInsurance Services, Inc.

/s/ Gary Lauer

Gary Lauer

Chief Executive Officer and President

Agreed and Accepted:

/s/ Bruce A. Telkamp

Name: Bruce A. Telkamp

August 7, 2000

Date: August 7, 2000

YOUR ULTIMATE RESOURCE FOR HEALTH INSURANCE



eHealth, Inc.
440 East Middlefield Road
Mountain View, CA 94043
www.ehealth.com
Phone 650.584.2700
Fax 650.961.2110

November 17, 2005

Jack L. Oliver III
Bryan Cave Strategies
700 13th Street N.W., Suite 500
Washington, DC 20005

Re: eHealth Board Membership Offer

Dear Jack:

eHealth, Inc. (the "Company") is pleased to offer you a position as a member of the Company's Board of Directors (the "Board"). The following is some information on the benefits available to you as a member of the Board.

Subject to the approval of the Board, you will receive the following cash payments in consideration for your Board service: (a) \$12,000 annual retainer, which will be paid when you initially become a member of the Board and annually thereafter; and (b) \$2,500 for each Board meeting that you attend in person. You will also be reimbursed for travel, lodging and other reasonable out-of-pocket expenses incurred in attending Board meetings and for meetings of any committees of the Board on which you may serve.

Subject to the approval of the Board, you will be granted an option to purchase 50,000 shares of the Company's Common Stock when you initially become a member of the Board. Subject to the approval of the Board, you will also be granted an option to purchase 12,500 shares of the Company's Common Stock upon the date of each of the Company's annual stockholders' meetings. The exercise price per share will be equal to the fair market value per share on the date each option is granted. Each option will be subject to the terms and conditions applicable to options granted under the Company's equity incentive plan ("Plan"), as described in that Plan and the applicable stock option agreement. You will vest in 25% of the option shares upon your completion of 12 months of continuous Board service following the option grant date and 1/48 of the option shares upon your completion of each of the next 36 months of Board service.

Nothing in this offer or the stock option agreement should be construed to interfere with or otherwise restrict in any way the rights of the Company and the Company's stockholder to remove any individual from the Board at any time in accordance with the provisions of applicable law.



Jack L. Oliver III
November 17, 2005
Page 2

We hope that you find the foregoing terms acceptable. You may indicate your agreement with these terms and accept this offer by signing and dating both this letter and the enclosed duplicate original of this letter and returning them to me.

If you have any questions, please call me.

Sincerely

eHealth, Inc.

By: /s/ Gary Lauer

Gary Lauer
Chief Executive Officer and Chairman

I have read and accept this offer:

/s/ Jack L. Oliver III

Signature of Jack L. Oliver III

Dated: November 22, 2005

GLL:llh

LEASE AGREEMENT
(SINGLE TENANT BUILDING IN SINGLE BUILDING PROJECT)

between

BRIAN AVERY, TRUSTEE OF THE
1983 AVERY INVESTMENTS TRUST,
as "Landlord"

and

eHEALTHINSURANCE SERVICES, INC.
a Delaware corporation
as "Tenant"

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BASIC LEASE INFORMATION

Lease Date:

For identification purposes only, the date of this Lease is May __, 2004

Landlord:

Brian Avery, Trustee of the 1983 Avery Investments Trust

Tenant:

eHealthInsurance Services, Inc., a Delaware corporation

Building Address:

440 Middlefield Road, Mountain View, CA 94043

Total Building Square Footage

17,740 square feet ±

Term:

Sixty (60) full calendar months (plus any partial month at the beginning of the Term)

Anticipated Commencement Date:

The later of (i) August 27, 2004, or (ii) fourteen (14) days after substantial completion of the Initial Tenant Improvements (as defined in Section 6.6, below) and Landlord's delivery of the Premises to Tenant, subject to the terms and conditions of Article 2, below.

Prior Occupancy

Landlord shall make reasonable efforts to deliver the Premises to Tenant on or before August 13, 2004, for the purposes of enabling Tenant to move Tenant's property into the Premises and to perform any construction relating to the installation of telephone, computers, data/phone cabling and special fixtures not installed by Landlord.

Expiration Date:

The last day of the sixtieth (60th) full calendar month in the Term, pursuant to Section 2 hereof.

Monthly Base Rent:

<u>Months</u>	<u>Monthly Base Rent</u>
1-12	\$ 22,175.00
13-24	\$ 23,062.00
25-36	\$ 23,949.00
37-48	\$ 24,836.00
49-60	\$ 25,723.00

Tenant's Share:

One Hundred Percent (100%)

Security Deposit:

Cash in the amount of \$51,446.00, pursuant to Section 4, below

Advance Rent:

Concurrently with its execution and delivery of this Lease, Tenant shall pay the Monthly Base Rent for the first full calendar month of the Term plus Landlord's estimate of Additional Rent for such month, equal to \$29,162.52.

Landlord's Address for Payment of Rent and Notices:

The 1983 Avery Investments Trust
130 East Dana Street
Mountain View, CA 94041

Tenant's Address for Notices:

Prior to the Commencement Date:

eHealthInsurance Services, Inc.
281 East Java Drive
Sunnyvale, CA 94089

Effective upon the Commencement Date, Tenant's sole Address for Notices shall be the Premises address.

The Basic Lease Information set forth above is part of the Lease. In the event of any conflict between any provision in the Basic Lease Information and the Lease, the Lease shall control.

LEASE

THIS LEASE is made as of the Lease Date set forth in the Basic Lease Information, by and between the Landlord identified in the Basic Lease Information ("Landlord") and the Tenant identified in the Basic Lease Information ("Tenant"). Landlord and Tenant hereby agree as follows:

1. PREMISES. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and conditions of this Lease, those certain premises (the "Premises") consisting of that certain building (the "Building") containing approximately 17,740 square feet located on the real property described in Exhibit A attached hereto and commonly known as 440 Middlefield Road, Mountain View, California. The Premises also include the appurtenant right to the exclusive use of the Common Areas (including without limitation, free of additional charge, the existing parking facilities located thereon (the "Parking Facility"), which parking facilities shall contain no less than four (4) parking spaces per each one thousand (1,000) square feet of space in the Premises). The real property on which the Building is located and all improvements thereon (including the Building and the Parking Facility) are referred to herein, collectively, as the "Property."

2. TERM. The term of this Lease (the "Term") shall commence on the date which is the later to occur of (i) August 27, 2004, or (ii) fourteen (14) days after substantial completion of the Initial Tenant Improvements (as defined in Section 6.6, below) and Landlord's delivery of the Premises to Tenant (the "Commencement Date") and, unless sooner terminated, shall expire on the last day of the month in which the fifth (5th) anniversary of the Commencement Date occurs (the "Expiration Date"). Landlord shall make reasonable efforts to deliver the Premises to Tenant on or before August 13, 2004, for the purposes of enabling Tenant to move Tenant's property into the Premises and to perform any construction relating to the installation of telephone, computers, data/phone cabling and special fixtures not installed by Landlord. The date Landlord delivers the Premises to Tenant shall be referred to herein as the "Prior Occupancy Date", and the fourteen (14) day period between the Prior Occupancy Date and the Commencement Date shall be referred to herein as the "Prior Occupancy Period". If the Prior Occupancy Date has not occurred on or before October 31, 2004, Tenant shall be entitled to terminate this Lease by providing written notice to Landlord, in which event Landlord shall promptly refund any payments made by Tenant hereunder. During the Prior Occupancy Period (and with respect to any entry by Tenant or its agents on the Premises before the Prior Occupancy Date as provided in Section 6.6, below), Tenant shall not be liable for payment of any Monthly Base Rent or Additional Rent, but Tenant shall be bound by all of the other obligations under this Lease with respect to the Premises during such period, including without limitation satisfaction of the insurance requirements of Article 11. Notwithstanding anything in this Article 2 to the contrary, at any time after the Lease Date, Tenant shall be entitled to elect to postpone the Prior Occupancy Date to any date between the actual date of Substantial Completion of the Initial Tenant Improvements and September 6, 2004, by providing a written notice to Landlord, which notice shall specify the Prior Occupancy Date designated by Tenant.

3. RENT.

3.1 Monthly Base Rent. Commencing as of the Commencement Date and continuing throughout the Term of the Lease, Tenant shall pay to Landlord the Monthly Base Rent set forth in the Basic Lease Information (as the same may be adjusted pursuant to Section 6.6(a)(iii), below), without prior notice or demand, on the first day of each and every calendar month occurring during the Term. Tenant shall pay Monthly Base Rent and Landlord's estimate of Additional Rent for one (1) month upon execution of this Lease, with such amounts to be credited to the first full calendar month of the Term. If the Commencement Date occurs on any day other than the first of the calendar month, Monthly Base Rent and Additional Rent for such partial month shall be prorated based on the actual number of days in such month and shall be paid on the Commencement Date, and the advance rental paid at execution shall be credited to following calendar month. Tenant shall not have the right to adjust the Monthly Base Rent based on any remeasurement of the Premises.

3.2 Additional Rent: Operating Costs and Taxes.

(a) Definitions.

(1) "Operating Costs" means all costs of owning, managing, operating, maintaining, repairing, replacing and restoring the Property, including all costs, expenditures, fees and charges for the following: (A) supplying, operating, managing, maintaining, repairing, replacing and restoring utilities, services and related Building Systems (including HVAC), sewers, storm drains, pest control, telecommunications facilities and equipment, recycling programs and trash removal (to the extent not paid directly by Tenant pursuant to this Lease); provided, however, that nothing contained in this subpart (A) shall be construed to make Landlord responsible for maintaining, repairing and/or replacing elements of the Property that are not part of Landlord's obligations under Section 7.2 of this Lease; (B) maintaining, repairing, restoring and replacing the Common Areas of the Property (including the Parking Facility, including resurfacing, repainting, restriping and cleaning same), the nonstructural components of the Building's exterior walls, and the roof of the Building, including the roof membrane; provided, however, that costs incurred to maintain, repair, restore and replace the structural components of the Building's roof system shall not be Operating Costs; (C) compensation (including salaries, wages, employment taxes, fringe benefits and other payroll expenses of employees) for persons who perform duties in connection with the operation, management, maintenance and repair of the Property, such compensation to be appropriately allocated for persons who also perform duties unrelated to the Property; (D) premiums for property (including coverage for earthquake and flood if carried by Landlord), liability, rental income and other insurance relating to the Property, and expenditures for deductible amounts paid under such insurance; (E) licenses, permits, certificates and inspections; (F) complying with the requirements of any Laws; (G) amortization of capital improvements to or replacements of the Property, with interest on the unamortized balance at the rate paid by Landlord on funds borrowed to finance such capital improvements or replacements (or, if Landlord finances such improvements out of Landlord's funds without borrowing, the rate that Landlord would

have paid to borrow such funds, as reasonably determined by Landlord), over the useful life of such improvements or replacements, as determined in accordance with commercially reasonable standards for such improvements or replacements (except that Operating Costs shall not include amortization of capital improvements to or replacements of the Property that are to be performed at Landlord's sole cost and expense pursuant to Section 7.2 of this Lease); provided, however, that the foregoing notwithstanding, if the total amount of such amortization for a calendar year occurring during the Term is less than \$15,000.00, Landlord shall be entitled to accelerate the amortization of the capital improvements and/or replacements in question and include in Operating Costs up to \$15,000.00 of amortization for the calendar year; (H) property management fees equal to three percent (3.0%) of the annual amount of Monthly Base Rent payable hereunder; (I) complying with and/or performing obligations under any reciprocal easement agreement or other similar arrangement with adjacent property owners; (J) reasonable accounting, legal and other professional services incurred in connection with the operation of the Property and the calculation of Operating Costs and Taxes; (K) a reasonable allowance for depreciation on machinery and equipment used to operate and maintain the Property and on other personal property owned by Landlord in the Property; (L) contesting the validity or applicability of any Laws that may affect the Property; (M) reserves for future expenditures of the type described herein, as reasonably determined by Landlord; (N) supplies, materials, tools and rental equipment; and (O) any other cost, expenditure, fee or charge, whether or not hereinbefore described, which in accordance with generally accepted property management practices would be considered a reasonable expense of managing, operating, maintaining, repairing and/or improving the Property.

Operating Costs shall not include (i) ground rent payments; (ii) interest and principal payments on loans or indebtedness of Landlord, financing costs and amortization of funds borrowed by Landlord, whether secured or unsecured; (iii) depreciation, except to the extent included in Operating Costs pursuant to subpart (K) of the first paragraph of this provision; (iv) costs, fines or penalties incurred due to the violation of any Law by Landlord and/or its employees, agents or contractors; (v) salaries, wages, benefits and other compensation paid to officers and employees of Landlord who are not assigned in whole or in part to the operation, management, maintenance or repair of the Property; (vi) general organizational, administrative and overhead costs relating to maintaining Landlord's existence, either as a corporation, partnership or other entity, including general corporate, legal and accounting expenses incurred in connection therewith; (vii) costs and expenses, including legal fees, incurred in connection with negotiations or disputes with employees, consultants, management agents, leasing agents, service providers, purchasers or mortgagees of the Building or the Property; (viii) tax penalties, fines or interest incurred as a result of Landlord's failure, inability or unwillingness to pay and/or to file any tax or informational returns when due, or from Landlord's failure to make any tax payment required to be made by Landlord before delinquency (other than to the extent any such failure to pay and/or to file, or to pay before delinquency, is due to Tenant's failure to timely pay Tenant's Share of Taxes and/or Tenant's Taxes); (ix) overhead and profit increment paid to the Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Building or the Property to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third

parties on a competitive basis; (x) costs arising from Landlord's charitable or political contributions; (xi) costs incurred in connection with the sale or refinancing of the Building or the Property; (xii) income taxes measured by the net income of Landlord or the owner of any interest in the Building or the Property, franchise, capital stock, gift, estate or inheritance taxes or any federal, state or local documentary transfer taxes imposed in connection with recording a deed transferring an interest in the Property or any portion thereof or interest therein; (xiii) any expense to the extent covered and actually paid by insurance; (xiv) any costs and expenses incurred to comply with Environmental Requirements that do not arise out of or result from Hazardous Materials Handled by Tenant, and (xv) any and all costs to maintain the landscaping on the Property (such costs are included in the "Tax and Landscape Expense" pursuant to Section 3.2(a)(3), below).

(2) "Taxes" means all real property taxes and general, special and district assessments and other governmental impositions, fees, levies and charges of whatever kind, nature or origin, imposed on, or by reason of the ownership or use of, the Property, including: governmental charges, fees or assessments for transit or traffic mitigation (including area-wide traffic improvement assessments and transportation system management fees), housing, police, fire or other governmental service or purported benefits to the Property, including assessments, taxes, fees, levies and charges imposed by governmental agencies for such purposes as street, sidewalk, road, utility construction and maintenance, refuse removal and for other governmental services; personal property taxes assessed on the personal property of Landlord used in the operation of the Property; service payments in lieu of taxes; any tax, fee or excise on the use or occupancy of any part of the Property, or on rent for the Property or for space in the Property; and any other fees, taxes or assessments of any kind or nature whatsoever levied or assessed in addition to, in lieu of or in substitution for existing or additional real or personal property taxes on the Property or the personal property described above; any increases in the foregoing caused by changes in assessed valuation, tax rate or other factors or circumstances; and the reasonable cost of contesting by appropriate proceedings the amount or validity of any taxes, assessments or charges described above; but excluding income taxes measured by the net income of Landlord or the owner of any interest in the Building or the Property, franchise, capital stock, gift, estate or inheritance taxes or any federal, state or local documentary transfer taxes imposed in connection with recording a deed transferring an interest in the Property or any portion thereof or interest therein. To the extent paid by Tenant as "Tenant's Taxes" (as defined in Section 8), "Tenant's Taxes" shall be excluded from Taxes. Taxes paid by Tenant hereunder as Additional Rent shall be subject to the limitations set forth in Section 3.2(a)(3), below.

(3) "Tax and Landscape Expense" means an amount equal to \$4,257.60 per month, representing Landlord's current monthly expense for Taxes and maintenance of all landscaping at the Property. As partial consideration for this Lease, Landlord agrees that the Tax and Landscape Expense shall not be increased during the initial Term of this Lease.

(4) "Tenant Improvement Expense" means the cost of all Alternate Items, as defined in and selected by Tenant pursuant to Section 6.6, below, amortized

over the initial Term of the Lease at eight percent (8%) interest per annum. The Tenant Improvement Expense shall be an additional monthly payment by Tenant to Landlord equal to \$0.02028 per month multiplied by Landlord's total, actual cost of the Alternate Items selected by Tenant (which cost shall include materials and labor for all Alternate Items plus a pro rata allocation of all other expenses arising in connection with construction of the Initial Tenant Improvements, including without limitation contractor's subcontractors' fee, profit and overhead, general conditions and insurance).

(5) "Tenant's Share" means one hundred percent (100%).

(b) Additional Rent.

(1) Commencing on the Commencement Date and continuing throughout the Term of the Lease, Tenant shall pay to Landlord, as Additional Rent, Tenant's Share of the sum of Operating Costs and the Tax and Landscape Expense for each calendar year, or portion thereof, occurring during the Term (except that Tenant's Share of estimated Operating Costs and the Tax and Landscape Expense for the first full calendar month of the Term shall be paid upon Tenant's execution of this Lease), and during the initial Term, Tenant shall also pay the Tenant Improvement Expense as Additional Rent with each regular, monthly payment of Rent.

(2) Prior to Commencement Date and thereafter prior to the end of each calendar year, Landlord shall notify Tenant of Landlord's estimate of Operating Costs and the Tax and Landscape Expense to be paid as a component of Additional Rent for the following calendar year. Commencing on the first day of January of each calendar year and continuing on the first day of every month thereafter in such year, Tenant shall pay to Landlord one-twelfth (1/12th) of such estimated Additional Rent. If Landlord thereafter estimates that Operating Costs for such year will vary from Landlord's prior estimate, Landlord may, on not less than thirty (30) days' prior written notice to Tenant, revise the estimate for such year (and Additional Rent shall thereafter be payable based on the revised estimate). Landlord's initial estimate of Operating Costs is \$2,729.92 per month, which, together with the monthly Tax and Landscape Expense of \$4,257.60, is payable as Additional Rent beginning on the Commencement Date.

(3) As soon as reasonably practicable after the end of each calendar year, Landlord shall furnish Tenant a statement (the "Statement") with respect to such year, showing Operating Costs, the Tax and Landscape Expense and any other Additional Rent for the year, and the total payments made by Tenant with respect thereto. Unless Tenant raises any objections to Landlord's Statement within ninety (90) days after receipt of the same, such Statement shall conclusively be deemed correct and Tenant shall have no right thereafter to dispute such Statement or any item therein or the computation of Additional Rent based thereon. If Tenant does object to such Statement within the requisite time period, then Landlord shall provide Tenant with reasonable verification of the figures shown on the Statement and the parties shall negotiate in good faith to resolve any disputes. If after such negotiations Landlord and Tenant cannot agree upon the amount of Operating Costs, then Tenant shall have the right to have an independent public accounting firm selected by Tenant from among the five (5) largest

firms in the United States, working pursuant to a fee arrangement other than a contingent fee (at Tenant's sole cost and expense) and approved by Landlord (which approval shall not be unreasonably withheld or delayed), audit and/or review Landlord's books and records relating to the Statement and the calculation of Operating Costs for the year in question (the "Independent Review"). The results of any such Independent Review shall be binding on Landlord and Tenant, unless Landlord elects, within sixty (60) days of receipt of the results of the Independent Review, to initiate legal proceedings to resolve any disputes regarding conclusions in the Independent Review that Landlord does not accept. If the Independent review and/or any legal proceedings with respect thereto show that the Operating Costs actually paid by Tenant for the calendar year in question exceeded Tenant's obligations for such calendar year, Tenant may offset such excess against Rent due under the Lease or, if no rent remains due, Landlord shall pay the excess to Tenant within fifteen (15) days after final determination of the Operating Costs after deducting all other amounts due Landlord. If the Independent Review and/or any legal proceedings with respect thereto show that Tenant's payments of Operating Costs for such calendar year were less than Tenant's obligation for the calendar year, Tenant shall pay the deficiency to the Landlord within fifteen (15) days after final determination of the Operating Costs. If the Independent Review and/or any legal proceedings with respect thereto show that Tenant has overpaid Operating Costs for the year in question by more than five percent (5%), then Landlord shall reimburse Tenant for all reasonable costs paid by Tenant to the firm performing the Independent Review. Operating Costs for the calendar years in which Tenant's obligation to share therein begins and ends shall be prorated. Any failure of Landlord to deliver Landlord's Statement as provided herein shall not relieve Tenant of Tenant's obligation to pay any amounts due Landlord based on Landlord's Statement, so long as the Statement for any calendar year is delivered not later than nine (9) months after the end of the calendar year.

(4) If Tenant's Additional Rent as finally determined for any calendar year exceeds the total payments made by Tenant on account thereof, and Tenant does not timely object thereto as permitted under subparagraph (3) above, Tenant shall pay Landlord the deficiency within fifteen (15) days of Tenant's receipt of Landlord's Statement. If, however, Tenant timely objects to the Landlord's Statement as permitted under subparagraph (3), above, Tenant shall pay Landlord any deficiency within fifteen (15) days of the completion of good faith negotiations or Tenant's receipt of the results of the Independent Review, as applicable. If the total payments made by Tenant on account thereof exceed Tenant's Additional Rent as finally determined for such year, Tenant's excess payment shall be credited toward the rent next due from Tenant under this Lease. For any partial calendar year at the beginning or end of the Term, Additional Rent shall be prorated on the basis of a 365-day year by computing Tenant's Share of the Operating Costs and the Tax and Landscape Expense for the entire year and then prorating such amount for the number of days during such year included in the Term. Notwithstanding the termination of this Lease, Landlord shall pay to Tenant or Tenant shall pay to Landlord, as the case may be, within fifteen (15) days after Tenant's receipt of Landlord's final Statement for the calendar year in which this Lease terminates, unless Tenant timely objects thereto as permitted under subparagraph (3) above, the difference between Tenant's Additional Rent for that year, as finally determined by Landlord, and the total amount previously paid by Tenant on account thereof.

The obligations of Landlord to refund any overpayment of Additional Rent and of Tenant to pay any Additional Rent not previously paid shall survive the expiration or earlier termination of this Lease.

3.3 Payment of Rent. All amounts payable or reimbursable by Tenant under this Lease, including late charges and interest, shall constitute rent and shall be payable and recoverable as rent in the manner provided in this Lease. Any sums payable to Landlord on demand under the terms of this Lease shall be payable within fifteen (15) days after notice from Landlord of the amount due. All rent shall be paid without offset, recoupment or deduction in lawful money of the United States of America to Landlord at Landlord's Address for Payment of Rent as set forth in the Basic Lease Information, or to such other person or at such other place as Landlord may from time to time designate.

4. SECURITY DEPOSIT. Concurrently with the execution of this Lease, Tenant shall deposit with Landlord, as security for the full and faithful performance of each and every obligation of Tenant under this Lease, cash in the amount of Fifty One Thousand Four Hundred Forty Six and no/100 Dollars (\$51,446.00). If Tenant commits an Event of Default under this Lease, Landlord may, without prejudice to any other remedy Landlord has, apply all or a part of the Cash Security Deposit and apply all or a part of the funds drawn down to: (a) any rent or other sum in default; (b) any foreseeable amount that Landlord may reasonably spend or become obligated to spend in exercising Landlord's rights under this Lease or otherwise by reason of the Event of Default; and/or (c) any expense, loss or damage that Landlord may suffer because of Tenant's default, including costs and reasonable attorneys' fees incurred by Landlord to recover possession of the Premises following an Event of Default; and it is understood and agreed that Landlord, in its sole discretion, shall have the right to elect whether and in what order to so apply the Cash Security Deposit.

Tenant waives the provisions of California Civil Code Section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that 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. Landlord and Tenant agree that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant. Tenant may not assign or encumber the Cash Security Deposit, and any attempt to do so shall be void and, in all events, not binding upon Landlord.

In the event Landlord applies all or a portion of the Cash Security Deposit as permitted hereunder, Tenant shall, upon written demand of Landlord, forthwith deposit with Landlord an amount of cash sufficient to replenish the Cash Security Deposit to the full amount thereof, and Tenant's failure to do so within five (5) days after receipt of such demand from Landlord shall constitute an Event of Default by Tenant for which, anything in this Lease to the contrary notwithstanding, Tenant shall not be entitled to any additional notices or cure periods. Within sixty (60) days after the expiration of the Term of this Lease by lapse of time, and provided that Tenant has paid all of the rental herein called for and fully performed all of the other covenants and obligations on its part to be

performed, Landlord shall return to Tenant the Cash Security Deposit, less any portion thereof which may have been applied by Landlord as permitted hereunder. Landlord may commingle the Cash Security Deposit with Landlord's general and other funds, and Landlord shall not be required to pay interest on the Cash Security Deposit to Tenant. If Landlord disposes of its interest in the Property, Landlord may deliver or credit the Cash Security Deposit to Landlord's successor-in-interest, and Landlord thereupon shall be relieved of further responsibility with respect to the Cash Security Deposit.

5. USE AND COMPLIANCE WITH LAWS.

5.1 Use. The Premises shall be used and occupied only for general office, administration, research and development, light manufacturing, laboratory and other legal uses, all to the extent directly related to Tenant's business, and for no other use or purpose. Landlord shall deliver the Premises (and the Property) to Tenant on the Prior Occupancy Date in compliance with all Laws, including without limitation the Americans with Disabilities Act and all Environmental Requirements (as defined in Section 5.2(a)(2), below), and Landlord hereby represents and warrants that, as of the Lease Date, Landlord has not received any written notice of noncompliance with respect to the Property or the Premises. At its sole expense, Landlord shall correct any noncompliance noted by Tenant in writing during the period of one hundred eighty (180) days after the Prior Occupancy Date (the "Warranty Period"). After the expiration of the Warranty Period (as defined in Section 7.1, below), Tenant, at its sole expense, shall comply with all present and future Laws relating to the condition, use or occupancy of the Premises (and shall discharge its obligations under Section 7.1 in compliance with all Laws and shall make any repairs, alterations or improvements as required to comply with all such Laws), and shall observe the "Rules and Regulations" (as defined in Section 27); provided, however, that Tenant shall not be required to make or pay for, structural changes to the Premises or the Building not related to Tenant's specific use of the Premises unless the requirement for such changes is imposed as a result of any Alterations or other improvements or additions made or proposed to be made by Tenant or at Tenant's request. The term "Laws," as used in this Lease, means all statutes, ordinances, codes, rules, regulations, requirements, licenses, permits, certificates, judgments, decrees, orders or directives of any federal, state, county or local governmental or quasi-governmental authority, agency, department, board panel or court now in force or which may hereafter be in force, as same may be amended. Tenant shall not do, bring, keep or sell anything in or about the Premises that is prohibited by, or that will cause a cancellation of, any insurance policy covering the Property or any part thereof. Tenant shall not permit the Premises to be occupied or used in any manner that will constitute waste or a nuisance, or disturb any occupant of property adjacent to the Property. Without limiting the foregoing, the Premises shall not be used for educational activities (other than Tenant's internal training sessions), practice of medicine or any of the healing arts, providing social services, for any governmental use (including embassy or consulate use), or for a personnel agency, studios for radio, television or other media, travel agency or reservation center operations or uses. Tenant shall not, without the prior consent of Landlord, (i) bring onto the Property anything that may cause substantial noise, odor or vibration, overload the floors in the Building or any of the Building Systems, or jeopardize the structural integrity of the Building or any part thereof;

(ii) connect to the utility systems of the Building any apparatus, machinery or other equipment other than typical office equipment; or (iii) connect to any electrical circuit in the Building any equipment or other load with aggregate electrical power requirements in excess of 80% of the rated capacity of the circuit. The term "Building Systems," as used in this Lease, means the heating, ventilating and air-conditioning ("HVAC"), mechanical, elevator, plumbing and sewer, electrical, fire protection, life safety, security and other systems in the Building and all components thereof.

5.2 Hazardous Materials.

(a) Definitions.

(1) "Hazardous Materials" shall mean any substance, material or waste (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, hazardous material, pollutant or contaminant under any Laws, including the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., and Sections 25117 and 25316 of the California Health and Safety Code, or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

(2) "Environmental Requirements" shall mean all present and future Laws and other requirements of any kind applicable to Hazardous Materials.

(3) "Handled by Tenant" and "Handling by Tenant" shall mean and refer to any installation, handling, generation, storage, use, disposal, discharge, release, abatement, removal, transportation, or any other activity of any type by Tenant or its agents, employees, contractors, licensees, assignees, sublessees, transferees or representatives (collectively, "Representatives") or its guests, customers, invitees, or visitors (collectively, "Visitors"), at or about the Premises and/or the Property in connection with or involving Hazardous Materials.

(4) "Environmental Losses" shall mean all costs and expenses of any kind (including attorneys' fees), damages, including foreseeable and unforeseeable consequential damages, fines and penalties incurred in connection with any violation of and/or compliance with Environmental Requirements and all losses of any kind attributable to the diminution of value, loss of use or adverse effects on marketability or use of any portion of the Property.

(b) Tenant's Covenants. No Hazardous Materials shall be Handled by Tenant at or about the Premises or Property without Landlord's prior written consent, which consent may be granted, denied, or conditioned upon compliance with Landlord's requirements, all in Landlord's absolute discretion. Notwithstanding the foregoing, normal quantities and use of those products containing small amounts of Hazardous Materials customarily used in the conduct of general office activities, such as copier

fluids and cleaning supplies (“Permitted Hazardous Materials”), may be used and stored at the Premises without Landlord’s prior written consent, provided that Tenant’s activities at or about the Premises and Property and the Handling by Tenant of all such products and the Hazardous Materials therein shall comply at all times with all Environmental Requirements. At the expiration or termination of the Lease, Tenant shall promptly remove from the Property all Hazardous Materials Handled by Tenant at the Property. Tenant shall keep Landlord fully and promptly informed of all Handling by Tenant of Hazardous Materials other than Permitted Hazardous Materials. Tenant shall be responsible and liable for the compliance with all of the provisions of this Section by all of Tenant’s agents, employees and contractors (“Tenant’s Representatives”) and Tenant’s visitors, clients, guests and invitees (“Tenant’s Visitors”), and all of Tenant’s obligations under this Section (including its indemnification obligations under paragraph (e) below) shall survive the expiration or earlier termination of this Lease.

(c) Compliance. Tenant shall at Tenant’s expense promptly take all actions required by any governmental agency or entity in connection with or as a result of the Handling by Tenant of Hazardous Materials at or about the Property, including inspection, monitoring and testing, performing all cleanup, removal and remediation work required with respect to those Hazardous Materials, complying with all closure requirements and post-closure monitoring, and filing all required reports or plans. All of the foregoing work and all Handling by Tenant of all Hazardous Materials shall be performed in a good, safe and workmanlike manner by consultants and contractors qualified and licensed to undertake such work and in a manner that will not interfere with any other tenant’s quiet enjoyment of the Property or Landlord’s use, operation, leasing and sale of the Property. Tenant shall deliver to Landlord prior to delivery to any governmental agency, or promptly after receipt from any such agency, copies of all permits, manifests, closure or remedial action plans, notices, and all other documents or communications relating to the Handling by Tenant of Hazardous Materials and/or compliance with Environmental Requirements regarding same at or about the Property. If any lien attaches to the Premises or the Property in connection with or as a result of the Handling by Tenant of Hazardous Materials, and Tenant does not cause the same to be released, by payment, bonding or otherwise, within ten (10) days after the attachment thereof, Landlord shall have the right but not the obligation to cause the same to be released and any sums expended by Landlord (plus Landlord’s administrative costs) in connection therewith shall be payable by Tenant on demand.

(d) Landlord’s Rights. Landlord shall have the right, but not the obligation, to enter the Premises during normal business hours and upon three (3) days advance oral or written notice to Tenant (and without notice in emergencies) (i) to confirm Tenant’s compliance with the provisions of this Section 5.2, and (ii) to perform Tenant’s obligations under this Section if Tenant has failed to do so after reasonable notice to Tenant. If Landlord reasonably believes that Tenant has breached its obligations herein with respect to Hazardous Materials-Handled by Tenant, Landlord shall also have the right to engage qualified Hazardous Materials consultants to inspect the Premises and review the Handling by Tenant of Hazardous Materials, including review of all permits, reports, plans, and other documents regarding same. If such inspection shows that Tenant has breached its obligations herein regarding Hazardous

Materials Handled by Tenant, Tenant shall pay to Landlord on demand the costs of Landlord's consultants' fees and all costs incurred by Landlord in performing Tenant's obligations under this Section. Landlord shall use reasonable efforts to minimize any interference with Tenant's business caused by Landlord's entry into the Premises, but Landlord shall not be responsible for any interference caused thereby.

(e) Tenant's Indemnification. Tenant agrees to indemnify, defend, protect and hold harmless Landlord and its partners or members and its or their partners, members, directors, officers, shareholders, employees and agents against and from all Environmental Losses and all other claims, actions, losses, damages, liabilities, costs and expenses of every kind, including reasonable attorneys', experts' and consultants' fees and costs, incurred at any time and arising from or in connection with the Handling by Tenant of Hazardous Materials at or about the Property or Tenant's failure to comply in full with all Environmental Requirements that are the responsibility of Tenant pursuant to subsections (b) and (c) of this Section 5.2. Notwithstanding anything in this Section 5.2 to the contrary, Tenant shall not be responsible for the clean up or remediation of, and shall not be required to indemnify Landlord against any costs or liabilities attributable to, any Hazardous Materials placed on or about the Premises (i) by third parties not related to Tenant or Tenant's Representatives, including, without limitation, any Hazardous Materials existing on the Premises prior to the Prior Occupancy Date, or (ii) by Landlord at any time.

(f) Landlord's Representation. The Property is located in the vicinity of various parcels of real property that have been the subject of prior investigation, remediation and oversight by State and Federal governmental authorities, and the Property has been the subject of investigation, remediation and oversight in connection with contamination by Hazardous Materials migrating in, on and under the Property from such nearby sites. Tenant agrees and acknowledges that, prior to the Lease Date, Landlord has made available to Tenant all reports, results and other written communications to and from governmental authorities concerning Hazardous Materials in, on or under the Property and various sites in the vicinity of the Property which are in Landlord's possession (collectively, the "Reports"). Except as disclosed in the Reports, Landlord represents to Tenant that, as of the Lease Date and as of the Prior Occupancy Date: (i) there have been no previous spills of Hazardous Materials in the Building, and (ii) the Premises and the Property are in compliance with all Environmental Requirements.

6. ALTERATIONS.

6.1 Landlord's Consent.

(a) Tenant shall not make or permit to be made any alterations, additions, installations or improvements within, on, to or about the Building, any part thereof (including the roof and the Building Systems), or any other part of the Property (singularly and collectively, "Alterations") without the prior written consent of Landlord in each instance. The foregoing notwithstanding, Tenant may construct Alterations in the Building without Landlord's prior written consent to the extent the aggregate cost of all

such Alterations constructed during any twelve (12) month period occurring during the Term of the Lease does not exceed \$25,000.00, and provided that (i) the Alterations are to the interior of the Building and do not affect the outside appearance of the Building, the Alterations are nonstructural and do not impair the structural integrity of the Building, and the Alterations do not affect the proper functioning of the Building Systems or other utilities, systems and services of the Building, (ii) Tenant gives Landlord written notice describing the Alterations not less than fifteen (15) days prior to commencing the construction thereof, and (iii) such Alterations shall otherwise be subject to the provisions of this Lease regarding Alterations. In addition, Landlord hereby approves Tenant's installation of either (A) an outdoor fence around the back patio area of the Building the "Fence", or (B) Tenant's planting hedges (the "Hedges") in lieu of the Fence to enclose the back patio area of the Building; provided, however, that (a) the Fence or Hedges shall be installed at Tenant's sole expense, (b) Tenant shall not drill into or otherwise deface the existing surface of the back patio to install the Fence or Hedges, (c) at Landlord's election, Tenant shall remove the Fence and Hedges at its expense upon the expiration or earlier termination of this Lease, (d) Tenant shall comply with all Laws applicable to the Fence or Hedges, and (e) Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any claims, demands, actions, liabilities, damages, losses, costs and expenses (including reasonable attorneys fees) arising in connection with Tenant's installation or removal of the Fence or Hedges.

(b) Landlord will not unreasonably withhold or delay its consent to any Alterations, provided that all of the following conditions shall be satisfied: (i) the Alterations are to the interior of the Building and do not affect the outside appearance of the Building; (ii) the Alterations are nonstructural and do not impair the structural integrity of the Building or any part thereof; (iii) the Alterations do not affect the proper functioning of the Building Systems or other utilities, systems and services of the Building, or materially increase the usage thereof by Tenant; (iv) Landlord shall have approved the final plans and specifications for the Alterations, any subsequent changes thereto, and all contractors and subcontractors who will perform them; (v) all costs and expenses incurred in connection with the Alterations, including the construction and installation thereof, the preparation of the plans and specifications therefore, and the attaining of all necessary governmental approvals and permits, shall be paid by Tenant; and (vi) Tenant shall pay to Landlord the costs and expenses actually incurred by Landlord in reviewing Tenant's plans and specifications and inspecting the Alterations to determine whether they are being performed in accordance with the approved plans and specifications and in compliance with Laws, including the fees of any architect or engineer employed by Landlord for such purpose. To the extent any proposed Alterations by Tenant affect the outside appearance of the Building (not including the Fence, which Landlord has approved subject to the terms and conditions of subsection (a), above), are structural or may impair the structural integrity of the Building or any part thereof, or may affect the proper functioning of the Building Systems or other utilities, systems and services of the Building, or materially increase the usage thereof by Tenant, Landlord may give or withhold its consent to such Alterations in Landlord's sole and absolute discretion. Anything in this Section 6.1(b) to the contrary notwithstanding, in the event Tenant requests Landlord's consent to Alterations that, either alone or when combined with previous Alterations of Tenant, will result in the installation of Alterations

costing more than \$50,000.00 that Tenant may be required to remove upon the expiration or earlier termination of the Lease, Landlord, as a condition of giving its consent to any such Alterations, may require Tenant to deliver to Landlord additional funds to secure Tenant's obligation to remove such Alterations and restore the Premises, any such additional funds to be held by Landlord as part of the Cash Security Deposit.

(c) Not less than fifteen (15) days nor more than twenty (20) days prior to commencement of any Alterations, Tenant shall notify Landlord of the work commencement date so that Landlord may post notices of nonresponsibility about the Property. All Alterations must comply with all Laws, the other terms of this Lease, and the final plans and specifications approved by Landlord, and Tenant shall fully and promptly comply with and observe any rules and regulations of Landlord then in force with respect to the making of Alterations and/or imposed by Landlord in connection with its approval of the plans and specifications for the Alterations. Landlord's review and approval of Tenant's plans and specifications are solely for Landlord's benefit, and Landlord shall have no duty toward Tenant, nor shall Landlord be deemed to have made any representation or warranty to Tenant, with respect to the safety, adequacy, correctness, efficiency or compliance with Laws of the design of the Alterations, the plans and specifications therefor, or any other matter regarding the Alterations. Tenant shall be responsible for any additional alterations and improvements required by Laws to be made to or in the Building or any other part of the Property as a result of any Alterations made by or for Tenant.

6.2 Ownership and Surrender of Alterations. Upon their installation, all Alterations, including, but not limited to, wall covering, paneling and built-in cabinetry, but excluding Trade Fixtures (as defined in Section 6.5, below), shall become a part of the realty and belong to Landlord and shall be surrendered with the Property; provided, however, that Landlord reserves the right to require Tenant to remove from the Property, at Tenant's expense, upon the expiration or earlier termination of the Lease, any Alterations installed by Tenant. If Tenant so requests in writing at the time Tenant submits its plans and specifications for the Alterations to Landlord for Landlord's approval, Landlord shall notify Tenant at that time whether Tenant will be required to remove all or any portion of the Alterations from the Property upon the expiration or earlier termination of the Lease.

6.3 Liens. Tenant shall pay when due all claims for labor, materials and services furnished by or at the request of Tenant or Tenant's Representatives. Tenant shall keep the Property free from all liens, security interests (with the exception of security instruments on equipment leased by Tenant) and encumbrances (including, without limitation, all mechanic's liens and stop notices) created as a result of or arising in connection with any Alterations or any other labor, services or materials provided for or at the request of Tenant or Tenant's Representatives, or any other act or omission of Tenant or Tenant's Representatives, or persons claiming through or under them (such liens, security interests and encumbrances singularly and collectively are herein called "Liens"). Tenant shall not use materials in connection with the Alterations that are subject to any Liens. Tenant shall indemnify Landlord against, and hold Landlord harmless from: (a) all Liens; (b) the removal of all Liens and any actions or proceedings

related thereto; and (c) all Claims in connection with the foregoing. If Tenant fails to keep the Property free from Liens, then, in addition to any other rights and remedies available to Landlord, Landlord may take any action necessary to discharge such Liens, including payment to the claimant on whose behalf the Lien was filed. Any sums expended by Landlord (plus Landlord's administrative costs) in connection with any such action shall be payable by Tenant on demand with interest thereon from the date of expenditure by Landlord at the Interest Rate (as defined in Section 16.2). Neither Landlord's curative action nor the reimbursement of Landlord by Tenant shall cure Tenant's default in failing to keep the Property free from Liens.

6.4 Additional Requirements. Tenant shall obtain all necessary permits and certificates for the commencement and performance of Alterations and for final approval thereof upon completion, and shall cause the Alterations to be performed in compliance therewith and with all applicable Laws and insurance requirements, and in a good, first-class and workmanlike manner. Tenant, at its expense, shall diligently cause the cancellation or discharge of all notices of violation arising from or otherwise connected with Alterations, or any other work, labor, services or materials done for or supplied to Tenant or Tenant's Representatives, or by any person claiming through or under Tenant or Tenant's Representatives. Alterations shall be performed so as not to cause labor disharmony or to delay or impose any additional expense on Landlord in the maintenance, repair or operation of the Property. Throughout the performance of the Alterations, Tenant, at its expense, shall carry, or cause to be carried, in addition to the insurance described in Section 11, Workers' Compensation insurance in statutory limits and such other insurance as Landlord may reasonably require, with insurers reasonably satisfactory to Landlord. Tenant shall furnish Landlord with satisfactory evidence that such insurance is in effect at or before the commencement of the Alterations and, upon request, at reasonable intervals thereafter until completion of the Alterations. Upon completion of any Alterations, Tenant shall deliver to Landlord, at no expense to Landlord, a complete set of as-built plans for the Alterations.

6.5 Trade Fixtures. Subject to the provisions of Section 5, and the foregoing provisions of this Section, Tenant may install and maintain furnishings, equipment, movable partitions, business equipment and other trade fixtures ("Trade Fixtures") in the Building, provided that the Trade Fixtures do not become an integral part of the Building. Tenant shall promptly repair any damage to the Building caused by any installation or removal of such Trade Fixtures. Tenant agrees and acknowledges that the Initial Tenant Improvements provided by Landlord pursuant to Section 6.6, below, do not constitute Tenant's "Trade Fixtures".

6.6 Initial Tenant Improvements. Landlord shall deliver the Premises to Tenant on the Prior Occupancy Date, and all of the alterations and furnishings described in the "Preliminary Plans" and "Specifications" attached hereto as Exhibits C and D, respectively (the "Initial Tenant Improvements"), shall be installed in the Premises at Landlord's sole expense.

(a) Prior to construction of the Initial Tenant Improvements, Tenant shall have the opportunity to select or reject certain alternate components of the Initial Tenant

Improvements listed on Exhibit D, attached hereto ("Alternate Items"), the cost of which exceed Landlord's budget for the Initial Tenant Improvements. Tenant shall reimburse Landlord for the cost of such Alternate Items by payment of the Tenant Improvement Expense pursuant to Section 3.2, above. In addition to selecting or rejecting the Alternate Items listed on Exhibit D, after the Lease Date Tenant shall also select the cubicles to be installed in the Premises by choosing to (i) approve the cubicles designated on Exhibit D (Specifications), in which case no adjustments will be made to Tenant's payment obligations hereunder; (ii) elect to have Landlord install more expensive cubicles, in which case (1) Landlord shall pay up to \$146,564.00 for such cubicles and any expenses to acquire and install such cubicles in excess of \$146,564.00 shall be included in the cost of Alternate Items for the purpose of calculating the Tenant Improvement Expense, and (2) Landlord shall own such cubicles throughout the Term and thereafter, without any obligation to pay for such cubicles beyond the initial \$146,564.00 paid by Landlord; or (iii) acquire and install cubicles at its sole expense, in which case (1) Tenant shall be entitled to a reduction in Monthly Base Rent equal to \$.09 cents per square foot per month (\$1,596.60 per month), and (2) installation of the cubicles shall not be a condition to Substantial Completion (as defined in Exhibit E) of the Initial Tenant Improvements and the occurrence of the Prior Occupancy Date. Tenant shall make its election with respect to Alternate Items and cubicles within three (3) days after written notice from Landlord that the Tenant's selection of the foregoing items must be finalized in order to avoid any delays in the Construction Schedule (based on the advice of Landlord's Representative).

(b) Prior to substantial completion of the Initial Tenant Improvements and without causing the Prior Occupancy Date to occur, Tenant and its agents shall be entitled to enter the Premises for the purposes of performing certain work (anticipated to consist primarily of installation of Tenant's server equipment in the server room) so long as such work does not interfere with or delay substantial completion of the Initial Tenant Improvements.

(c) Landlord shall make reasonable efforts to deliver the Premises to Tenant on or before August 13, 2004, but Landlord shall not be liable to Tenant if the Prior Occupancy Date occurs on a later date. The Initial Tenant Improvements shall be constructed by Landlord in a good and workmanlike manner, using new materials and shall be constructed in compliance with all applicable Laws. The Initial Tenant Improvements shall be covered by Landlord's warranty set forth in Section 7.1, below. Landlord and Tenant's rights and responsibilities with respect to the construction of the Initial Tenant Improvements shall be subject to the "Work Letter" attached hereto as Exhibit E.

7. MAINTENANCE AND REPAIRS.

7.1 Tenant's Obligations. Landlord shall deliver the Premises to Tenant with the Initial Tenant Improvements complete as set forth in Section 6.6, above. As of the Prior Occupancy Date, the Premises (including without limitation the Initial Tenant Improvements, Building Systems and roof) shall be in good working condition in accordance with the Preliminary Plans, the Construction Plans and the Work Letter (i.e.,

fully wired for voice and data and furnished as “plug and play” (a) office space to include cubicles, white boards, chairs and conference room furniture, (b) break area with refrigerator, sink, coffee bar, tables and chairs, and (c) server rooms with appropriate racks, HVAC, networking and cabling), and Landlord hereby warrants the same during the Warranty Period and shall repair or replace, as necessary, any components of the Premises which are not in good working condition to the extent Tenant provides written notice thereof to Landlord within the Warranty Period. Except as expressly set forth in this Section 7.1 and Sections 5.1 and 5.2(f), above, the Premises (and the Property) shall be delivered to, and accepted by, Tenant in its “as is” condition with “all faults,” and, excepting any defective components (or noncompliance with Laws) of the Premises noted by Tenant in writing during the Warranty Period, Landlord shall have no obligation whatsoever to alter, remodel, improve, repair, decorate or paint the Premises, the remainder of the Property or any part thereof either prior to or during the Term, except as expressly set forth in Section 7.2, below. By taking possession of the Premises Tenant agrees that the Premises (and the Property) are suitable for Tenant’s purposes and in good and tenantable condition. During the Term, Tenant, at Tenant’s expense, but under the direction of Landlord if Landlord so elects, shall clean, keep and maintain in good order, condition and repair (and replace, if necessary) every part of the Premises and the remainder of the Property which is not part of Landlord’s obligation pursuant to Section 7.2 of this Lease, said obligation of Tenant to include (but not be limited to) all Building Systems (other than HVAC) and all components thereof (including all machinery, equipment, wires, conduits and lines), the interior of all walls, all floors and floor coverings, ceilings (ceiling tiles and grid), the Initial Tenant Improvements, any Alterations installed by Tenant, fire extinguishers, outlets and fixtures, any appliances (including dishwashers, hot water heaters and garbage disposals), and all windows, doors, entrances, plate glass and skylights. Tenant acknowledges and agrees that it has inspected, or immediately after taking possession of the Premises will inspect, the Property (including the Premises) and that Tenant is not relying on any representations or warranties made by Landlord regarding the Premises or any other part of the Property, except as may be expressly set forth in this Lease.

7.2 Landlord’s Obligations. Subject to Sections 12 and 13, Landlord shall maintain or cause to be maintained in good order, condition and repair, the Common Areas of the Property (including the Parking Facility and all landscaping on the Property), the structural components of the Building (which structural components include only the foundation and the structural components of all exterior walls and the Building’s roof system), the Building’s exterior walls, the Building’s roof (including the roof membrane), and the Building’s HVAC systems. Landlord shall maintain and repair the structural components of the Building, at Landlord’s sole cost and expense; provided, however, Tenant shall pay the entire cost of repairs and/or replacements for any damage caused by Tenant’s use of the Premises or any other part of the Property, any act or omission of Tenant (including Tenant’s failure to perform its obligations under Section 7.1) or Tenant’s Representatives or Visitors, and/or Tenant’s Alterations, and provided further to the extent the costs incurred by Landlord for any such maintenance and repair are increased by reason of Tenant’s Alterations, the additional costs attributable to Tenant’s Alterations shall be an Operating Cost. Any other costs incurred by Landlord pursuant to this provision, including costs incurred to maintain and repair

(and make replacements to) the Common Areas (including the Parking Facility), the nonstructural components of the Building's roof system (including the roof membrane), the nonstructural components of the Building's exterior walls (including painting same), and the HVAC system, shall be Operating Costs, and nothing contained herein shall be construed to negate or limit Tenant's obligation to pay Tenant's Share of such costs. Landlord agrees to maintain (as an Operating Cost) an HVAC maintenance contract with a reputable HVAC contractor so long as, in Landlord's reasonable judgment, to provide Tenant copies of reports received by Landlord from the HVAC contractor regarding the maintenance and repair of the HVAC system, and to permit Tenant to call the HVAC contractor directly in the event of an emergency. Landlord shall be under no obligation to inspect the Property, including the Building; and Tenant shall promptly report in writing to Landlord any condition known to Tenant which Landlord is required to repair. As a material part of the consideration for this Lease, Tenant hereby waives any benefits of any applicable existing or future Law, including the provisions of California Civil Code Sections 1932(1), 1941 and 1942, that allows a tenant to make repairs at its landlord's expense.

8. **TENANT'S TAXES.** "Tenant's Taxes" shall mean (a) all taxes, assessments, license fees and other governmental charges or impositions levied or assessed against or with respect to Tenant's personal property or Trade Fixtures in the Premises, whether any such imposition is levied directly against Tenant or levied against Landlord or the Property, (b) all rental, excise, sales or transaction privilege taxes arising out of this Lease (excluding, however, state and federal personal or corporate income taxes measured by the income of Landlord from all sources) imposed by any taxing authority upon Landlord or upon Landlord's receipt of, or right to receive, any rent payable by Tenant pursuant to the terms of this Lease ("Rental Tax"), and (c) any increase in Taxes attributable to inclusion of a value placed on Tenant's personal property, Trade Fixtures or Alterations. Tenant shall pay any Rental Tax to Landlord in addition to and at the same time as Monthly Base Rent is payable under this Lease, and shall pay all other Tenant's Taxes before delinquency (and, at Landlord's request, shall furnish Landlord satisfactory evidence thereof). If Landlord pays Tenant's Taxes or any portion thereof, Tenant shall reimburse Landlord upon demand for the amount of such payment, together with interest at the Interest Rate from the date of Landlord's payment to the date of Tenant's reimbursement.

9. UTILITIES AND SERVICES.

9.1 Responsibility for Utilities and Services. Tenant shall be responsible for and shall pay promptly all costs and other charges (including initial and subsequent deposits, if any) for water, gas, electricity, telephone, refuse pickup, sewer, janitorial service, and all other utilities, materials and services furnished directly to or used by Tenant in, on or about the Property during the Term, together with any taxes thereon.

9.2 Interruption of Services. In the event of an interruption in or failure or inability to provide any services or utilities to the Premises or Building for any reason (a "Service Failure"), such Service Failure shall not, regardless of its duration, impose upon Landlord any liability whatsoever, constitute an eviction of Tenant, constructive or

otherwise, entitle Tenant to an abatement of rent or to terminate this Lease or otherwise release Tenant from any of Tenant's obligations under this Lease. Tenant hereby waives any benefits of any applicable existing or future Law, including the provisions of California Civil Code Section 1932(1), permitting the termination of this Lease due to such interruption, failure or inability.

10. EXCULPATION AND INDEMNIFICATION.

10.1 Tenant's Indemnification of Landlord. Tenant shall indemnify, protect, defend and hold harmless Landlord and its constituent partners or members and its or their partners, members, directors, officers, shareholders, employees and agents against and from any claims, demands, actions, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees (collectively, "Claims"), arising out of or resulting from (a) the acts or omissions of Tenant or Tenant's Representatives or Visitors in or about the Premises or any other part of the Property, (b) any construction or other work undertaken by Tenant on the Premises or any other part of the Property (including any design defects), (c) any breach or default under this Lease by Tenant, (d) the conduct of Tenant's business, and/or (e) any loss, injury or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the Premises or any other part of the Property during the Term, excepting only Claims described in this clause (e) to the extent they are caused by the willful misconduct or gross negligence of Landlord or its authorized representatives.

10.2 Damage to Tenant and Tenant's Property. Landlord shall not be liable to Tenant for any loss, injury or other damage to Tenant, Tenant's Representatives, Tenant's Visitors or to Tenant's, Tenant's Representatives' or Tenant's Visitors' property in or about the Property or any part thereof from any cause (including defects in the Property or in any equipment in the Property; fire, explosion or other casualty; or bursting, rupture, leakage or overflow of any plumbing or other pipes or lines, sprinklers, tanks, drains, drinking fountains or washstands in, above, or about the Property). Tenant hereby waives all claims against Landlord for any such loss, injury or damage and the cost and expense of defending against claims relating thereto, other than any loss, injury or damage caused by Landlord's gross negligence or willful misconduct. Notwithstanding any other provision of this Lease to the contrary, in no event shall Landlord be liable to Tenant for any punitive or consequential damages or damages for loss of business by Tenant.

10.3 Survival. The rights and obligations of the parties under this Section 10 shall survive the expiration or earlier termination of this Lease.

11. INSURANCE.

11.1 Tenant's Insurance.

(a) Liability Insurance. Tenant shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Five Million Dollars (\$5,000,000.00) each occurrence for bodily injury and property damage combined, Five Million Dollars (\$5,000,000.00)

annual general aggregate, and Five Million Dollars (\$5,000,000.00) products and completed operations annual aggregate. Tenant's liability insurance policy or policies shall: (i) include premises and operations liability coverage, products and completed operations liability coverage, broad form property damage coverage including completed operations, blanket contractual liability coverage including, to the maximum extent possible, coverage for the indemnification obligations of Tenant under this Lease, and personal and advertising injury coverage; (ii) provide that the insurance company has the duty to defend all insureds under the policy; (iii) provide that defense costs are paid in addition to and do not deplete any of the policy limits; (iv) cover liabilities arising out of or incurred in connection with Tenant's use or occupancy of the Premises and the other portions of the Property; and (v) extend coverage to cover liability for the actions of Tenant's Representatives. Each policy of liability insurance required by this Section shall: (A) contain a cross liability endorsement or separation of insureds clause; (B) provide that any waiver of subrogation rights or release prior to a loss does not void coverage; (C) provide that it is primary to and not contributing with, any policy of insurance carried by Landlord covering the same loss; (D) provide that any failure to comply with the reporting provisions shall not affect coverage provided to Landlord, its partners, property managers and Mortgagees; and (E) name Landlord, its partners, any property manager of the Property, and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds. Such additional insureds shall be provided at least the same extent of coverage as is provided to Tenant under such policies. All endorsements effecting such additional insured status shall be at least as broad as additional insured endorsement form number CG 20 11 11 85 promulgated by the Insurance Services Office. The insurance requirements set forth herein are independent of Tenant's indemnification and other obligations under this Lease and shall not be construed to restrict, limit or modify such indemnification or other obligations of Tenant under the Lease.

(b) Property Insurance. Tenant shall at all times maintain in effect with respect to any Alterations and Tenant's Trade Fixtures and other personal property, commercial property insurance providing coverage, on an "all risk" or "special form" basis, in an amount equal to at least 90% of the full replacement cost of the covered property. Tenant may carry such insurance under a blanket policy, provided that such policy provides coverage equivalent to a separate policy. During the Term, the proceeds from any such policies of insurance shall be used for the repair or replacement of the Alterations, Trade Fixtures and personal property so insured. Landlord shall be provided coverage under such insurance to the extent of its insurable interest and, if requested by Landlord, both Landlord and Tenant shall sign all documents reasonably necessary or proper in connection with the settlement of any claim or loss under such insurance. Landlord will have no obligation to carry insurance on any Alterations or on Tenant's Trade Fixtures or personal property.

(c) Requirements For All Policies. Each policy of insurance required under this Section 11.1 shall: (i) be in a form, and written by an insurer, reasonably acceptable to Landlord, (ii) be maintained at Tenant's sole cost and expense, and (iii) provide that Tenant's insurer shall endeavor to provide thirty (30) days' written notice to Landlord prior to any cancellation, non-renewal or modification of insurance

coverage, and Tenant agrees to promptly forward to Landlord a copy of any such notice received from its insurer. Insurance companies issuing such policies shall have rating classifications of "A" or better and financial size category ratings of "VII" or better according to the latest edition of the A.M. Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state where the Property is located. Any deductible amount under such insurance shall not exceed \$10,000.00. Tenant shall provide to Landlord, upon request, evidence that the insurance required to be carried by Tenant pursuant to this Section, including any endorsement effecting the additional insured status, is in full force and effect and that premiums therefor have been paid.

(d) No Limitation of Tenant's Liability. Any limits set forth in this Lease on the amount or type of coverage required by Tenant's insurance shall not limit the liability of Tenant under this Lease.

(e) Certificates of Insurance. Prior to occupancy of the Premises by Tenant, Tenant shall furnish to Landlord a certificate of insurance reflecting that the insurance required by this Section is in force, accompanied by an endorsement showing the required additional insureds satisfactory to Landlord in substance and form. Not less than five (5) days prior to the expiration of any policy of insurance required to be carried by Tenant hereunder, Tenant shall provide a copy of a binder for the renewal of such insurance (or for a replacement policy), and within five (5) business days after such expiration date Tenant shall furnish to Landlord a certificate of insurance reflecting that the renewed insurance (or any replacement policy) required by this Section is in force, accompanied by an endorsement showing the required additional insureds satisfactory to Landlord in substance and form. Notwithstanding the requirements of this paragraph, Tenant shall at Landlord's request provide to Landlord a certified copy of each insurance policy required to be in force at any time pursuant to the requirements of this Lease or its Exhibits.

11.2 Landlord's Insurance. During the Term, Landlord shall maintain in effect insurance on the Building (including the Initial Tenant Improvements) with responsible insurers, on an "all risk" or "special form" basis, insuring the Building in an amount equal to at least 90% of the replacement cost thereof, excluding land, foundations, footings and underground installations. Landlord may, but shall not be obligated to, carry insurance against additional perils and/or in greater amounts.

11.3 Mutual Waiver of Right of Recovery & Waiver of Subrogation. Landlord and Tenant each hereby waive any right of recovery against each other and the partners, members, shareholders, officers, directors and authorized representatives of each other for any loss or damage that is covered by any policy of property insurance maintained by either party with respect to the Premises or the Property or any operation therein, regardless of cause, including negligence of the party benefiting from the waiver, to the extent of the loss or damage covered thereby. If any such policy of insurance relating to this Lease or to the Premises or the Property does not permit the foregoing waiver or if the coverage under any such policy would be invalidated as a result of such waiver, the party maintaining such policy shall obtain from the insurer under such policy a waiver of all right of recovery by way of subrogation against either party in connection with any claim, loss or damage covered by such policy.

12. DAMAGE OR DESTRUCTION.

12.1 Landlord's Duty to Repair.

(a) If all or a substantial part of the Premises are rendered untenantable or inaccessible by damage from fire or other casualty then, unless either party is entitled to and elects to terminate this Lease pursuant to Sections 12.2 and 12.3, Landlord shall use reasonable efforts to repair and restore the Premises to substantially their former condition to the extent permitted by then applicable Laws; provided, however, in no event shall Landlord have any obligation for repair or restoration beyond the extent of insurance proceeds received by Landlord for such repair or restoration, or for any of Tenant's personal property, Trade Fixtures or Alterations.

(b) If Landlord is required or elects to repair damage to the Premises, this Lease shall continue in effect, but Tenant's Monthly Base Rent shall be equitably abated with regard to any portion of the Premises that Tenant is prevented from occupying by reason of such damage or its repair from the date of the casualty until substantial completion of Landlord's repair of the affected portion of the Premises as required under this Lease. In no event shall Landlord be liable to Tenant by reason of any injury to or interference with Tenant's business or property arising from fire or other casualty or by reason of any repairs to any part of the Property necessitated by such casualty.

12.2 Landlord's Right to Terminate. Landlord may elect to terminate this Lease following damage by fire or other casualty under the following circumstances:

(a) If in Landlord's reasonable judgment the Premises cannot be substantially repaired and restored under applicable Laws within one (1) year from the date of the casualty;

(b) If adequate insurance proceeds are not for any reason, including the casualty not being a casualty for which Landlord is required to maintain insurance pursuant to Section 11.2 or a decision made by any Mortgagee (as defined in Section 20.2), made available to Landlord from Landlord's insurance policies (and/or from Landlord's funds made available for such purpose, in Landlord's sole and absolute discretion) to cover the entire cost of the required repairs;

(c) If the Building is damaged or destroyed to the extent that, in the reasonable judgment of Landlord, the cost to repair and restore the Building would exceed twenty-five percent (25%) of the full replacement cost of the Building; or

(d) If the fire or other casualty occurs during the last two (2) years of the Term.

If any of the circumstances described in subparagraphs (a), (b), (c) or (d) of this Section 12.2 occur or arise, Landlord shall give Tenant notice within ninety (90) days

after the date of the casualty, specifying whether Landlord elects to terminate this Lease as provided above and, if not, Landlord's estimate of the time required to complete Landlord's repair obligations under this Lease. If Landlord elects to terminate this Lease, the Lease shall terminate fifteen (15) days after the date Tenant receives notice of Landlord's election.

12.3 Tenant's Right to Terminate. If twenty five percent (25%) or more of the Building is rendered untenantable or inaccessible by damage from fire or other casualty, and Landlord does not elect to terminate this Lease as provided above, then Tenant may elect to terminate this Lease if Landlord's estimate of the time required to complete Landlord's repair obligations under this Lease is greater than one hundred eighty (180) days from the date of the casualty, in which event Tenant can terminate this Lease by giving Landlord notice of Tenant's election to terminate within fifteen (15) days after Landlord's notice to Tenant pursuant to Section 12.2. If Tenant elects to terminate this Lease, the Lease shall terminate fifteen (15) days after the date Landlord receives notice of Tenant's election.

12.4 Waiver. Landlord and Tenant each hereby waive the provisions of California Civil Code Sections 1932(2), 1933(4) and any other applicable existing or future Law permitting the termination of a lease agreement in the event of damage or destruction under any circumstances other than as provided in Sections 12.2 and 12.3.

13. CONDEMNATION.

13.1 Definitions.

(a) "Award" shall mean all compensation, sums, or anything of value awarded, paid or received on a total or partial Condemnation.

(b) "Condemnation" shall mean (i) a permanent taking (or a temporary taking for a period extending beyond the end of the Term) pursuant to the exercise of the power of condemnation or eminent domain by any public or quasi-public authority, private corporation or individual having such power ("Condemnor"), whether by legal proceedings or otherwise, or (ii) a voluntary sale or transfer by Landlord to any such authority, either under threat of condemnation or while legal proceedings for condemnation are pending.

(c) "Date of Condemnation" shall mean the earlier of the date that title to the property taken is vested in the Condemnor or the date the Condemnor has the right to possession of the property being condemned.

13.2 Effect on Lease.

(a) If the Premises are totally taken by Condemnation, this Lease shall terminate as of the Date of Condemnation. If a portion but not all of the Premises is taken by Condemnation, this Lease shall remain in effect; provided, however, that if more than twenty-five percent (25%) of the floor area of the Premises is taken and the portion of the Premises remaining after the Condemnation will be unsuitable for Tenant's

continued use, then upon notice to Landlord within thirty (30) days after Landlord notifies Tenant of the Condemnation, Tenant may terminate this Lease effective as of the Date of Condemnation.

(b) If forty percent (40%) or more of the parcel of land on which the Building is situated or twenty-five percent (25%) or more of the Parking Facility is taken by Condemnation, then upon notice to Landlord within thirty (30) days after Landlord notifies Tenant of the Condemnation, Tenant may terminate this Lease effective as of the Date of Condemnation.

13.3 Restoration. If this Lease is not terminated as provided in Section 13.2, Landlord shall diligently proceed to repair and restore the Premises and/or the Property to substantially their former condition (to the extent permitted by then applicable Laws); provided, however, that Landlord's obligations to so repair and restore shall be limited to the amount of any Award received by Landlord and not required to be paid to any Mortgagee. In no event shall Landlord have any obligation to repair or replace any of Tenant's personal property, Trade Fixtures, or Alterations.

13.4 Abatement and Reduction of Rent. If any portion of the Premises is taken in a Condemnation or is rendered permanently untenantable by repairs necessitated by the Condemnation, and this Lease is not terminated, the Monthly Base Rent payable under this Lease shall be proportionally reduced as of the Date of Condemnation based upon the percentage of rentable square feet in the Premises so taken or rendered permanently untenantable. In addition, if this Lease remains in effect following a Condemnation and Landlord proceeds to repair and restore the Premises, the Monthly Base Rent payable under this Lease shall be abated with regard to any portion of the Premises that Tenant is prevented from occupying during the period of such repair or restoration. In no event shall Landlord be liable to Tenant by reason of any injury to or interference with Tenant's business or property arising from Condemnation or by reason of any repairs to any part of the Property necessitated by Condemnation.

13.5 Awards. Any Award made shall be paid to Landlord, and Tenant hereby assigns to Landlord, and waives all interest in or claim to, any such Award, including any claim for the value of the unexpired Term; provided, however, that Tenant shall be entitled to prosecute a separate claim for a separately designated Award for relocation expenses, the interruption of or damage to Tenant's business, and compensation for Tenant's personal property or Trade Fixtures.

13.6 Waiver. Landlord and Tenant each hereby waive the provisions of California Code of Civil Procedure Section 1265.130 and any other applicable existing or future Law allowing either party to petition for a termination of this Lease upon a partial taking of the Premises and/or the Property.

14. ASSIGNMENT AND SUBLETTING.

14.1 Landlord's Consent Required. Tenant shall not assign this Lease or any interest therein, or sublet or license or permit the use or occupancy of the Premises or any

part thereof by or for the benefit of anyone other than Tenant, or in any other manner transfer all or any part of Tenant's interest under this Lease (each and all a "Transfer"), without the prior written consent of Landlord, which consent (subject to the other provisions of this Section 14) shall not be unreasonably withheld. The term Transfer, as used herein, includes the following: (i) if Tenant is a partnership or a limited liability company, the transfer, voluntary or involuntary, either by a single transaction or in a series of transactions, of a controlling interest in Tenant, or the dissolution of Tenant, whether voluntary or involuntary; (ii) if Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the transfer, voluntary or involuntary, either by a single transaction or in a series of transactions, of a controlling interest in Tenant (except that a Transfer shall not include any such transfer of a controlling interest in Tenant occurring at a time when the stock of Tenant is publicly traded on a nationally recognized stock exchange or over the counter), or the sale, by a single transaction or series of transactions, within any one (1) year period of corporate assets equaling or exceeding fifty percent (50%) of the total value of Tenant's assets (except in connection with an initial public offering of the stock of Tenant on a nationally recognized stock exchange or over the counter); (iii) if Tenant is a trust, the transfer, voluntarily or involuntarily, of either a controlling interest in the trustee of such trust or more than fifty percent (50%) of the trust's assets; and (iv) if Tenant is any other form of entity a transfer, voluntary or involuntary, either by a single transaction or in a series of transactions, of a controlling interest in Tenant. As used herein, the term "controlling interest" means (a) in the case of a partnership, limited liability company or other business entity, the ownership of partnership interests, membership interests or other indicia of ownership constituting more than fifty percent (50%) of the ownership interests in Tenant (provided that in the case of a limited partnership or manager controlled limited liability company, it also means the ownership of more than fifty percent (50%) of the ownership interests in the general partner or manager of Tenant), and (b) in the case of a corporation, the ownership and/or the right to vote stock constituting more than fifty percent (50%) of the voting stock of Tenant. Notwithstanding anything to the contrary in this Section 14.1, Tenant shall have the right to assign the Premises to any entity without first obtaining Landlord's consent if such assignment is the result of a merger or consolidation with Tenant or a sale of all or substantially all of Tenant's assets, provided that (1) Tenant is not then in default under this Lease or has committed acts or omissions which with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Lease, (2) the entity which results from any merger or consolidation or which acquires all or substantially all of Tenant's assets shall have a net equity value of at least Ten Million Dollars (\$10,000,000), and (3) Tenant shall give Landlord no less than thirty (30) days prior written notice of any such transaction, which notice shall include financial information reasonably satisfactory to Landlord evidencing such assignees compliance with the foregoing net equity requirement. Notwithstanding any provision in this Lease to the contrary, Tenant shall not mortgage, pledge, hypothecate or otherwise encumber this Lease or all or any part of Tenant's interest under this Lease.

14.2 Reasonable Consent.

(a) Prior to any proposed Transfer, Tenant shall submit in writing to Landlord, not less than thirty (30) days prior to the proposed effective date of the

Transfer, (i) the name and legal composition of the proposed assignee, subtenant, user or other transferee (each a "Proposed Transferee"); (ii) the nature of the business proposed to be carried on in the Premises; (iii) a current balance sheet, income statements for the last two years (or, if the Proposed Transferee has been in business for less than two years, for such lesser period of time as the Proposed Transferee has been in business) and such other reasonable financial and other information concerning the Proposed Transferee as Landlord may request; and (iv) a copy of the proposed assignment, sublease or other agreement governing the proposed Transfer. Within fifteen (15) days after Landlord receives all such information it shall notify Tenant whether it approves or disapproves such Transfer or if it elects to proceed under Section 14.7.

(b) Tenant acknowledges and agrees that, among other circumstances for which Landlord could reasonably withhold consent to a proposed Transfer, it shall be reasonable for Landlord to withhold consent where (i) the Proposed Transferee does not intend itself to occupy the entire portion of the Premises assigned or sublet, (ii) Landlord reasonably disapproves of the Proposed Transferee's business operating ability or history, reputation or creditworthiness or the character of the business to be conducted by the Proposed Transferee at the Premises, (iii) the Proposed Transferee is a governmental agency, (iv) at the time Tenant requests Landlord's consent Tenant is in default under this Lease or has committed acts or omissions which with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Lease, or (v) Landlord determines that the proposed Transfer would have the effect of decreasing the value of the Building or increasing the expenses payable by Landlord for maintaining and repairing the portions of the Property Landlord maintains and repairs under this Lease at Landlord's expense.

14.3 Excess Consideration. If Landlord consents to the Transfer, Tenant shall pay to Landlord as additional rent, as and when received by Tenant, fifty percent (50%) of any Bonus Rent (as hereinafter defined) payable by or on behalf of any transferee (the "Transferee") for or in connection with the Transfer. The term "Bonus Rent," as used herein, means any and all rent and other consideration, whether denominated rent or otherwise, payable by or on behalf of the Transferee under the terms of the Transfer or any collateral agreement in excess of the Monthly Base Rent and Additional Rent payable hereunder, less the reasonable cost of any improvements installed by the Tenant, at its expense, in the Premises pursuant to the Transfer for the specific subtenant or assignee (and approved by Landlord) and reasonable leasing commissions and attorneys' fees actually paid by the Tenant in connection with the Transfer, without deduction for carrying costs due to vacancy or otherwise. Such costs of additional improvements, leasing commissions and attorneys' fees shall be amortized over the term of the Transfer. At Landlord's option, upon written notice to the Transferee, Landlord may require the Transferee to pay all or any portion of Landlord's share of the Bonus Rent directly to Landlord; provided, however, that Landlord's acceptance or collection of Landlord's Share of the Bonus Rent will not be deemed to be a consent to any Transfer or a cure of any default under this Section 14 or any other provisions of this Lease. In the case of a sublease, the Bonus Rent shall be determined by comparing the rent and/or other consideration payable under the sublease to the portion of the Monthly Base Rent and Additional Rent allocable to the subleased portion of the Premises (and the portion of the

Monthly Base Rent and Additional Rent allocable to the subleased portion of the Premises shall be determined by multiplying the Monthly Base Rent and Additional Rent by a fraction, the numerator of which is the rentable square footage of the subleased portion of the Premises and the denominator of which is the rentable square footage of the Premises).

14.4 No Release of Tenant. No Transfer shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether accruing before or after such Transfer. The consent by Landlord to any Transfer shall not relieve Tenant or any Transferee from the obligation to obtain Landlord's express prior written consent to any subsequent Transfer by Tenant or any Transferee. The acceptance of rent by Landlord from any other person (whether or not such person is an occupant of the Premises) shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer.

14.5 Expenses and Attorneys' Fees. Tenant shall pay to Landlord on demand all reasonable costs and expenses (including reasonable attorneys' fees) incurred by Landlord in connection with reviewing any proposed Transfer (including any request for consent to, or any waiver of, Landlord's rights in connection with, any security interest in any of Tenant's property at the Premises).

14.6 Effectiveness of Transfer. Prior to the date on which any Transfer becomes effective, Tenant shall deliver to Landlord a counterpart of the fully executed Transfer document and Landlord's standard form of Consent to Assignment or Consent to Sublease executed by Tenant and the Transferee in which each of Tenant and the Transferee confirms its obligations pursuant to this Lease. Failure or refusal of a Transferee to execute any such instrument shall not release or discharge the Transferee from any liability. The voluntary, involuntary or other surrender of this Lease by Tenant, or a mutual cancellation by Landlord and Tenant, shall not work a merger, and any such surrender or cancellation shall, at the option of Landlord, either terminate all or any existing subleases or operate as an assignment to Landlord of any or all of such subleases.

14.7 Landlord's Right to Space. Notwithstanding any of the provisions of this Section 14 to the contrary, if Tenant notifies Landlord that it desires to enter into a Transfer which is either an assignment of this Lease or a sublease of greater than fifty percent (50%) of the square footage of the Premises and the sublease is for a term greater than fifty percent (50%) of the initial Term, Landlord may elect (x) in the case of an assignment or a sublease of the entire Premises, to terminate this Lease, or (y) in the case of a sublease of less than the entire Premises, to terminate this Lease as it relates to the space proposed to be subleased by Tenant. In such event, this Lease will terminate or the space proposed to be subleased will be removed from the Premises subject to this Lease on the date the Transfer was proposed to be effective (and, in the event of such removal, (i) the Monthly Base Rent shall be adjusted by multiplying the then existing Monthly Base Rent by a fraction, the numerator of which shall be the rentable square footage of the Premises that will be retained by the Tenant after Landlord's recapture and the denominator of which shall be the rentable square footage of the Premises just prior to the recapture, and (ii) Tenant's Share under this Lease shall be proportionately reduced).

Landlord may lease any space as to which the Lease is terminated as provided herein to any party on such terms as Landlord, in its discretion, determines, including the Proposed Transferee identified by Tenant.

14.8 Assignment of Sublease Rents. Tenant hereby absolutely and irrevocably assigns to Landlord any and all rights to receive rent and other consideration from any sublease and agrees that Landlord, as assignee or as attorney-in-fact for Tenant for purposes hereof, or a receiver for Tenant appointed on Landlord's application may (but shall not be obligated to) collect such rents and other consideration and apply the same toward Tenant's obligations to Landlord under this Lease; provided, however, that Landlord grants to Tenant at all times prior to the occurrence of any Event of Default by Tenant a revocable license to collect such rents, which license shall automatically and without notice be and be deemed to have been revoked and terminated immediately upon, but only until Tenant completes the cure of, any Event of Default (it being agreed that upon completion of such cure the license shall be reinstated on, and subject to, the provisions of this Section 14.8).

14.9 Additional Requirements. Any Transfer shall be null and void unless it complies with this Lease and: (i) in the case of an assignment, provides that the assignee assumes all of Tenant's obligations under this Lease and agrees to be bound by all of the terms of this Lease; and (ii) in the case of a sublease, provides that (a) it is subject and subordinate to this Lease, (b) if there is any conflict or inconsistency between the sublease and this Lease, this Lease will prevail, (c) Landlord may enforce all the provisions of the sublease, including the collection of rent, (d) the sublease may not be modified without Landlord's prior written consent and that any modification without such consent shall be null and void, (e) if this Lease is terminated or Landlord reenters or repossesses the Premises, Landlord may, at its option, take over all of Tenant's right, title and interest as sublessor and, at Landlord's option, the subtenant shall attorn to Landlord, but Landlord shall not be (x) liable for any previous act or omission of Tenant under the sublease, (y) subject to any existing defense or offset against Tenant, or (z) bound by any previous modification of the sublease made without Landlord's prior written consent or by any prepayment of more than one (1) month's rent.

15. DEFAULT AND REMEDIES.

15.1 Events of Default. The occurrence of any of the following shall constitute an "Event of Default" by Tenant:

(a) Tenant fails to make any payment of rent (including, without limitation, Monthly Base Rent and Additional Rent) within five (5) days after the date that such payment is due.

(b) Tenant abandons the Premises for more than thirty (30) days.

(c) Tenant fails timely to deliver any subordination document, estoppel certificate or financial statement requested by Landlord within the applicable time period specified in Sections 20 and 21.

(d) Tenant violates the restrictions on Transfer set forth in Section 14.

(e) Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within 30 days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets.

(f) Tenant fails, within sixty (60) days after the commencement of any proceedings against Tenant seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights, to have such proceedings dismissed, or Tenant fails, within thirty (30) days after an appointment, without Tenant's consent or acquiescence, of any trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets, to have such appointment vacated.

(g) Tenant fails to perform or comply with any provision of this Lease other than those described in (a) through (f) above, and does not fully cure such failure within fifteen (15) days after notice to Tenant or, if such failure cannot reasonably be cured within such fifteen (15)-day period, Tenant fails within such fifteen (15)-day period to commence, and thereafter to diligently proceed with all actions necessary to cure such failure as soon as reasonably possible, and in all events within ninety (90) days of such notice.

(h) Tenant fails to perform its obligations under Section 4 of this Lease with regard to delivering or replenishing the Cash Security Deposit.

15.2 Remedies. Upon the occurrence of an Event of Default, Landlord shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law:

(a) Landlord may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including reentry into the Premises, efforts to relet the Premises, reletting of the Premises for Tenant's account, storage of Tenant's personal property and Trade Fixtures, acceptance of keys to the Premises from Tenant or exercise of any other rights and remedies under this Section, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises. Upon such termination in writing of Tenant's right to possession of the Premises, as herein provided, this Lease shall terminate and Landlord shall be entitled to recover damages from Tenant, including: (i) the worth at the time of the award of the unpaid Monthly Base Rent and Additional Rent which had been earned or was payable at the time of termination; (ii) the worth at the time of the award of the amount by which the unpaid Monthly Base Rent and Additional Rent which would have been earned or payable after termination until the

time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Monthly Base Rent and Additional Rent which would have been paid for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including any reasonable costs or expenses incurred by Landlord in maintaining or preserving the Premises and the rest of the Property after such default, the cost of recovering possession of the Premises, reasonable expenses of reletting, including necessary renovation or alteration of the Premises, Landlord's reasonable attorneys' fees and costs incurred in connection therewith, and any real estate commissions paid or payable. As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the Interest Rate (as defined in Section 16.2). As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

(c) Landlord may, but shall not be obligated to, cure the Event of Default at Tenant's expense. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant.

(d) Landlord may remove all Tenant's property from the Premises, and such property may be stored by Landlord in a public warehouse or elsewhere at the sole cost and for the account of Tenant. If Landlord does not elect to store any or all of Tenant's property left in the Premises, Landlord may consider such property to be abandoned by Tenant, and Landlord may thereupon dispose of such property in any manner deemed appropriate by Landlord. Any proceeds realized by Landlord on the disposal of any such property shall be applied first to offset all expenses of storage and sale, then credited against Tenant's outstanding obligations to Landlord under this Lease, and any balance remaining after satisfaction of all obligations of Tenant under this Lease shall be delivered to Tenant.

(e) Tenant waives any and all rights of redemption granted by or under any Laws if Tenant is evicted or dispossessed for any cause, or if Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the terms, covenants or conditions of this Lease, or otherwise.

16. LATE CHARGE AND INTEREST.

16.1 Late Charge. Tenant acknowledges that late payment of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. These costs include processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any ground leases and/or mortgages. Accordingly, if any payment of rent is not received by Landlord within three (3) days after the date such payment is due, Tenant shall pay to Landlord on demand as a late charge an additional amount equal to five percent (5%) of the overdue payment. A late charge shall not be imposed more than once on any particular installment not paid when due, but imposition of a late charge on any payment not made when due does not eliminate or supersede late charges imposed on other (prior) payments not made when due or preclude imposition of a late charge on other installments or payments not made when due. Tenant agrees that the late charge imposed by this provision is a fair and reasonable estimate of the costs Landlord will incur by reason of the late payment by Tenant, and that the imposition of such late charge is in addition to and not in lieu of Landlord's right to charge interest on unpaid amounts as provided in Section 16.2, below.

16.2 Interest. In addition to the late charges referred to above, which are intended to defray Landlord's costs resulting from late payments, any payment from Tenant to Landlord not paid when due shall at Landlord's option bear interest from the date due until paid to Landlord by Tenant at the rate of twelve percent (12%) per annum or the maximum rate that Landlord may charge to Tenant under applicable Laws, whichever is less (the "Interest Rate"). Acceptance of any late charge and/or interest shall not constitute a waiver of Tenant's default with respect to the overdue sum or prevent Landlord from exercising any of its other rights and remedies under this Lease.

17. WAIVER. No provisions of this Lease shall be deemed waived by Landlord unless such waiver is in a writing signed by Landlord. The waiver by Landlord of any breach of any provision of this Lease shall not be deemed a waiver of such provision or of any subsequent breach of the same or any other provision of this Lease. No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver. Landlord's acceptance of any payments of rent due under this Lease shall not be deemed a waiver of any default by Tenant under this Lease (including Tenant's recurrent failure to timely pay rent) other than Tenant's nonpayment of the accepted sums, and no endorsement or statement on any check or payment or in any letter or document accompanying any check or payment shall be deemed an accord and satisfaction. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant requiring Landlord's consent or approval.

18. ENTRY, INSPECTION AND CLOSURE. Upon three (3) days oral or written notice to Tenant (and without notice in emergencies), Landlord and its authorized representatives may enter the Property and any portion thereof at all reasonable times to: (a) determine whether the Property is in good condition, (b) determine whether Tenant is

complying with its obligations under this Lease, (c) perform any maintenance or repair of the Building or any other portion of the Property that Landlord has the right or obligation to perform, (d) serve, post or keep posted any notices required or allowed under the provisions of this Lease, (e) show the Property, including the Premises, to prospective brokers, agents, buyers, transferees, Mortgagees or, within the final twelve (12) months of the Term, prospective tenants, or (f) do any other act or thing necessary for the safety or preservation of the Premises or any other portion of the Property. When reasonably necessary Landlord may temporarily close entrances, doors, corridors, elevators or other facilities in the Building without liability to Tenant by reason of such closure, provided that Landlord shall use reasonable efforts to ensure that such closure occurs not longer than is reasonably necessary. Landlord shall conduct its activities under this Section in a manner that will minimize inconvenience to Tenant. In no event shall Tenant be entitled to an abatement of rent on account of any entry by Landlord, and Landlord shall not be liable in any manner for any inconvenience, loss of business or other damage to Tenant or other persons arising out of Landlord's entry in the Premises or any other portion of the Property in accordance with this Section, provided that such loss or damage is not the result of Landlord's willful misconduct or gross negligence. No action by Landlord pursuant to this paragraph shall constitute an eviction of Tenant, constructive or otherwise, entitle Tenant to an abatement of rent or to terminate this Lease or otherwise release Tenant from any of Tenant's obligations under this Lease.

19. SURRENDER AND HOLDING OVER.

19.1 Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean and in their condition as of the date on which possession of the Premises was delivered to Tenant, except: (i) for normal wear and tear, damage from casualty or condemnation and changes resulting from approved Alterations that Tenant is not required to remove; and (ii) that all interior walls will be freshly painted, all tile floors will be cleaned and waxed, all broken, marred or nonconforming acoustical ceiling tiles shall be replaced, all windows shall be washed, and any burned out or broken light bulbs or ballasts shall be replaced. In addition, prior to the expiration or earlier termination of this Lease Tenant shall: (a) upon Landlord's request, remove all telephone and other cabling installed in the Building by Tenant; (b) remove from the Property all Tenant's personal property and Trade Fixtures; and (c) remove all Alterations that Landlord has elected to require Tenant to remove; and Tenant shall repair any damage and perform any restoration work caused by removal of any of the foregoing items. If such removal is not completed before the expiration or termination of the Term, Landlord shall have the right (but no obligation) to remove the same, and Tenant shall pay Landlord on demand for all costs of removal and storage thereof and for the rental value of the Premises for the period from the end of the Term through the end of the time reasonably required for such removal. Landlord shall also have the right to retain or dispose of all or any portion of such property if Tenant does not pay all such costs and retrieve the property within ten (10) days after notice from Landlord (in which event title to all such property described in Landlord's notice shall be transferred to and vest in Landlord). Tenant waives all Claims against Landlord for any damage or loss to Tenant resulting from Landlord's removal, storage, retention, or disposition of any such property. Upon expiration or termination of this Lease or of

Tenant's possession, whichever is earliest, Tenant shall surrender all keys to the Premises and any part thereof and shall deliver to Landlord all keys for or make known to Landlord the combination of locks on all safes, cabinets and vaults that may be located in the Premises. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

Normal wear and tear, for purposes of this provision, shall be construed to mean wear and tear caused to the Premises by the natural aging process that occurs in spite of prudent application of good standards for maintenance, repair and janitorial practices. It is not intended, nor shall it be construed to include items of neglected or deferred maintenance which would have or should have been attended to during the Term of the Lease if good standards had been applied to properly maintain and keep the Premises at all times in good condition and repair.

19.2 Holding Over. If Tenant (directly or through any Transferee or other successor-in-interest of Tenant) remains in possession of the Premises and/or fails to satisfy its surrender obligations under Section 19.1, above, after the expiration or earlier termination of this Lease, Tenant's continued possession shall be on the basis of a tenancy at the sufferance of Landlord. In such event, Tenant shall continue to comply with and perform all the terms and obligations of Tenant under this Lease, except that the Monthly Base Rent during Tenant's holding over shall be one hundred twenty-five percent (125%) of the Monthly Base Rent payable in the last full month prior to the expiration or termination hereof. Acceptance by Landlord of rent after such expiration or termination shall not constitute a renewal of this Lease; and nothing contained in this provision shall be deemed to waive Landlord's right of reentry or any other right hereunder or at law. Tenant shall indemnify, defend and hold Landlord harmless from and against all Claims arising or resulting directly or indirectly from Tenant's failure to timely surrender the Premises, including (i) any rent payable by or any loss, cost, or damages claimed by any prospective tenant of the Premises, and (ii) Landlord's foreseeable damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises by reason of such failure to timely surrender the Premises.

20. ENCUMBRANCES.

20.1 Subordination. This Lease is expressly made subject and subordinate to any mortgage, deed of trust, ground lease, underlying lease or like encumbrance affecting any part of the Property or any interest of Landlord therein which is now existing or hereafter executed or recorded ("Encumbrance"); provided, however, that such subordination shall only be effective as to Encumbrances created by Landlord after the Commencement Date of this Lease if the holder of the Encumbrance agrees that so long as this Lease is in full force and effect and there exists no Event of Default hereunder, Tenant's right to possession of the Premises shall not be disturbed by reason of foreclosure, exercise of the statutory power of sale, or receipt of a deed in lieu of foreclosure in the case of any mortgage or deed of trust that constitutes the Encumbrance or termination in the case of any ground lease that constitutes the Encumbrance. Tenant shall execute and deliver to Landlord, within ten (10) days after written request therefor

by Landlord and in a form reasonably requested by Landlord, any additional documents evidencing the subordination of this Lease with respect to any such Encumbrance, provided that, in any case where Tenant is entitled to the above-described nondisturbance agreement, either prior to or concurrently with the request Tenant is provided the required nondisturbance agreement by the holder of the Encumbrance. If the interest of Landlord in the Property is transferred pursuant to or in lieu of proceedings for enforcement of any Encumbrance, provided the new owner requires Tenant to do so or Tenant is party to a nondisturbance agreement as herein described, Tenant shall attorn to the new owner, and this Lease shall continue in full force and effect as a direct lease between the transferee and Tenant on the terms and conditions set forth in this Lease. Anything in this Section 20.1 to the contrary notwithstanding, if a Mortgagee so elects in writing, this Lease shall be deemed superior to the Encumbrance held by the Mortgagee, regardless of the date of recordation of the Encumbrance, and Tenant will execute an agreement confirming the Mortgagee's election on request.

20.2 Mortgagee Protection. Tenant agrees to give any holder of any Encumbrance covering any part of the Property ("Mortgagee"), by registered mail, a copy of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified in writing (by way of notice of assignment of rents and leases, or otherwise) of the address of such Mortgagee. If Landlord shall have failed to cure such default within thirty (30) days from the effective date of such notice of default, then the Mortgagee shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default (including the time necessary to foreclose or otherwise terminate its Encumbrance, if necessary to effect such cure), and this Lease shall not be terminated so long as such remedies are being diligently pursued; provided, however, that nothing contained in this Section 20.2 shall be construed to impose any obligation on a Mortgagee to cure such default.

21. ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS.

21.1 Estoppel Certificates. Within ten (10) days after written request therefor, Tenant shall execute and deliver to Landlord, in a form provided by or satisfactory to Landlord, a certificate stating that this Lease is in full force and effect, describing any amendments or modifications hereto, acknowledging that this Lease is subordinate or prior, as the case may be, to any Encumbrance and stating any other information Landlord may reasonably request, including the Term, the date on which the Term expires, the Monthly Base Rent, the date to which Rent has been paid, the amount of any security deposit, letter of credit or prepaid rent, whether either party hereto is in default under the terms of the Lease, and whether Landlord has completed its construction obligations hereunder (if any). Tenant irrevocably constitutes, appoints and authorizes Landlord as Tenant's special attorney-in-fact for such purpose to complete, execute and deliver such certificate if Tenant fails timely to execute and deliver such certificate as provided above. Any person or entity purchasing, acquiring an interest in or extending financing with respect to the Property shall be entitled to rely upon any such certificate. If Tenant fails to deliver such certificate within ten (10) days after Landlord's second written request therefor, Tenant shall be liable to Landlord for any damages incurred by

Landlord, including any profits or other benefits from any sale or financing of the Property or any interest therein which are lost or made unavailable as a result, directly or indirectly, of Tenant's failure or refusal to timely execute or deliver such estoppel certificate.

21.2 Financial Statements. Within ten (10) days after written request therefor, but not more than once a year, Tenant shall deliver to Landlord a copy of the financial statements (including at least a year end balance sheet and a statement of profit and loss) of Tenant (and of each guarantor, if any, of Tenant's obligations under this Lease) for each of the three most recently completed years, prepared in accordance with generally accepted accounting principles (and, if such is Tenant's normal practice, audited by an independent certified public accountant), all then available subsequent interim statements, and such other financial information as may reasonably be requested by Landlord or required by any Mortgagee.

22. NOTICES. Any notice, demand, request, consent or approval that either party desires or is required to give to the other party under this Lease shall be in writing and shall be served personally, delivered by messenger or courier service, or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the other party at the party's address for notices set forth in the Basic Lease Information. Notices shall be deemed to have been given and be effective on the earlier of (a) receipt (or refusal of personal delivery), or (b) one (1) day after acceptance by an independent service for delivery, if sent by independent messenger or courier service, or (c) three (3) days after mailing if sent by mail in accordance with this Section. Landlord may change its address for notices hereunder, effective fifteen (15) days after notice to Tenant complying with this Section. If Tenant sublets the Premises, notices from Landlord shall be effective on the subtenant when given to Tenant pursuant to this Section.

23. ATTORNEYS' FEES. In the event of any dispute between Landlord and Tenant in any way related to this Lease, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees and costs and expenses of any type incurred by the prevailing party in connection with any action or proceeding (including any appeal and the enforcement of any judgment or award), whether or not the dispute is litigated or prosecuted to final judgment. The "prevailing party" shall be determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim or defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues.

24. QUIET POSSESSION. Subject to Tenant's full and timely performance of all of Tenant's obligations under this Lease and subject to the terms of this Lease, including Section 20, Tenant shall have the quiet possession of the Premises throughout the Term as against any persons or entities lawfully claiming by, through or under Landlord.

25. SIGNS. Subject to Tenant obtaining all necessary approvals from the City of Mountain View and subject to Landlord's review and approval of plans and

specifications for any proposed signage, which approval shall not be unreasonably withheld, Tenant shall have the right to install Tenant identification signage on the Property's monument sign, on the glass entry doors to the Building and on the exterior of the Building; provided, however, that any signage affixed to the exterior of the Building shall not penetrate or otherwise damage or deface the sandstone façade of the Building. Any and all letters/logos must be glued to the copper backgrounds on each side of the existing monument sign; there shall be no drilling into the sign. Tenant shall have no right to maintain any Tenant identification sign in any other location in, on or about the Property or the Premises and shall not display or erect any other Tenant identification sign, display or other advertising material that is visible from the exterior of the Building. Any changes to the size, design, color or other physical aspects of Tenant's identification sign(s) and/or directional signs shall be subject to the Landlord's prior written approval, which shall not be unreasonably withheld, and any appropriate municipal or other governmental approvals. The cost of Tenant's sign(s) and their installation, maintenance and removal (including any necessary repairs to the Building or any other part of the Property caused by such removal) shall be Tenant's sole cost and expense. If Tenant fails to maintain its sign(s), or if Tenant fails to remove its sign(s) upon the expiration or earlier termination of this Lease, Landlord may do so at Tenant's expense and all reasonable amounts expended by Landlord in doing so shall be immediately payable by Tenant to Landlord as Additional Rent.

26. COMMON AREAS. Tenant shall have the right during the Term of the Lease to the exclusive use of all areas and facilities within the boundaries of the Property that are outside of the Building, including the Parking Facility, sidewalks, landscaped areas, pedestrian ways, driveways, service areas and delivery facilities, trash disposal facilities, storage areas (if any), and common utility facilities (collectively, the "Common Areas"), subject to the Rules and Regulations and changes therein promulgated by Landlord from time to time governing the use of the Common Areas. The Common Areas, except for the sidewalks, are not open to the general public and Landlord reserves the right to control and prevent access to the Common Areas by any person whose presence, in Landlord's opinion, would be prejudicial to the safety, reputation and interests of the Property.

27. RULES AND REGULATIONS. Tenant shall be bound by and shall comply with the rules and regulations attached to and made a part of this Lease as Exhibit B to the extent those rules and regulations are not in conflict with the terms of this Lease, as well as any reasonable modifications and/or additions thereto hereafter adopted by Landlord upon notice to Tenant thereof (collectively, the "Rules and Regulations"); provided, however, that no such additional or amended rules and regulations shall materially and adversely interfere with Tenant's business operations in the Building or on the Property.

28. LANDLORD'S LIABILITY. The term "Landlord," as used in this Lease, shall mean only the owner or owners of the Property at the time in question. In the event of any conveyance of title to the Property, then from and after the date of such conveyance, the transferor Landlord shall be relieved of all liability with respect to Landlord's obligations to be performed under this Lease after the date of such conveyance. Notwithstanding any other term or provision of this Lease, the liability of Landlord arising out of or based

upon its obligations under this Lease is limited solely to Landlord's interest in the Property as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Landlord or against Landlord's constituent partners or members or its or their respective partners, shareholders, members, directors, officers or managers on account of any of Landlord's obligations or actions under or related to this Lease.

29. CONSENTS AND APPROVALS. The review and/or approval by Landlord of any item or matter to be reviewed or approved by Landlord under the terms of this Lease or any Exhibits or Addenda hereto shall not impose upon Landlord any liability for the accuracy or sufficiency of any such item or matter or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting Landlord's interest in the Property, and no third parties, including Tenant or the Representatives and Visitors of Tenant or any person or entity claiming by, through or under Tenant, shall have any rights as a consequence thereof.

30. BROKERS. Landlord shall pay the fee or commission of Cornish & Carey ("Broker"), who is also the procuring broker and is serving as an agent for both Landlord and Tenant in this transaction, in accordance with Landlord's separate written agreement with Broker. Tenant warrants and represents to Landlord that in connection with the negotiating and making of this Lease neither Tenant nor anyone acting on Tenant's behalf has dealt with any broker or finder who might be entitled to a fee or commission for this Lease other than Tenant's Broker. Tenant shall indemnify and hold Landlord harmless from any Claims asserted by any other person or entity for a fee, commission or other compensation based upon any dealings with or statements made by Tenant or Tenant's Representatives.

31. PARKING. Tenant shall have the exclusive right to use the Parking Facility, provided that all parking by Tenant, Tenant's Representatives and Tenant's Visitors shall be in compliance with all Rules and Regulations of Landlord regarding the use of the Parking Facility, as such Rules and Regulations may be modified from time to time. Failure to observe the Rules and Regulations shall be an Event of Default. In addition, if Tenant, Tenant's Representatives or Tenant's Visitors violate the Rules and Regulations, Landlord shall have the right to remove any vehicles so violating the Rules and Regulations, at Tenant's expense, and Landlord shall not be liable for any damage incurred in connection with such removal. All responsibility for damage to vehicles or persons in or about the Parking Facility is assumed by the owner of the vehicle and/or its driver. Should parking charges or surcharges of any kind be imposed upon the Parking Facility or the use thereof by a government agency, such charges shall be included in Operating Costs.

32. ENTIRE AGREEMENT. This Lease, including the Exhibits attached hereto, all of which Exhibits are incorporated into and made a part of this Lease by this reference thereto, constitutes the entire agreement between Landlord and Tenant with respect to the leasing of the Premises by Tenant, and supersedes all prior or contemporaneous agreements, understandings, proposals and other representations by or between Landlord and Tenant, whether written or oral, all of which are merged herein. For clarification, the

legal description, the Rules and Regulations, the Preliminary Plans, the Specifications and the Work Letter attached hereto as Exhibits A through E, respectively, are incorporated into and made a part of this Lease. Neither Landlord nor Landlord's agents have made any representations or warranties whatsoever with respect to the Building, the Property or this Lease except as expressly set forth herein, and no rights, easements or licenses shall be acquired by Tenant by implication or otherwise unless expressly set forth herein. This Lease may be amended or modified only by a written instrument signed by Landlord and Tenant.

33. MISCELLANEOUS.

33.1 Submission of Lease. The submission of this Lease for examination does not constitute an option for or offer to lease the Premises and this Lease shall become effective as a binding agreement only upon execution and delivery thereof by Landlord to Tenant.

33.2 Successors and Assigns. Subject to Sections 14 and 28, this Lease shall be binding on and shall inure to the benefit of the parties and their respective successors, assigns and legal representatives.

33.3 Severability. The determination that any provisions hereof may be void, invalid, illegal or unenforceable shall not impair any other provisions hereof and all such other provisions of this Lease shall remain in full force and effect. The unenforceability, invalidity or illegality of any provision of this Lease under particular circumstances shall not render unenforceable, invalid or illegal other provisions of this Lease, or the same provisions under other circumstances.

33.4 Governing Law. This Lease shall be governed by and construed and interpreted in accordance with the laws (excluding conflicts of laws principles) of the State of California.

33.5 Interpretation. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party, even if such party drafted the provision in question. When required by the context of this Lease, the singular includes the plural. Wherever the terms "including" or "includes" are used in this Lease, they shall mean "including, but not limited to" the matter or matters thereafter enumerated. The captions contained in this Lease are for purposes of convenience only and are not to be used to interpret or construe this Lease. In any provision of this Lease relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's Representatives Tenant's Visitors.

33.6 Joint and Several Liability. If more than one person or entity is identified as Tenant hereunder, the obligations of each and all of them under this Lease shall be joint and several.

33.7 Recordation. Neither Landlord nor Tenant shall record this Lease or a memorandum thereof.

33.8 Waiver of Jury Trial. Landlord and Tenant waive their respective rights to trial by jury in any cause of action, claim, counterclaim or cross-complaint in any action or proceeding brought by either Landlord or Tenant against the other on any matter whatsoever arising out of or in any way connected with this Lease, including the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, any claim for injury or damage, and the enforcement of any remedy under any Laws now or hereinafter in effect.

33.9 Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

34. **TIME.** Time is of the essence for the performance of each and every obligation to be performed by Tenant under this Lease.

35. **AUTHORITY.** If Tenant is a corporation, partnership, limited liability company or other form of business entity, Tenant and each of the persons executing this Lease on behalf of Tenant warrant and represent to Landlord that Tenant is a duly organized and validly existing entity, that Tenant has full right and authority to enter into this Lease and that the persons signing on behalf of Tenant are authorized to do so and have the power to bind Tenant to this Lease. Upon request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations.

36. **OPTION TO EXTEND LEASE.** Provided Tenant (i) is not in default when Tenant exercises its option or at the effective date of any such option period, and (ii) has not sublet the Premises or assigned this Lease, Tenant shall have one (1) option to extend the term of this Lease for a period of Sixty (60) months (the "Option Period") at a rate equal to ninety five percent (95%) of the Fair Market Rental Value (defined below) of the Premises; provided, however, that in no event shall such rental be less than the Monthly Base Rent in effect immediately before the expiration of the initial Term. Such option shall be exercised by giving notice of exercise of the option ("Option Notice") to Landlord at least nine (9) months, but not more than one (1) year, before the expiration of the initial Term, with time being of the essence in Tenant's delivery of the Option Notice. All other terms of the Lease shall remain unchanged, and upon commencement of the Option Period, such period shall be included within the Term of this Lease.

36.1 Fair Market Rental Value. For purposes of this Lease, the term "Fair Market Rental Value" shall be based upon the highest and best use of the Premises and may include increases in Monthly Base Rent over the Option Period. Fair Market Rental Value shall be determined as follows: At least one hundred and twenty (120) days prior to commencement of the Option Period, Landlord shall notify Tenant of its determination of the Fair Market Rental value. Tenant shall have thirty (30) days from the date of such notice to notify Landlord whether it disagrees with such determination. If Tenant fails to so timely notify Landlord, the Fair Market Rental Value shall be as established in Landlord's notice. If Tenant gives Landlord timely notice of its disagreement, within fifteen (15) days of the date of such notice, Landlord and Tenant shall negotiate in good faith to resolve the Fair Market Rental for an additional fifteen (15) day period. If the

parties have not resolved Fair Market Rental within such time, promptly thereafter each shall specify in writing to each other the name and address of a person to act as the appraiser or broker on its behalf. Each such person shall be an MAI certified commercial real estate broker or appraiser with at least five (5) years of experience with the prevailing market rents for the area in which the Premises are located. If either party fails to timely appoint an appraiser or broker, the determination of the timely appointed appraiser or broker shall be final and binding.

The two appraiser/brokers shall have thirty (30) days from the day of their respective appointments (the "Determination Period") to make their respective determinations and agree on the fair market rental rate. If the two appraiser/brokers selected by the Landlord and Tenant cannot reach agreement on the fair market rental rate, such appraisers shall within fifteen (15) days jointly appoint an impartial third appraiser/broker with qualifications similar to those of the first two appraiser/brokers, and the fair market rental rate shall be established by the three appraiser/brokers in accordance with the following procedures: The appraiser/broker selected by each party shall state in writing his other determination of the rental rate, taking into consideration the rental rates for comparable properties in the Mountain View/Palo Alto area, which determination shall provide for periodic adjustments to the base rent if such appraiser believes that such adjustments are appropriate. The first two appraiser/brokers shall arrange for the simultaneous delivery of their determinations to the third appraiser/broker no later than seven (7) days after the expiration of the Determination Period. The role of the third appraiser shall be to select which of the two proposed determinations most closely approximates the third appraiser's determination of the fair market rental rate, and shall have no more than thirty (30) days in which to select the final determination. The third appraiser shall have no right to propose a middle ground or any modification of the two proposed determinations. The determination chosen by the third appraiser shall constitute the decision of the appraisers and be final and binding on the parties. Each party shall pay the cost of its own appraiser and shall share equally the cost of the third appraiser.

In the event the appraisers have not determined the Fair Market Rental Value as of the date the Option Period is to begin, Tenant shall on an interim basis pay Landlord monthly rent based upon Landlord's determination of Fair Market Rental Value as stated in Landlord's notice to Tenant. If the appraisers' final determination is less than Landlord's determination, Tenant shall be entitled to a credit against the next rental payment due from Tenant hereunder in the amount of the difference. Alternatively, if the appraisers' final determination is more than Landlord's determination, Tenant shall pay such difference with the next rental payment due.

36.2 Single Appraiser/Broker Nothing contained herein shall prevent Landlord and Tenant from jointly selecting a single appraiser/broker to determine the Fair Market Rental Value, in which event the determination of the appraiser/broker shall be conclusively deemed the Fair Market Rental Value. Landlord and Tenant shall share equally the fees and expenses of said joint appraiser/broker.

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Lease as of the Lease Date.

TENANT:

eHEALTHINSURANCE SERVICES, INC.
a Delaware corporation

LANDLORD:

/s/ Brian Avery
BRIAN AVERY, Trustee of the 1983
Avery Investments Trust

By: /s/ Stuart Huizinga

Title: CFO

Name: Stuart Huizinga

By: _____

Title: _____

Name: _____

EXHIBIT A

The Property

The land and building referred to in this description are situated in the State of California, County of Santa Clara, City of Mountain View and are described as follows:

All of Lot 11, as shown upon that certain map entitled, "Tract no. 2724 Ellis-Middlefield Industrial Park, which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 16, 1960 in Book 121 of Maps 40, 41, 42, 43 and 44.

APN & ARB: 159-41-004

Commonly known as: 440 E. Middlefield Road, Mountain View, Ca.

EXHIBIT B
Rules and Regulations

The following Rules and Regulations are additional provisions of the foregoing Lease. Capitalized terms used herein shall have the meanings ascribed to them in the Lease.

1. No Access to Roof. Except for access for routine maintenance and repair of any equipment or other device that has been installed on the roof with Landlord's prior written consent, Tenant has no right of access to the roof of the Building and will not install, repair or replace any antenna, aerial, aerial wires, fan, air conditioner, satellite dish or other device on the roof of the Building, without the prior written consent of Landlord, which may be given or withheld in Landlord's sole discretion. Any such device installed without such written consent is subject to removal at Tenant's expense without notice at any time. Notwithstanding the foregoing, Landlord hereby approves Tenant's installation of a satellite dish not to exceed twenty (20) inches in diameter for the purpose of receiving television programming and other related services; provided, however, that (a) Tenant shall install such dish on an exterior wall and such installation shall not cause any roof penetration, and (b) at Landlord's election, Tenant shall use Landlord's contractor to make any exterior penetrations necessary for the installation thereof. In any event Tenant will be liable for any damages or repairs incurred or required as a result of its installation, use, repair, maintenance or removal of such devices on the roof and agrees to indemnify, protect, defend and hold harmless Landlord from any Claims arising from any activities of Tenant or of Tenant's Representatives on the roof of the Building.

2. Signage. Other than as permitted pursuant to Section 25 of the Lease, no sign, placard, picture, name, advertisement or notice visible from the exterior of the Premises will be inscribed, painted, affixed or otherwise displayed by Tenant on or in any part of the Building without the prior written consent of Landlord, which may be given or withheld in Landlord's sole discretion.

3. Prohibited Uses. The Premises will not be used for manufacturing, for the storage of merchandise held for sale to the general public, for lodging or for the sale of goods to the general public. Tenant will not permit any food preparation on the Premises except that Tenant may use Underwriters' Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages and may use microwave ovens so long as such use is in accordance with all applicable Laws. Tenant may use outdoor grills on the Premises so long as such use is in accordance with all applicable Laws and so long as Tenant does not drill into or otherwise deface the existing patio surface in connection with such use. The foregoing prohibitions shall be in addition to, and not in lieu of, any other prohibitions applicable to the use of the Premises under the Lease and/or applicable Laws.

4. Keys and Locks. Landlord will furnish Tenant, free of charge, two keys to the Building. Landlord may make a reasonable charge for any additional or replacement

keys. Tenant will not alter any locks or install any new or additional lock or bolt on any door of its Premises without the prior written consent of Landlord and, in any event, Tenant will provide Landlord with a key for any such lock. On the termination of the Lease, Tenant will deliver to Landlord all keys to any locks or doors in the Building which have been obtained by Tenant.

5. Freight. Tenant shall not transport freight in loads exceeding floor load capacities or the weight limitations of elevators. Landlord reserves the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building, and no property will be received in the Building or carried up or down elevators or stairs except along such routes as may be designated by Landlord. Landlord reserves the right to require that heavy objects will stand on wood strips of such length and thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such property from any cause, and Tenant will be liable for all damage or injuries caused by moving or maintaining such property.

6. Nuisances and Dangerous Substances. Tenant will not conduct itself or permit Tenant's Representatives or Visitors to conduct themselves, in the Premises or anywhere on or in the Property in a manner which is offensive or unduly annoying. Tenant will not install or operate any phonograph, radio receiver, musical instrument, or television or other similar device in any part of the Common Areas and shall not operate any such device installed in the Premises in such manner as to disturb or annoy occupants of property adjacent to the Property. Tenant will not use or keep in the Premises or the Property any kerosene, gasoline or other combustible fluid or material other than limited quantities thereof reasonably necessary for the maintenance of office equipment. Tenant will not use or keep 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 Landlord or occupants of property adjacent to the Property by reason of noise or odors. Tenant will not bring or keep any animals in or about the Premises or the Property.

7. Window Coverings. No curtains, draperies, blinds, shutters, shades, awnings, screens or other coverings, window ventilators, hangings, decorations or similar equipment shall be attached to, hung or placed in, or used in or with any window of the Building without the prior written consent of Landlord, and Landlord shall have the right to control all lighting within the Premises that may be visible from the exterior of the Premises.

8. Floor Coverings. Tenant will not lay or otherwise affix linoleum, tile, carpet or any other floor covering to the floor of the Premises in any manner except as approved in writing by Landlord. Tenant will be liable for the cost of repair of any damage resulting from the violation of this rule or the removal of any floor covering by Tenant or its contractors, employees or invitees.

9. Wiring and Cabling Installations. No boring or cutting for wires or cables will be allowed without the prior written consent of Landlord. The location of burglar alarms, smoke detectors, telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior written consent of Landlord. Landlord shall not unreasonably withhold or delay its consent to the matters specified in this Rule 9.

10. Office Closing Procedures. Tenant will see that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant or its employees leave the Premises, so as to prevent waste or damage. Tenant will be liable for all damage sustained by Landlord resulting from Tenant's carelessness in this regard or violation of this rule. Tenant will keep the doors to the Building corridors closed at all times except for ingress and egress.

11. Plumbing Facilities. The toilet rooms, toilets, 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 disposed of therein. Tenant will be liable for any breakage, stoppage or damage resulting from the violation of this rule by Tenant, its employees or invitees.

12. Use of Hand Trucks. Tenant will not use or permit to be used in the Premises or in the Common Areas any hand trucks, carts or dollies except those equipped with rubber tires and side guards or such other equipment as Landlord may approve.

13. Refuse. Tenant shall store all Tenant's trash and garbage within the Premises or in other facilities designated by Landlord for such purpose. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the city in which the Building is located without being in violation of any law or ordinance governing such disposal. All trash and garbage removal shall be made in accordance with directions issued from time to time by Landlord, only through such Common Areas provided for such purposes and at such times as Landlord may designate. Tenant shall comply with the requirements of any recycling program adopted by Landlord for the Building.

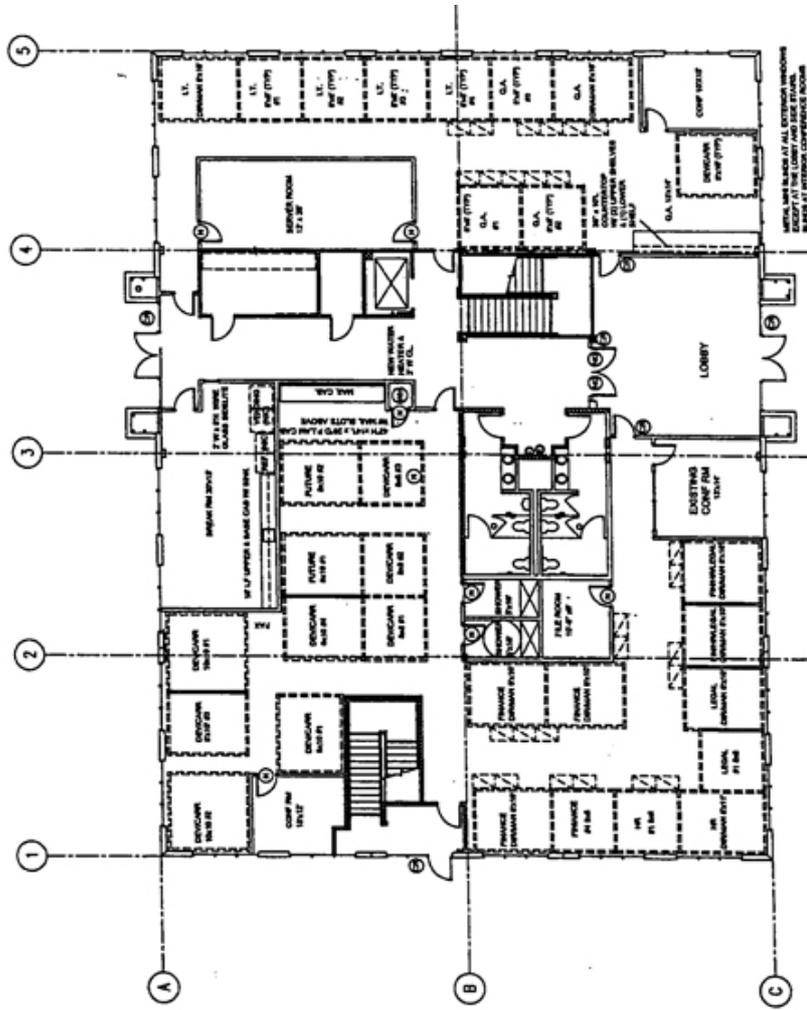
14. Fire, Security and Safety Regulations. Tenant will comply with all safety, security, fire protection and evacuation measures and procedures established by Landlord or any governmental agency.

15. Responsibility for Theft. Tenant assumes any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

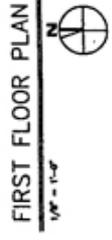
16. Sales and Auctions. Tenant will not conduct or permit to be conducted any sale by auction in, upon or from the Premises or elsewhere in the Property, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceeding.

17. Effect on Lease. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of the Lease. Violation of these Rules and Regulations constitutes a failure to fully perform the provisions of the Lease, as referred to in Section 15.1.

18. Additional and Amended Rules. Landlord reserves the right to rescind or amend these Rules and Regulations and/or to adopt any other rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building and the Property and for the preservation of good order therein and thereon; provided, however, that no such additional or amended rules and regulations shall materially and adversely interfere with Tenant's business operations in the Building or on the Property.



DIRMANAGER CUBES- 10'x10': (2) EACH
 DIRMANAGER CUBES- 8'x10': (16) EACH
 OTHER CUBES- 8'x8': (12) EACH



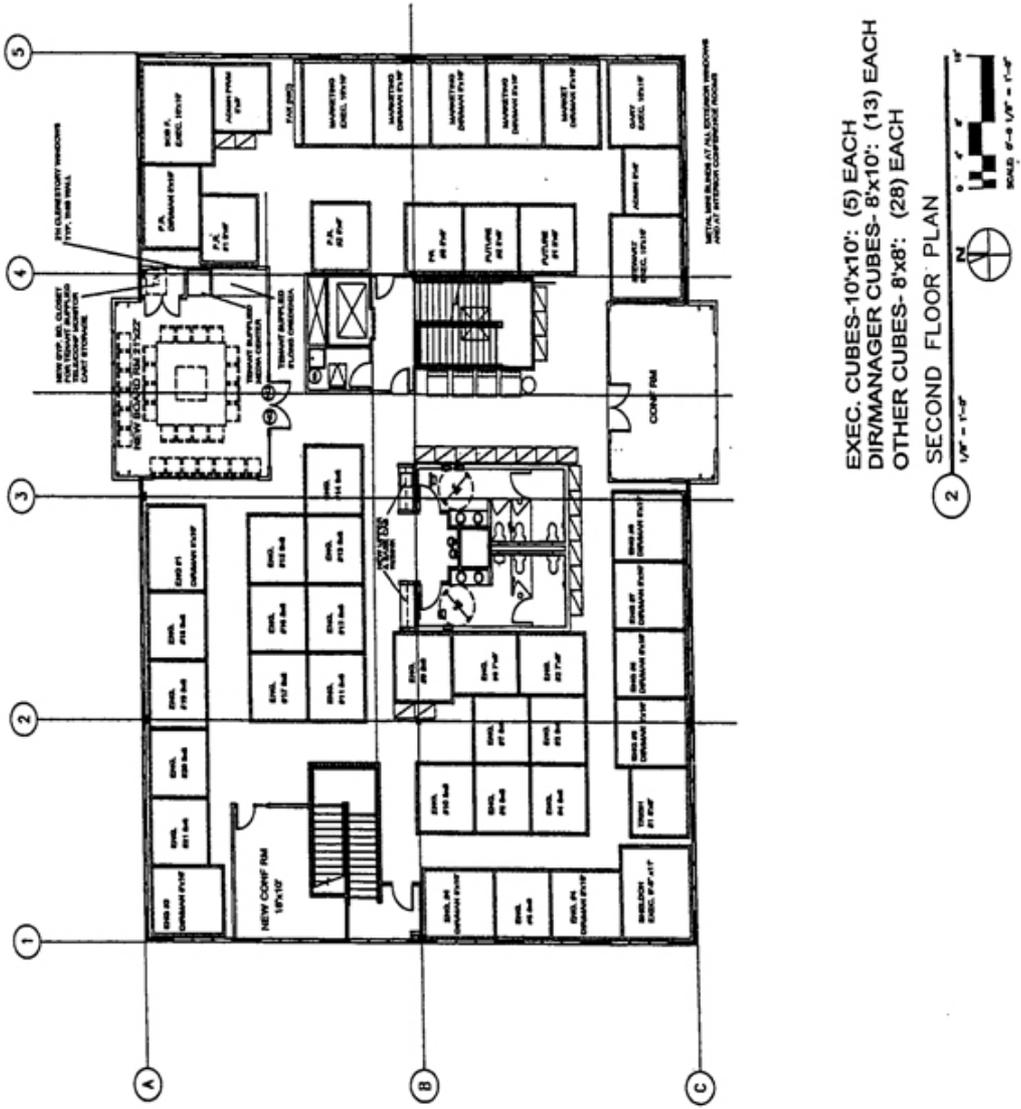


Exhibit "D"
TENANT IMPROVEMENT SPECIFICATIONS
FOR EHEALTHINSURANCE.COM
440 MIDDLEFIELD ROAD
MOUNTAIN VIEW, CALIFORNIA

DIVISION 1 - GENERAL REQUIREMENTS

- Section 01100 Summary: Provide "plug-n-play" office space built-out and furnished to the standards provided below. Tenant to provide program requirements including quantities and sizes for all workstations and auxiliary spaces (conference rooms, break areas, server rooms, etc.).
- Section 01300 Administrative Requirement: Provide construction documents and interior finish design along with all permits and hook-up fees (excluding meter service) for occupancy of the "plug-n-play" office space.
- Section 01400 Quality Requirements: Perform work in a good and workmanlike manner in compliance with all applicable code requirements.
- Section 01700 Execution Requirements: All existing lobby and building core facilities currently in-place to remain "as-is". Tenant improvement exiting plan to meet applicable code requirements with existing exterior door layout.

DIVISION 2 - SITEWORK

- Section 02200 Site Preparation: Provide selective demolition of existing slab-on-grade concrete and overhead finishes for preparation of tenant improvement construction.
- Section 02500 Utility Services: Tenant to contract directly with utility providers for electrical, natural gas, water, telecom, sanitation and sanitary sewage services of the facility
- Section 02800 Site Improvements and Amenities: Existing site improvement provided in an "as-is" condition.

DIVISION 3 - CONCRETE

- Section 03300 Cast-in-Place Concrete: Compact backfill and pour concrete in under slab trenches for sanitary sewer piping to the break room sink location.

DIVISION 4 - MASONRY

Not Applicable

Revision dated 05/06/04

**TENANT IMPROVEMENT SPECIFICATIONS
FOR EHEALTHINSURANCE.COM
440 MIDDLEFIELD ROAD
MOUNTAIN VIEW, CALIFORNIA**

DIVISION 5 - METALS

Section 05100 Structural Metal Framing: Provide metal backing for counters, sinks, etc. at required locations.

DIVISION 6 - CARPENTRY

Section 06101 Backboards: Provide backboards for communication systems in server room. The backboards to be fire-rated plywood and painted prior to equipment installation when exposed.

Section 06110 Wood Framing: Provide structural framing at penetration and sleepers for dedicated server HVAC system on roof.

Section 06201 Cabinets - Upper/Lower: Provide plastic laminate cabinets with doors, drawers, and adjustable shelves in the break room and coffee station.

Section 06203 Counter Tops and Shelves: Provide plastic laminate counter tops and shelves in the Q.A. area.

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

Section 07210 Building Insulation: Provide roof and wall insulation as required to meet applicable energy conservation codes.

Section 07211 Sound Insulation: Provide insulation and sealant in walls around conference rooms, server room, Q.A. area, and break room.

Section 07600 Flashing and Roof Patch: Provide flashing and roof patch of any tenant improvement required penetration.

Revision dated 05/06/04

**TENANT IMPROVEMENT SPECIFICATIONS
FOR EHEALTHINSURANCE.COM
440 MIDDLEFIELD ROAD
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DIVISION 8 - DOORS AND WINDOWS

- Section 08100 Metal Doors and Frames: Existing exterior metal doors and frames provided in an “as-is” condition unless code required upgrade is necessary.
- Section 08210 Wood Doors: Provide solid core pre-finished cherry cinnamon wood doors, 3’-0” x 8’-0” or 6’-0” x 8’-0”, in anodized aluminum frames, with Schlage D-Series hardware. Dome type doorstop on all doors and closers as required. Finish of hardware to match existing core improvements.
- Section 08801 Glass Doors: Provide storefront glass door at boardroom (3’-0”x 8’-0”) and interior lobby entrance. (6’-0”x 8’-0”), in anodized aluminum frames, with Schlage D-Series hardware. Dome type doorstops on all doors and closers as required. Finish of hardware to match existing core improvements.
- Section 08801 Glass Wall: Provide clear glass window wall to match existing core improvement at boardroom. All other specialty glass to be provided by tenant.
- Section 08804 Sidelites: Provide an aluminum frame with clear glass installed adjacent to all applicable interior doors (excluding server room, etc.) 2’-0” x 8’-0”.

DIVISION 9 - FINISHES

- Section 09250 Wall Partitions: Provide slab to underside of roof/floor structure, 5/8” gypsum sheet rock both sides, taped and finished to Level 4 standards below acoustical ceiling at conference, break room, and server room.
- Section 09252 Furring: Provide gypsum board furring on the inside face of the perimeter concrete walls to conceal existing rainwater leaders and additional required electrical conduits in office areas from the slab-on-grade to 6” above the acoustical ceiling, taped and finished to Level 4 standards.
- Section 09510 Acoustical Ceiling: Provide suspended acoustical ceiling, Armstrong Prelude XL 15/16” Dimensional Tee System with Dune Second Look (2’x4’) Angled Tegular throughout the office areas. Compression posts as required by code.
- Section 09650 Resilient Flooring (VCT): Provide Armstrong Excelon 12”x12” Vinyl Composition Tile in break room, file room and server room. Rubber base to match.

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- Section 09680 Carpet: Provide Hollytex Infinium Commercial Solutions Series carpet. Available patterns are Pointe Royal (cut pile), Spin City (cut pile), Accommodation (textured loop), Attribute (level loop), Carrara (textured loop), Exeter (level loop), or London Classics (loop pile). Cut pile for use in low traffic rooms only. Rubber base to match.
- Section 09700 Furring: Provide standard smooth wall finish on exterior/perimeter concrete walls (sack and patch), from the slab-on-grade to the height of the acoustical ceiling.
- Section 09900 Painting: Include two finish coats of Kelly Moore or equal over sealer coat, smooth finish, paint to all walls, furring, columns, etc.

DIVISION 10 - SPECIALTIES

- Section 10115 Marker Boards: Provide 4'x8' surface mounted white boards in all conference rooms.
- Section 10400 Signage: Code required signage to be installed.
- Section 10401 Signage: Exterior signage allowance will be provided on the existing monument base. Any and all letters/logo must be glued to the copper background of the monument sign. There shall be no drilling into the sign or building structure.
- Section 10520 Fire Extinguishers: Provide fire extinguishers in cabinets as required by code. Cabinets to be semi-recessed type with extinguisher type and size required by code.
- Section 10800 Break room's Accessories: Provide paper towel and soap dispenser in break room and coffee station

DIVISION 11 - EQUIPMENT

- Section 11120 Vending Equipment: Vending equipment to be by tenant.
- Section 11130 Audio/Visual Equipment: Audio/Visual equipment to be by tenant except for projection screens in large conference rooms, four total.
- Section 11400 Appliances: Provide full-sized refrigerator, dishwasher and microwave in break room. Provide undercounter refrigerator in coffee bar. All other appliances by tenant.

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Section 11680 Office Equipment: Office equipment (printer, plotter, faxes, etc.) to be by tenant.

DIVISION 12 - FURNISHINGS

Section 12100 Art: Art to be by tenant.

Section 12300 Manufactured Casework: Lobby/Reception desk not required by tenant.

Section 12490 Window Treatment: Provide Levelor blinds (vertical or horizontal) on all perimeter windows and interior glass walls.

Section 12510 Office Furniture: Provide office furniture for boardroom, conference rooms and break rooms. Boardroom to have a 15-person, 14' long by 5' wide boat shaped veneered wood table. Three (3) conference rooms to an 8-person, 8' long by 4' wide boat shaped veneered wood table. Two (2) conference rooms to a 6-person, 6' long by 3' wide boat shaped veneered wood table. Break room to have six (4'x4') plastic laminate tables. Boardroom to have 8' long credenza to match table finish. All other furniture by tenant.

Section 12520 Seating: Provide seating for cubicles, boardroom, and conference rooms, break rooms, and 2nd floor hallway/waiting area. Each cubicle to have 1 task chair. Boardroom to have a 15 conference chairs and 10 side chairs. Three (3) conference rooms to each have 8 conference chairs. Two (2) conference rooms to each have 6 conference chairs. Break room to have 24 stackable plastic chairs. 2nd floor hallway/lobby area to provide couch/armchair seating for 4 persons with 2 side tables.

Section 12700 Systems Furniture: Provide modular stackable systems furniture systems for 7 executive cubicles, 29 manager cubicles and 40 standard cubicles. Cubicles to be new Kingdar Office System (Herman Miller Ethospace clone). Fabric and laminate color to be selected by tenant. Each executive cubicle to be 10'x10' in size with a L-shaped work surface and have a keyboard tray, 1 task light, 1 overhead file, 1 open overhead shelf, 1 file-file pedestal, 1 box-box-file pedestal, 2 Rail Tiles, 1 side table and 2 side chairs. Each manager cubicle to be 8'x10' in size with a L-shaped work surface and have a keyboard tray, 1 task light, 1 overhead file, 1 open overhead shelf, 1 file-file pedestal, 1 box-box-file pedestal, 2 Rail Tiles, and 2 side chairs. Each standard cubicle to be 8' x 8' in size with a L-shaped work surface and have a keyboard tray, 1 task light, 1 overhead file, 1 open overhead shelf, 1 file-file pedestal and 1 box-box-file pedestal, and 2 Rail Tiles.

Section 12800 Interior Plants: Interior plants provided by tenant.

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DIVISION 13 - SPECIAL CONSTRUCTION

Not Applicable

DIVISION 14 - CONVEYING SYSTEMS

Not Applicable

DIVISION 15 - MECHANICAL SYSTEMS

- Section 15400 Plumbing: Provide plumbing services (hot/cold water, sanitary sewer and venting) at break room, and coffee bar. Sinks to be Elkay stainless steel with American Standard chrome fixtures.
- Section 15300 Fire Sprinklers: Provide tenant improvement heads from shell overhead system as required by applicable code. Heads to be white semi-recessed sprinklers with white escutcheons.
- Section 15800 HVAC: Provide distribution per tenant improvement plan based upon 25 VAV zones from existing shell HVAC system. Temperature to be maintained 70°F ± 4 within office environment. Provide 5-ton dedicated split HVAC system for server room. Existing DDC controls to be used. Standard Titus diffusers.

DIVISION 16 - ELECTRICAL

- Section 16300 Power: Provide general utility power of 5 watts per square foot in office area at 120/208-volts. Included in the general utility power will be 1 circuit per 2 cubicles. Lighting power to be 277/480 volt and per Title 24 energy compliance. Provide HVAC power for dedicated server system. Provide a 220V, single-phase circuit for a UPS at the Server room location. Existing shell service 1,600 amp at 3-phase, 480 volts.
- Section 16500 Lighting: Provide 2' x 4' Lithonia or equivalent fluorescent parabolic troffers, 4" deep fixtures designed to an average of 75 foot-candles in office area. Exit and emergency lighting per code.
- Section 16700 Communications: Provide voice/data cabling to workstations and auxiliary rooms. Standard drop to be two (2) category 3 voice lines and two (2) category 5e data lines. Assumed 100 drop locations in facility. Voice and data lines to be terminated to 110-blocks and patch panel in server room. Nine (9) 19" x 7' racks to be included in scope. Interconnection from MPOE to server room to consist of 50-pair category 3 line. All other IT equipment by tenant (PBX, phones, security, etc.).

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ALTERNATE ITEMS (PROVIDED BY TENANT)

- Section 03300 Cast-in-Place Concrete: Compact backfill and pour concrete in under slab trenches for sanitary sewer piping to both shower locations.
- Section 06202 Cabinets/Millwork: Wood veneer faced closet with doors to match furniture finish, as specified by tenant at boardroom for storage of video equipment cart.
- Section 06203 Cabinets/Millwork: Plastic laminate cabinets with doors, drawers and shelves as specified by tenant, for use at mail station.
- Section 09251 Shower Room Wall Partitions and Ceiling: Provide gypsum board partitions 8'-0" high. One layer of 5/8" gypsum board each side on 3 5/8" metal studs and 5/8" gypsum board ceiling.
- Section 09310 Ceramic Tiler Shower Rooms: Provide ceramic tile on the floor and wainscot to match existing core improvements.
- Section 10185 Prefabricated Shower Enclosure: Provide an A.D.A. compliant fiberglass prefabricated shower enclosure in each of two (2) shower rooms.
- Section 10400 Signage at Showers: Code required signage to be installed.
- Section 12491 Window Treatments (Special): Mechanical shades (Mechoshades) for boardroom glass.
- Section 12501 Furniture: Freestanding "Entertainment" system to house electronic components within the boardroom.
- Section 13700 Security Access: All security systems hardware, power and wiring, and all related door hardware upgrades.
- Section 15401 Plumbing: All plumbing associated with installation of 2 ADA Compliant showers.
- Section 15801 HVAC: Provide one-exhaust fans to each of two (2) shower room locations.
- Section 16701 Communications: Upgrade to Category 6 data lines including supporting patch panel at Server room location.

END OF TENANT IMPROVEMENT CONSTRUCTION SPECIFICATIONS

Revision dated 05/06/04

EXHIBIT E

WORK LETTER FOR INITIAL TENANT IMPROVEMENTS

This Exhibit E (referred to herein as this “**Work Letter**”) forms a part of that certain Office Lease dated of even date herewith (the “**Lease**”) by and between Brian Avery, Trustee of the 1983 Avery Investments Trust, as Landlord, and eHealthinsurance Services, Inc., a Delaware corporation, as Tenant, to which this Work Letter is attached. If there is any conflict between this Work Letter and the Lease, this Work Letter shall govern.

1. Defined Terms. All defined terms referred to in this Work Letter shall same meaning as defined in the Lease to which this Work Letter is a part, except where expressly defined to the contrary.

2. Additional Definitions. Each of the following terms shall have the following meaning:

(a) “**Architect**” means Devcon Construction, Inc.

(b) “**Applicable Laws and Restrictions**” shall mean all laws (including, without limitation, the Americans with Disabilities Act), building codes, ordinances, governmental regulations, and recorded title covenants, conditions and restrictions applicable to the Premises.

(c) “**Construction Plans**” – shall mean the final and complete plans and specifications for the construction of the Initial Tenant Improvements, which plans and specifications shall be consistent with and logical evolutions of the Preliminary Plans and the Specifications attached to the Lease as Exhibits C and D, respectively, and shall consist of all architectural, engineering, mechanical and electrical drawings and specifications which are required to obtain all building permits, licenses and certificates from the applicable governmental authority(ies) for the construction of the Initial Tenant Improvements, as the same may be modified by a Change Order issued in accordance with this Work Letter and/or by any subsequent revisions required by the City of Mountain View. The Construction Plans shall be prepared by the Architect consistent with the Preliminary Plans and Specifications and approved by the parties as set forth herein and shall, in all respects, be in substantial compliance with all Applicable Laws and Restrictions.

(d) “**Contractor**” shall mean Devcon Construction, Inc., whom Tenant has previously approved as the Contractor responsible for construction of the Initial Tenant Improvements. The Contractor shall be duly licensed by the State of California.

(e) “**Construction Schedule**” shall mean the schedule for the commencement, prosecution and Substantial Completion of the Initial Tenant Improvements, which shall be prepared by Contractor within two (2) business days following the final approval of the Construction Plans by the parties, as more particularly described in Section 4(b), below.

(f) **“Force Majeure Delays”** – Any delay, other than a Tenant Delay, by Landlord in completing the Initial Tenant Improvements by the Prior Occupancy Date set forth in the Lease by reason of (i) any strike, lockout or other labor trouble or industrial disturbance (whether or not on the part of the employees of either party hereto), (ii) governmental preemption of priorities or other controls in connection with a national or other public emergency, civil disturbance, riot, war, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body, (iii) shortages of fuel, materials, supplies or labor, or (iv) lightning, earthquake, fire, storm, tornado, flood, washout, explosion, inclement weather or any other similar industry-wide or Building-wide cause beyond the reasonable control of Landlord, and (v) any other cause, whether similar or dissimilar to the above, beyond Landlord’s reasonable control. In the event of any Force Majeure Delay, Landlord shall provide Tenant with written notification of such delay within five (5) days of learning of such delay, the time for performance of any obligation of Landlord to construct the Initial Tenant Improvements under this Work Letter or the Lease and to deliver the Premises to Tenant under the Lease shall be extended, at Landlord’s reasonable election, by the actual number of days caused by such Force Majeure Delays resulting from any of the foregoing events to the extent such delay affects the critical path set forth in the Construction Schedule.

(g) **“Initial Tenant Improvements”** – The improvements to be installed by Landlord in the Premises in accordance with the Construction Plans. The type and quality of materials to be used by Landlord to construct the Initial Tenant Improvements will be consistent with the specifications set forth on the Preliminary Plans and Specifications.

(h) **“Preliminary Plans”** – the Preliminary Plans, including without limitation all specifications thereon, attached to the Lease as Exhibit C.

(i) **“Representatives”** – Landlord’s Representative shall mean Alex Johnson of Matrix CM, whose telephone number is (408) 996-0435, whose facsimile number is (408) 996-0495 and whose address for delivered notice is 20370 Town Center Lane, Suite 137, Cupertino, CA 95014, or such other person as Landlord shall designate in writing to Tenant as its authorized representative for the purposes of administering this Work Letter. Tenant’s Representative shall mean Stuart Huizinga whose telephone number is (408) 542-4880, whose facsimile number is (408) 542-4703, and whose address for delivered notice is 281 Java Drive, Sunnyvale, California 94089, or such other person as Landlord shall designate in writing to Tenant as its authorized representative for the purposes of administering this Work Letter. Either party may change its numbers and address by delivery of three (3) business days’ notice to the other party’s Representative.

(j) **“Specifications”** – the Specifications, including without limitation all fixtures, furnishings and finishes specified thereon, attached to the Lease as Exhibit D.

(k) **“Substantial Completion”** – The Initial Tenant Improvements shall be deemed Substantially Complete on the date that (i) the building officials of the applicable governmental agency(s) issue a final permit or a temporary, conditional or final certificate of occupancy, or other inspection sign-off, sufficient to permit lawful occupancy of the Premises by Tenant (including verbal approval), (ii) the Contractor delivers to both Landlord and Tenant a certificate of substantial completion wherein the Contractor shall certify to both Landlord and Tenant that the Initial Tenant Improvements have been substantially completed in accordance with this Work Letter and the Construction Plans (as defined above) except for items which do not unreasonably interfere with Tenant’s use of the Premises, and (iii) all utilities (excluding any services or utilities that are Tenant’s responsibility pursuant to the terms of this Work Letter or the Lease, including, without limitation, Tenant’s obligation to pull cable from the Building to the Premises) and mechanical systems are connected and available for Tenant’s use in the Premises.

(l) **“Tenant Delay”** – Any delay incurred by Landlord in completing the Initial Tenant Improvements due to (i) a delay by Tenant, or by any person employed or engaged by Tenant, in approving or delivering to Landlord any plans, schedules or information, including, without limitation, the Construction Plans beyond the applicable time period set forth in this Work Letter; (ii) a delay in the performance of work in the Premises by Tenant or any person employed by Tenant, if and only if such work is identified in the Construction Plans as being necessary for the Substantial Completion of the Initial Tenant Improvements; (iii) any Change Order requested by Tenant to previously approved work or in the Preliminary Plans or Construction Plans to the extent that such requested change affects the critical path set forth in the Construction Plans and is not solely the result of a concurrent delay by Landlord; provided that in no event shall the amount of Tenant Delay as a consequence of such requested change exceed the amount of delay specified in the Change Order; (iv) requests for special materials and finishes that were not originally requested in the Preliminary Plans or Construction Plans and which are not readily available; provided that the length of Tenant Delay due to such unavailability shall not exceed the amount of delay approved by Tenant when such materials and finishes were requested by Tenant, (v) delays in delivery of any materials requested by Tenant through Change Orders to the extent that such requested change affects the critical path set forth in the Construction Plans and is not solely the result of a concurrent delay by Landlord; provided that the amount of Tenant Delay as a consequence of such Change Order may not exceed the amount of delay specified in the Change Order; (vi) the failure of Tenant to pay as and when due under this Work Letter all costs and expenses to construct the Initial Tenant Improvements to the extent Tenant is required to pay for such costs in this Work Letter; and (vii) interference with the construction of the Initial Tenant Improvements by Tenant or any person employed by Tenant.

3. Designation of Representative. Landlord and Tenant hereby respectively appoint Landlord’s Representative and Tenant’s Representative as its sole representative for the purposes of this Work Letter. Until replaced by written notice, Landlord’s Representative and Tenant’s Representative shall have the full authority and responsibility to act on behalf of Landlord and Tenant, respectively, as required in this Work Letter and shall act in a commercially reasonable manner in such capacity.

4. Construction of the Initial Tenant Improvements.

(a) Construction Plans and Construction Schedule. Landlord shall cause to be prepared the Construction Plans for the Initial Tenant Improvements that are consistent with and are logical evolutions of the Preliminary Plans and Specifications within fifteen (15) days following the mutual execution and delivery of the Lease by Landlord and Tenant. Upon completion of the Construction Plans, Landlord shall immediately forward such plans to Tenant for approval, which approval shall not be unreasonably withheld or delayed; provided, however, that (i) it shall not be reasonable for Tenant to withhold its approval if the Construction Plans are substantially in conformance with and/or are a logical evolution of the Preliminary Plans and Specifications, and (ii) if Tenant's response to Landlord's request for approval includes a request for any additional changes which are beyond the scope of the Preliminary Plans and Specifications, Tenant shall be liable for payment of all additional expenses arising in connection with such changes. Within two (2) business days following Tenant's receipt of the Construction Plans, Tenant shall notify Landlord in writing whether Tenant approves or reasonably disapproves of the Construction Plans. If Tenant reasonably disapproves of the proposed Construction Plans, Tenant's written notice of disapproval shall specify any changes or modifications Tenant desires in the Construction Plans. Architect will then revise the Construction Plans, taking into account the reasons for Tenant's disapproval (provided, however, that Architect shall not be required to make any revision to the Construction Plans that Landlord reasonably disapproves), and the Construction Plans shall be deemed final as modified. Notwithstanding the foregoing, any failure of Tenant to fully and finally approve the Construction Plans within ten (10) days after receipt of the first drafts thereof from Landlord shall constitute a Tenant Delay, as long as Landlord and Contractor have not unreasonably delayed in their preparation and delivery of the Construction Plans. Landlord shall not unreasonably withhold its approval of any change requested by Tenant to the Construction Plans which does not materially delay the Prior Occupancy Date nor materially increase the cost that will be incurred by Landlord in constructing the Initial Tenant Improvements. When the Construction Plans have been approved by Landlord and Tenant as provided above, the Construction Plans shall be initialed by the parties.

(b) Construction; Weekly Meetings. As soon as Construction Plans are approved in final form by the parties in accordance with the terms of subparagraph (a) above, Landlord shall cause Contractor to (i) within ten (10) days following final approval of the Construction Plans, prepare the Construction Schedule based upon such final Construction Plans, and (ii) commence and to thereafter diligently prosecute to completion the construction of the Initial Tenant Improvements in accordance with the Construction Plans (using the standard of materials and specifications shown therein) in accordance with the Construction Schedule, subject to Tenant Delays and Force Majeure Delays. Landlord's Representative and Tenant's Representative shall meet on a weekly basis, or more frequent basis if desired by the parties, to track the construction against the Construction Schedule and discuss the progress of construction.

(c) Subcontracts and Materials. Landlord may negotiate with or competitively bid subcontractors (or cause the Contractor to do so) for the Initial Tenant Improvements, in Landlord's sole and absolute discretion.

(d) Changes to Construction Plans and Construction Schedule. If, following the date that the Construction Plans have been approved by Landlord and Tenant as provided in subparagraph (a) above, Tenant desires to order extra or changed work or request that the Construction Schedule be modified (a "**Change**"), pursuant to a written "**Change Order**", Landlord shall cause Architect to prepare additional Construction Plans implementing such Change (provided, however, that Landlord shall not be required to cause Architect to implement any such Change that Landlord reasonably disapproves). Tenant shall pay the cost of preparing additional Construction Plans within ten (10) days after receipt of Landlord's invoice therefor. As soon as practicable after the completion of such additional Construction Plans, Landlord shall notify Tenant of the estimated cost of the Change and the effect, if any, on the Construction Schedule. Within two (2) business days after receipt of such cost estimate, Tenant shall notify Landlord in writing whether Tenant approves the Change. If Tenant approves the Change, Landlord shall proceed with the Change and Tenant shall be liable for any cost resulting from the Change (and the Construction Schedule shall be modified to reflect any adjustments attributable to such Change). If Tenant fails to approve the Change within such two (2) business day period, construction of the Initial Tenant Improvements shall proceed as provided in accordance with the original Construction Documents.

All Change Orders shall be billed on a cost plus fee basis unless otherwise agreed by Tenant, with the Contractor's fee thereon not to exceed four percent (4%) and the subcontractor's fee not to exceed fifteen percent (15%). Tenant shall not be responsible for the payment of any general condition charges or general requirement charges (the "**General Condition Charges**") as a result of such Change Order, except to the extent that such Change Order results in (i) additional construction time to complete the Initial Tenant Improvements, or (ii) the need for additional on-site project management, supervisory fees or clean-up costs. In the event that General Condition Charges apply pursuant to the foregoing sentence, then Tenant shall pay such fees based on either a per diem basis or a percentage basis for the cost of the work, subject to Tenant's reasonable approval. The Change Order shall clearly describe (a) the change, (b) the party required to perform the change, (c) any modification of the Construction Plans, (d) the amount of delay or the time saved resulting therefrom and any revision of the Construction Plans and/or Construction Schedule occasioned by the change, (e) any added or reduced Tenant Improvement cost resulting from the change, and (f) any other cost, and the manner of payment of such costs. Change Orders desired by Landlord shall be subject to Tenant's prior consent, not to be unreasonably withheld.

(e) Tenant's Responsibility. Tenant shall be solely responsible for procuring or installing in the Premises any trade fixtures, equipment, telephone equipment or other personal property not included within the Preliminary Plans and Specifications ("**Personal Property**") to be used in the Premises by Tenant, and the cost of such Personal Property shall be paid by Tenant. Tenant shall conform to the Building's wiring standards in installing any telephone equipment and shall be subject to any and all rules of the site during construction.

(f) Disapprovals and Failures to Respond. Any disapproval by Tenant or Landlord of the Construction Plans submitted for its approval shall be communicated only by a writing, which shall be delivered to the other party within the time permitted hereunder. Such notice shall specify the disapproved item(s), the reason(s) for the disapproval, and the changes required to make the item acceptable to such party.

5. Standard of Construction. Landlord shall obtain from Contractor, and cause Contractor to obtain from each subcontractor for the express benefit of Landlord and Tenant, a warranty that the Initial Tenant Improvements have been constructed in accordance with the Construction Plans and Applicable Laws and in a good and workmanlike manner, and that they shall be free from defects in material and workmanship. Such warranty(ies) shall be effective for a minimum of one (1) year following completion of the Initial Tenant Improvements (collectively, the **“Warranties”**) and shall be expressly assignable to Tenant, provided that Landlord, at its option, may pursue such claims directly or assign any such Warranties to Tenant for enforcement.

6. Payment of Construction Costs. Landlord shall apply for all permits required in connection with the construction of the Initial Tenant Improvements described on the Preliminary Plans and shall pay all fees related to such permits and all costs to construct the Initial Tenant Improvements described on the Preliminary Plans including, without limitation, costs incurred in the preparation of the Preliminary Plans and Construction Plans. Any additional costs due to changes in the Initial Tenant Improvements reflected in the Preliminary Plans, Specifications and/or the Construction Plans requested by Tenant or arising as a result of any Tenant Delay shall be paid by Tenant as provided in Section 4(d), above.

7. Builder's All-Risk Policy. At its election in its sole discretion, Landlord shall obtain a builder's all-risk policy insuring the full replacement cost of the Initial Tenant Improvements, which policy provides coverage against all casualty loss respecting the Initial Tenant Improvements and loss due to theft or vandalism of materials suitably stored on site. Tenant shall be named as an additional insured on this policy.

8. Tenant Fixturing. Landlord shall use all reasonable efforts to complete construction of the Initial Tenant Improvements to a point permitting Tenant's entry for installation of its fixtures and equipment on or before Substantial Completion of the Initial Tenant Improvements. When the construction has proceeded to the point where Tenant's installation of its fixtures and equipment in the Premises can be commenced in accordance with good construction practice, Landlord shall notify Tenant to that effect and shall permit Tenant and its authorized representatives and contractors to have access to the Premises for the purpose of installing Tenant's trade fixtures, cabling, equipment and other Tenant's Property in the Premises. Landlord and Tenant shall cooperate in good faith to schedule and coordinate Tenant's fixturing with the Landlord's construction

in a manner which will not interfere with Substantial Completion of the Initial Tenant Improvements, will minimize any increase in each party's cost, and will ensure labor harmony. While performing fixturing, Tenant shall comply, and shall cause its employees, contractors and suppliers to comply, with the reasonable work rules observed by Landlord's Contractor and with the provisions of Section 2 of the Lease.

9. Inspection & Punchlist. Tenant's Representative and consultants shall have the right to enter on the Premises at all reasonable times and upon reasonable prior notice to Landlord's Representative for the purpose of inspecting the progress of the work. Tenant's Representative, Landlord's Representative and the Architect(s), and such advisers as they shall desire, shall inspect the Premises promptly after Substantial Completion using commercially reasonable efforts to discover all uncompleted or defective construction. After such inspection has been completed, a list of "**punchlist**" items shall be prepared jointly by Landlord and Tenant which the parties agree are to be corrected by Landlord. Landlord shall use its commercially reasonable efforts to complete and/or repair such "**punchlist**" items within thirty (30) days.

10. Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease, if an event of Default by Tenant under the Lease beyond expiration of all applicable notice or cure periods, or a default by Tenant under this Work Letter, has occurred at any time on or before the Substantial Completion of the Initial Tenant Improvements, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to cause cease the construction of the Initial Tenant Improvements (in which case, Tenant shall be responsible for any delay in the Substantial Completion of the Initial Tenant Improvements caused by such work stoppage), and (ii) all other obligations of Landlord under the terms of this Work Letter shall be forgiven until such time as such Default is cured pursuant to the terms of the Lease.

**GOLD POINTE CORPORATE CENTER
STANDARD LEASE AGREEMENT (OFFICE)
BETWEEN
GOLD POINTE E LLC,
A LIMITED LIABILITY COMPANY
AS "LANDLORD"**

AND

**EHEALTHINSURANCE SERVICES, INC.
A DELAWARE CORPORATION,
AS "TENANT"**

JUNE 10, 2004

GOLD POINTE CORPORATE CENTER 'E'
OFFICE GROSS LEASE AGREEMENT
Basic Lease Information

Terms and Definitions. For the purpose of this Lease, the following capitalized terms shall have the following definitions:

Lease Date: June 10, 2004

Landlord: Gold Pointe E LLC,
A limited liability company
c/o Panattoni Development Company
8401 Jackson Road
Sacramento, California 95826

Tenant: eHealthInsurance Services, Inc.
A Delaware Corporation

Tenant's Notice Address: 11919 Foundation Place, Suite 100
Gold River, CA 95670

Tenant's Billing Address: 11919 Foundation Place, Suite 100
Gold River, CA 95670

Tenant Contact: **Stuart Huizinga**
Phone Number: (408) 542-4880
Fax Number (408) 541-0882

Project: That office development commonly known as Gold Pointe Corporate Center, which is comprised of five office buildings.

Building: The two story building commonly known as 11919 Foundation Place, Gold River, California.

Premises: For purposes of this Lease, "Usable Area" shall mean a measure of area expressed in square feet computed using BOMA Standards in effect as of the Commencement Date. BOMA Standards calculate Rentable Area to Usable Area factors (the "R/U Ratio") for all floors of the Building. These R/U Ratios shall be averaged to determine an overall, full building R/U Ratio (the "Load Factor"). The Usable Area multiplied by the Load Factor shall determine the rentable area of the Premises, (the "Rentable Area").

The Premises referred to in this Lease consist of approximately 25,000 rentable square feet, as shown in Exhibit A, Suite 100, on the east side of the first floor of the Building, which is 39.55% ("Tenant's Proportionate Share") of the rentable square feet of the Building. The actual square footage to be determined after final space planning. In no event shall the square footage be less than 20,000 rentable square feet.

Term: The term shall be Sixty five (65) months from the Scheduled Lease Commencement Date (as hereinafter defined), which includes a five-month rent free period during the term as set forth in Section 5(b) below.

Scheduled Lease Commencement Date: December 1, 2004

Scheduled Lease Expiration Date: April 30, 2010

Business Hours: The hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. Saturday (excepting Federally recognized holidays).

Base Rent: \$1.76 per rentable square foot of the Premises per month, as adjusted pursuant to Section 5.

Base Year: 2005 calendar year.

Lease Year: The Base Year and each succeeding calendar year.

Use: General office and any other lawful use approved in writing by Landlord, which shall not be unreasonably withheld.

Security Deposit: \$100,000.00

Broker for Landlord: Aguer Havelock
655 University Avenue, Suite 215
Sacramento, CA 95825

Broker for Tenant: Aguer Havelock
655 University Avenue, Suite 215
Sacramento, CA 95825

LIST OF EXHIBITS

A	Description of Premises
A-1	Space Plans
B	Tenant Improvement Agreement
C	First Amendment to Lease and Acknowledgment
D	Rules and Regulations
E	Janitorial Specifications
F	Lender's Standard Form Subordination Non-Disturbance Agreement
G	Signage Guidelines
H	Tenant Parking Area
I	Exclusions From Operating Expenses and Taxes

**GOLD POINTE CORPORATE CENTER
STANDARD LEASE AGREEMENT
(OFFICE)**

This Standard Lease Agreement (“**Lease**”) is made and entered into by the Landlord and Tenant referred to in the Basic Lease Information. The Basic Lease Information attached to this Lease as page 1 and page 2 is hereby incorporated into this Lease by this reference.

1. PREMISES

(a) This Lease shall be effective as between Landlord and Tenant as of the Lease Date. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord upon the terms and conditions contained herein the Premises, which are more particularly described in Exhibit A attached hereto and made a part hereof (the “**Premises**”), including the tenant improvements (the “**Tenant Improvements**”) thereon presently existing or to be constructed in accordance with the “Tenant Improvement Agreement” attached as Exhibit B, which is made a part hereof by this reference. As hereinafter used in this Lease, the term “**Building**” shall refer to the entire structure in which the Premises are located, the term “**Lot**” shall refer to the Assessor’s tax parcel on which the Building is situated, and the term “**Project**” shall collectively refer to the Lot, the Building, and the Project Common Areas. This Lease confers no rights either with regard to the subsurface of the land below the ground level of the Building or with regard to airspace above the roof of the Building.

2. ACCEPTANCE OF PREMISES

Except as otherwise provided in this Lease, Tenant’s taking possession of the Premises shall constitute Tenant’s acknowledgment that the Premises are in good condition and that the Tenant Improvements are constructed in accordance with the Tenant Improvement Agreement, and that Tenant agrees to accept the same in its condition existing as of the date of such entry and subject to all applicable municipal, county, state and federal statutes, laws, ordinances, including zoning ordinances, and regulations governing and relating to the use, occupancy or possession of the Premises. Notwithstanding the foregoing, within fifteen (15) days following the date that Tenant takes possession of the Premises, Tenant shall deliver to Landlord a list of items (“**Punch List Items**”) that Tenant reasonably deems that Landlord must complete or correct in order for the Premises to be reasonably acceptable (which shall not include any items damaged by Tenant, its agents, employees, contractors and/or subcontractors) per Exhibit B. Within thirty (30) days following Landlord’s receipt of the Punch List Items, to the extent commercially possible, Landlord shall complete and/or correct such items set forth on the Punch List Items using its good faith efforts and due diligence. No promise of Landlord to alter, remodel, repair or improve the Premises or the Building and no representation, express or implied, respecting any matter or thing related to the Premises or Building or this Lease (including, without limitation, the condition of the Building or Premises) have been made to Tenant by Landlord, its agents or employees, other than as set forth in the Tenant Improvement Agreement and as otherwise provided in this Lease.

3. PROJECT COMMON AREAS

The term “**Project Common Areas**” shall refer to all areas and facilities outside the Premises and within the Project that are provided and designated by Landlord from time to time for the general nonexclusive use of Landlord, Tenant, and of other lessees in the Project and their respective employees, suppliers, shippers, customers, and invitees. Landlord hereby grants to Tenant, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Project Common Areas as they exist from time to time, subject to any rules, regulations, and restrictions governing the use of the Project as from time to time made or amended by Landlord. Under no circumstances shall the right granted herein to use the Project Common Areas be deemed to include the right to store any property in the Project Common Areas. Provided that Landlord, using its commercially reasonable efforts, does not unreasonably interfere with Tenant’s use of the Premises, Landlord reserves the right at any time and from time to time, to: (i) make alterations in or additions to the Project and to the Project Common Areas; (ii) close the Project Common Areas to whatever extent required in the opinion of Landlord’s counsel to prevent a dedication of any of the Project Common Areas or the accrual of any rights of any person or of the public to the Project Common Areas; (iii) temporarily close any of the Project Common Areas for maintenance purposes; and (iv) promulgate reasonable and nondiscriminatory rules and regulations governing the use of the Project Common Areas.

4. TERM AND POSSESSION

Subject to and upon the terms and conditions set forth herein, the Term of this Lease shall be for the period specified in the Basic Lease Information, commencing upon the earlier of the following dates (the “**Scheduled Lease Commencement Date**”): (i) the date on which the Premises are Substantially Complete (as defined below); (ii) the date on which the Premises would have been Substantially Complete had there been no delays caused by or attributable to the Tenant; or (iii) the date upon which the Tenant takes possession of the Premises with the Landlord’s written consent. Landlord shall give Tenant forty-five (45) days prior written notice as to when the Scheduled Lease Commencement Date shall occur. Within thirty (30) days after the Commencement Date, Landlord and Tenant shall execute an amendment to this Lease (“**First Amendment to Lease and Acknowledgment**”) setting forth the Lease Commencement Date and the expiration date of the term of the Lease, which shall be in the form attached hereto as Exhibit C. For purposes of the foregoing, the Premises shall be deemed to be “Substantially Complete” when (i) Tenant is tendered direct access to the Premises with building services (sanitary sewer, public water, electrical, elevator, HVAC service and fire suppression services operational) ready to be furnished to the Premises, (ii) a certificate of occupancy (temporary or final) has been issued by the

appropriate governmental entity, and (iii) the identified construction to be provided by Landlord, as set forth in the Tenant Improvement Agreement has been completed, with the exception of the Punch List Items. Landlord shall provide Tenant with not less than thirty (30) days prior written notice of the anticipated date that the Premises shall be Substantially Complete. Tenant shall be permitted access to the Premises prior to the Commencement Date to perform construction relating to the installation of telephone, computers, data/phone cabling, furniture and special fixtures not installed by Landlord, provided Tenant does not interfere or impede Landlord in construction of tenant improvements, and provided further that evidence of insurance as hereinafter required is delivered to Landlord prior to occupancy. Landlord shall Substantially Complete the Premises by the Scheduled Lease Commencement Date as set forth in the Basic Lease Information, plus extensions thereto equal to the durations of (i) any delays beyond the reasonable control of Landlord, such as acts of God, fire, earthquake, acts of a public enemy, riot, insurrection, unavailability of materials, governmental delays in issuing permits, approvals or inspections, governmental restrictions on the sale of materials or supplies or on the transportation of such materials or supplies, strike or shortages directly affecting construction or transportation of materials or supplies, shortages of materials or labor resulting from government controls, weather conditions, or any other cause or events beyond the reasonable control of Landlord (collectively, "**Force Majeure Event**"), or (ii) delays caused by or attributable to the Tenant ("**Tenant Delays**"). The parties agree that if Landlord is unable to Substantially Complete the Premises by the Scheduled Lease Commencement Date, plus any extension thereto pursuant to this Section, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, and the expiration date of the Term of this Lease shall be extended for such delay; but in such event, Tenant shall not be liable for any Rent until the Lease Commencement Date; provided, however if such delays were caused or attributable to the Tenant, Rent shall commence as of the Scheduled Lease Commencement Date. Notwithstanding the foregoing, and provided that the Lease Agreement is fully executed by June 14, 2004, in the event Landlord is unable to Substantially Complete the Premises by December 22, 2004 for any reason (other than as a result of Tenant Delays). (i) Tenant shall receive two (2) rent free days for each day following December 22, 2004 that Landlord is unable to Substantially Complete the Premises and deliver possession to Tenant, and (ii) if Landlord's failure to Substantially Complete the Premises continues for a period longer than sixty (60) days after the December 22, 2004 date. Tenant shall have the right to terminate this Lease without further liability and receive a full refund of the Security Deposit (defined below) upon written notice to that effect delivered to Landlord at any time after such sixty (60) day period and prior to the date that Landlord is able to Substantially Complete the Premises and tender possession of the Premises to Tenant.

5. BASE RENT

(a) Tenant agrees to pay Landlord the Base Rent for the Premises, without prior notice, demand, deduction or offset (except as expressly set forth in this Lease), as adjusted from time to time in the manner set forth in this Section 5. Landlord agrees to accept payment of Base Rent pursuant to wire transfer from Tenant. The term "**Rent**" as used in this Lease shall mean Base Rent, Tenant's Proportionate Share of Operating Expenses and any other amounts owing from Tenant to Landlord pursuant to the provisions of this Lease. The Base Rent shall be payable in advance on or before the first day of each month throughout the term of the Lease. Base Rent for any period during the term hereof which is for less than one month shall be a prorated portion of the monthly installment based upon a thirty (30) day month.

(b) The Base Rent shall be as follows:

Months 00-05: Free of Rent and Operating Expenses.
Months 06-35: \$1.76 per rentable square foot per month.
Months 36-65: \$1.85 per rentable square foot per month.

(c) If the amount of Rent or any other payments due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions.

6. SECURITY DEPOSIT

Tenant agrees to deposit with Landlord upon execution of this Lease, a security deposit as stated in the Basic Lease Information (the "**Security Deposit**"), which sum shall be held and owned by Landlord, without obligation to pay interest, as security for the performance of Tenant's covenants and obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of damages incurred by Landlord in case of Tenant's default. Upon the occurrence of any event of default by Tenant, Landlord may from time to time, without prejudice to any other remedy provided herein or by law, use such fund as a credit to the extent necessary to credit against any arrears of Rent or other payments due to Landlord hereunder, and any other foreseeable damage, injury, expense or liability caused by such event of default, and Tenant shall pay to Landlord, on demand, the amount so applied in order to restore the Security Deposit to its original amount. Although the Security Deposit shall be deemed the property of Landlord, any remaining balance of such deposit shall be returned by Landlord to Tenant within forty five (45) days after the termination of this Lease, reduced by such amounts as may be reasonably required by Landlord to remedy defaults on the part of Tenant in the payment of Rent or other obligations of Tenant under this Lease, to repair damage to the Premises, Building or Project caused by Tenant or any Tenant's Parties and to clean the Premises. Landlord may use and co-mingle the Security Deposit with other funds of Landlord. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of any Regulations, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

7. OPERATING EXPENSES

(a) For the purpose of this Section 7(a) and this Lease, the following terms are defined as follows:

- (1) **“Base Year”** shall mean the calendar year set forth in the Basic Lease Information.
- (2) **“Tenant’s Proportionate Share”** of the total rentable area of the Building as set forth as a percentage in the Basic Lease Information, however, Landlord and Tenant acknowledge that if the number of buildings which constitute the Project increases or decreases, or if physical changes are made to the Premises, Building or Project or the configuration of any thereof, Landlord may at its discretion reasonably adjust Tenant’s Proportionate Share of the Building or Project to reflect the change. Landlord’s determination of Tenant’s Proportionate Share of the Building and of the Project shall be conclusive so long as it is reasonably and consistently applied.
- (3) **“Operating Expenses”** shall mean all costs and expenses paid or incurred by or on behalf of Landlord (whether directly or through independent contractors) in connection with the operation, repair, replacement and maintenance of the Building and the Project, including the following costs by way of illustration, but not limitation: (i) salaries, wages, compensation, benefits, pension or contributions and all medical, insurance and other fringe benefits paid to, for or with respect to all persons (whether they be employees of Landlord, its managing agent or any independent contractor) for their services in the operation (including security services), maintenance, repair or cleaning of the Project or Building, and payroll taxes, worker’s compensation, uniforms and dry cleaning costs for such persons; (ii) payments under service contracts with independent contractors for operating (including providing security services, if any), maintaining, repairing or cleaning the Project or Building or any portion thereof or any fixtures or equipment therein; (iii) all costs for electricity, water, gas, steam, sewer and other utility services to the Project or Building, including any taxes on any such utilities; (iv) repairs and replacements which are appropriate to the continued operation of the Building as a first-class office building; (v) cost of lobby decoration, painting and decoration of non-tenant areas; (vi) cost of landscaping in, on or about the Project or Building; (vii) cost of building and cleaning supplies and equipment, cost of replacements for tools and equipment used in the operation, maintenance and repair of the Project or Building and charges for lobby and elevator telephone service for the Building; (viii) financial expenses incurred in connection with the operation of the Project or Building, such as insurance costs, including, but not limited to, any premiums, deductibles and other costs of insurance, as Landlord may, in its reasonable discretion, from time to time carry (including, without limitation, liability insurance, fire and casualty insurance, rental interruption insurance, flood and earthquake insurance, and any other insurance), attorneys’ fees and disbursements, auditing and other professional fees and expenses, association dues and any other ordinary and customary financial expenses incurred in the ordinary course in connection with the operation of the Project and Building; (ix) fees payable to a property management company (which may be owned or controlled by Landlord or Landlord’s principals) for the property and asset management of a first-class office building. Such property management fee (“PMF”) shall initially be set at two percent (2%) of the Building’s Gross Revenue, and in any subsequent Lease Year such PMF shall not exceed one hundred and ten percent (110%) of the previous years PMF; (x) the cost of capital improvements made by Landlord in order (i) to conform to any changes enacted after the Commencement Date in laws, rules, regulations or requirements of any governmental authority having jurisdiction, or of the board of fire underwriters or similar insurance body, provided that such expense, if a capital expenditure as determined by generally accepted accounting procedures, shall be amortized on a straight line basis over such expenditure’s useful life using a useful life determined under generally accepted accounting procedures and commercially reasonable standards, and only such amortized portion shall be included in Operating Expenses, not to exceed One Hundred Thousand and No/100ths Dollars (\$100,000.00) in any given Lease Year (which limitation shall apply only during the initial Term of this Lease), or (ii) to effect a labor saving, energy saving or other economy, which cost shall be included in Operating Expenses for the Lease Year in which such improvement was made not in excess of the savings resulting from such expenditure; (xi) reasonable costs for accounting, legal and other professional services incurred in the operation of the Project and Building; (xii) rental payments made for equipment used in the operation and maintenance of the Project; (xiii) the cost of governmental licenses and permits, or renewals thereof, necessary for the operation of the Project and/or Building; (xiv) sales, use and excise taxes on goods and services; (xv) real property taxes, assessments and bonds (collectively, **“Real Estate Taxes”**), which shall include, but not be limited to, any and all taxes, assessments, water and sewer charges and other similar governmental charges levied on or attributable to the Project, including the Building and the Lot, or their operation, ordinary and extraordinary, substitute and additional, unforeseen as well as foreseen, present and future, of any kind and nature whatsoever, including without limitation, (i) real property taxes or assessments levied or assessed against the Project, including the Building and the Lot, (ii) assessments or charges levied or assessed against the Project, including the Building and the Lot by any redevelopment agency, (iii) any tax measured by gross rentals received from the leasing of the Premises, Building or Project, excluding any net income, franchise, capital stock, estate or inheritance taxes imposed by the state or federal government or their agencies, branches or departments; provided that

if at any time during the term any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the rent received under this Lease or on the rent received under any other leases of space in the Building or the Project, or (2) any license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or in part upon such rent, or (3) any transfer, transaction, succession, gift, transit, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other premises within the Building or the Project, then any such taxes, assessments, levies and charges shall be deemed to be included in real property taxes and assessments (real estate taxes and assessments shall also include the reasonable cost to Landlord of contesting the amount, validity, or applicability of any real estate taxes and assessments); (xvi) costs associated with the maintenance of the Building management offices or related facilities in the Building, including the fair rental value of any space occupied for such purposes in the event the Landlord performs such management services itself, or the rental paid to Landlord for such space by any management company in the event that Landlord employs a management company to provide such services (in no event, however, will such management office or related facility exceed 2,000 square feet); and (xvii) all other reasonable or necessary expenses paid in connection with the operation, maintenance, repair, replacement and cleaning of the Project and Building.

Any costs or expenses of the nature described above shall be included in Operating Expenses for any Lease Year no more than once, notwithstanding that such cost or expenses may fall under more than one of the categories listed above. Operating Expenses shall not be reduced as a result of Tenant performing for itself any of the services that Landlord provides for the Project or the tenants thereof. Landlord may use related or affiliated entities to provide service or furnish materials for the Project; provided the fees and charges of such related and affiliated entities do not exceed the reasonable fees charged in the applicable industry for a project similar to the Project.

The Operating Expenses that vary with occupancy (“**Varying Operating Expenses**”) and that are attributable to any Lease Year (including the Base Year) in which less than ninety-five percent (95.00%) of the rentable area of the Building is occupied by tenants will be adjusted by Landlord to the amount that Landlord reasonably believes they would have been if ninety-five percent (95.00%) of the rentable area of the Building had been occupied. Additionally, Real Estate Taxes for the Base Year shall be adjusted to be based upon a fully completed Building, with full completion of all tenant improvements constructed therein consistent with finishes generally utilized by similar first-class projects in the vicinity of the Building.

Operating Expenses specifically exclude the items listed in Exhibit I “Exclusion From Operating Expenses and Real Estate Taxes.”

- (4) Tenant’s Proportionate Share of Operating Expenses shall be payable by Tenant to Landlord as follows:
- (i) Beginning with the Lease Year following the Base Year and for each Lease Year thereafter, Tenant shall pay Landlord an amount equal to Tenant’s Proportionate Share of the Operating Expenses incurred by Landlord in the Lease Year which exceeds the total amount of Operating Expenses payable by Landlord for the Base Year. This excess is referred to as the “**Excess Expenses.**”
 - (ii) To provide for current payments of Excess Expenses, Tenant shall, at Landlord’s request, pay as additional rent during each Lease Year, an amount equal to Tenant’s Proportionate Share of the Excess Expenses payable during such Lease Year, as estimated and modified by Landlord from time to time, but not in excess of once per Lease Year. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of estimated Excess Expenses. It is the intention hereunder to estimate from time to time the amount of the Excess Expenses for each Lease Year, including the Lease Year immediately following the Base Year, and Tenant’s Proportionate Share thereof, and then to make an adjustment in the following year based on the actual Excess Expenses incurred for that Lease Year.
 - (iii) On or before April 1 of each Lease Year after the first Lease Year (or as soon thereafter as is practical), Landlord shall deliver to Tenant a statement (“**Expense Statement**”) setting forth Tenant’s Proportionate Share of the Excess Expenses for the preceding Lease Year; provided, however, that the failure of Landlord to supply such statement shall not constitute a waiver of Landlord’s rights to collect for such Excess Expenses, except, however, in the event that Landlord’s failure to provide such statement exceeds three hundred sixty five (365) days after the Expiration Date

of the Lease, Landlord's right to collect such Excess Expenses shall terminate at such time. If Tenant's Proportionate Share of the actual Excess Expenses for the previous Lease Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within thirty (30) days of the receipt of the statement. If such total exceeds Tenant's Proportionate Share of the actual Excess Expenses for such Lease Year, then Landlord shall credit against Tenant's next ensuing monthly installment(s) of Excess Expense an amount equal to the difference until the credit is exhausted. If a credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit within thirty (30) days following the determination of such amount. The obligations of Tenant and Landlord to make payments required under this Section 7 shall survive the Expiration Date. Tenant's Proportionate Share of Excess Expenses in any Lease Year having less than 365 days shall be appropriately prorated.

- (iv) For a period of six (6) months after receipt of the Expense Statement, Tenant, or its representatives, shall be entitled, upon ten (10) days prior written notice and during normal business hours, at the office of the Building's property manager or such other place as Landlord shall reasonably designate, to inspect, copy and examine those books and records of Landlord relating to the determination of Excess Expenses for the immediately preceding Lease Year. Failure of Tenant to request such inspection within such six (6) month period shall render such Expense Statement conclusive and binding on Tenant. If, after inspection and examination of such books and records, Tenant disputes the amounts of the Excess Expenses charged by Landlord, Tenant may, by written notice to Landlord, request an independent audit of such books and records. The independent audit of the books and records shall be conducted by an independent public accounting firm reasonably acceptable to both Landlord and Tenant, which shall be compensated on an hourly basis only. If, within thirty (30) days after Landlord's receipt of Tenant's notice requesting an audit, Landlord and Tenant are unable to agree on an independent public accounting firm to conduct such audit, then Landlord may designate a nationally recognized accounting firm not then employed by Landlord or Tenant to conduct such audit. The audit shall be limited to the determination of the amount of Excess Expenses for the subject Lease Year. If the audit discloses that the amount of Excess Expenses billed to Tenant was incorrect, the appropriate party shall pay to the other party the deficiency or overpayment, as applicable. All costs and expenses of the audit shall be paid by Tenant unless the audit shows that Landlord overstated Excess Expenses for the subject Lease Year by more than five percent (5.00%), in which case Landlord shall pay all costs and expenses of the audit. Tenant and the CPA shall keep any information gained from such audit confidential and shall not disclose it to any other party. The exercise by Tenant of the audit rights hereunder shall not relieve Tenant of its obligation to timely pay all sums due hereunder, except the disputed Excess Expenses which shall be paid by Tenant within fifteen (15) days of the completion of the audit.

8. USE

Tenant shall use the Premises for the uses set forth in the Basic Lease Information, and shall not use the Premises for any other purposes. Tenant shall be solely responsible for obtaining any necessary governmental approvals of such use. Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises. If the rate of any insurance carried by Landlord is increased as a result of Tenant's use, Tenant shall pay to Landlord within thirty (30) days before the date Landlord is obligated to pay a premium on the insurance, or within thirty (30) days after Landlord delivers to Tenant a certified statement from Landlord's insurance carrier stating that the rate increase was caused solely by an activity of Tenant on the Premises as permitted in this Lease, whichever date is later, a sum equal to the difference between the original premium and the increased premium. Landlord reserves the right to prescribe the weight and position of all safes, fixtures and heavy installations that Tenant desires to place in the Premises so as to distribute properly the weight, or to require plans prepared by a qualified structural engineer for such heavy objects, which shall be prepared at Tenant's sole cost and expense.

9. COMPLIANCE WITH THE LAW

(a) Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental law or rule, regulation, or requirement of any duly constituted public authorities now in force or which may hereafter be enacted or promulgated, or subject Landlord to any liability for injury to any person or property by reason of any business operation being conducted in or about the Premises. Subject to Section 9(b) below, to the extent required due to Tenant's specific use of the Premises, alterations of the Premises, or as a result of Tenant's application for permits or authorizations, as opposed to compliance required by all tenants of the Project, Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, and governmental rules, regulations, including, but not limited to, the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. 12101 *et seq.*), any amendment thereto or regulations promulgated thereunder, or state or local ordinances or codes enacted pursuant thereto; or requirements of any board or fire insurance underwriters or other similar bodies, now or hereafter constituted, relating to or affecting the condition, use, or occupancy of the Premises by Tenant, excluding structural changes not related to or affected by Tenant's improvements or acts. The final judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant.

(b) Landlord represents and warrants that the Building, Premises and Project Common Area, as of the Commencement Date to the extent such were constructed by or caused to be constructed by Landlord, are in compliance with all laws, statutes, ordinances and governmental rules, regulations including, but not limited to ADA. At its sole expense, Landlord shall correct any noncompliance noted by Tenant (only to the extent that such non-compliance existed under the laws effective at the Commencement Date of the Lease), in writing during the period of one hundred and eighty (180) days after the Commencement Date (the "Warranty Period"). The foregoing representation and warranty of Landlord does not (i) include any improvements constructed or caused to be constructed by any other tenant of the Project and/or Tenant, and/or (ii) affect the Tenant's obligations pursuant to Section 9(a) above and/or (iii) apply to the use to which Tenant will put the Premises. In the event Landlord's representation or warranty in this section is finally determined to be incorrect, as Tenant's sole remedy, Landlord shall be responsible for promptly taking actions to cause such compliance, at Landlord's sole cost and expense.

10. ALTERATIONS AND ADDITIONS

(a) Excepting the supplemental HVAC approved by Landlord pursuant to Schedule 2 to **Exhibit B** attached hereto, Tenant shall not make or suffer to be made any non-structural alterations, additions, or improvements (collectively, "**Alterations**") to or of the Premises, or any part thereof, without first obtaining the written consent of Landlord, which shall not be unreasonably withheld or delayed; provided, however, if the Alterations would adversely affect the structure or safety of the Building or its electrical, plumbing, HVAC, mechanical or safety systems, or if such Alterations would create an obligation on Landlord's part to make modifications to the Building, Landlord may withhold its consent in its sole and absolute discretion. Notwithstanding the foregoing, without the prior consent of Landlord, but with the prior notice to Landlord, Tenant shall be entitled to make Alterations within the Premises, provided that (i) the cost of construction such Alterations does not exceed Ten Thousand and No/100ths Dollars (\$10,000.00) per project in the aggregate, and (ii) does not effect the plumbing, electrical, structural or mechanical systems of the Building, and (iii) Tenant otherwise complies with the provisions of this Section. All Alterations shall comply with all applicable laws, statutes and ordinances, which include, but are not limited to ADA. Any Alterations to or of said Premises, including, but not limited to, wall covering, paneling, and built-in cabinet work, but excepting movable furniture and trade fixtures, shall on the expiration of the Term become a part of the realty and belong to Landlord, and shall be surrendered with the Premises. However, Landlord shall provide written notice to Tenant prior to the construction of such Alteration whether Tenant will be required to remove such Alteration and restore the Premises to its original condition upon the expiration of the Term. If Landlord so states, Tenant, at its own cost shall restore the Premises to its original condition upon the expiration of the Term. Upon Landlord's approval of the requested Alterations, Tenant shall secure all necessary permits, if applicable. Before Landlord's consent to such Alterations, Tenant shall submit detailed specifications, floor plans and necessary permits (if applicable) to Landlord for review. In no event shall any Alterations affect the structure of the Building or its facade. As a condition to its consent, Landlord may request adequate assurance that all contractors who will perform such work have in force workman's compensation and such other employee and public liability insurance as Landlord deems necessary, and where the Alterations are material, Landlord may require Tenant or its contractors to post adequate completion and performance bonds. In the event Landlord consents to the making of any Alterations to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense, completed to the reasonable satisfaction of Landlord, and the contractor or person selected by Tenant to make the same must first be approved in writing by Landlord which approval shall not be unreasonably withheld or delayed. If Tenant makes any Alterations to the Premises as provided in this Section, the Alterations shall not be commenced until ten (10) business days after Landlord has received notice from Tenant stating the date the installation of the Alterations is to commence so that Landlord can post and record an appropriate notice of non-responsibility. Tenant shall reimburse Landlord for any expenses incurred by Landlord in connection with the Alterations made by Tenant, including any reasonable fees charged by Landlord's contractors or consultants to review plans and specifications prepared by Tenant, and the cost of updating the existing as-built plans of the Building to reflect the Alterations, not to exceed One Thousand and No/100ths Dollars (\$1,000.00) in total per Alteration. Tenant shall indemnify, defend and hold the Landlord, the Building and the Premises free and harmless from any liability, loss, damage, cost, attorneys' fees and other expenses incurred on account of such construction, or claims by any person performing work or furnishing materials or supplies for Tenant or any persons claiming under Tenant.

(b) Landlord agrees that, subject to Tenant's compliance with Section 10(a) above, Tenant shall be entitled to install a satellite/microwave dish upon the roof of the Building in a location reasonably acceptable to Landlord and Tenant. Tenant acknowledges that view aesthetics of the Building shall be considered in the placement of such dish. Tenant shall be responsible for the maintenance and repair of such dish and shall remove, at Tenant's cost, such dish from the roof of the Building upon the expiration or earlier termination of this Lease and shall repair any damage caused thereby and reseal any roof penetrations.

11. REPAIRS AND MAINTENANCE:

(a) By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises as being in good and sanitary order, condition and repair, excepting the Punch List Items, any defects (or noncompliance with laws) in the Premises noted by Tenant in writing to the Landlord during the Warranty Period and latent defects in the construction done by Landlord, its agents, employees, contractors, and subcontractors. Tenant shall, at Tenant's sole cost and expense, maintain the Premises, in good, clean and first-class condition and repair. Without limiting the generality of the foregoing, Tenant shall be solely responsible for maintaining and repairing all fixtures, non-building standard electrical lighting, ceilings and floor coverings, windows, doors, plate glass, skylights, and interior walls within the Premises using the same quality of materials as used in the original construction. In addition, Tenant shall be responsible for all repairs made necessary by Tenant or Tenant's invitees.

Landlord acknowledges that Tenant shall have no obligation to repair or maintain any areas of the Project outside of the Premises, unless such repair or maintenance is required due to acts of Tenant, its agents, employees, contractors and subcontractors. Excepting maintenance, repairs or replacements required due to the negligence or willful misconduct of Landlord, its agents, employees, contractors and subcontractors, Tenant acknowledges that Landlord shall have no obligation to maintain, repair or replace any telecommunications or computer cabling or wiring which is located in the Premises or which exclusively serves the Premises (collectively, "**Cabling**"), except in the event that such would be required due to Landlord's negligent acts or omissions. Tenant shall, at Tenant's expense, contract with Pacific Bell or another reputable contractor to maintain the Cabling. Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises except as specifically set forth in this Lease. Under no circumstances shall Tenant make any repairs to the Building or to the mechanical, electrical or heating, ventilating or air conditioning systems of the Premises or the Building, unless such repairs are previously approved in writing by Landlord. Tenant waives the provisions of 1931(1), 1941 and 1942 of the California Civil Code, and any similar or successor law regarding Tenant's right to make repairs and deduct expenses of such repairs from the Rent due under this Lease.

(b) Landlord shall operate the Building to a standard or quality consistent with that of other first-class projects in the immediate geographical area and shall (i) provide janitorial service to the Premises on a five (5) day a week basis (excepting holidays described in the Basic Lease Information), consistent with the janitorial specification attached hereto as Exhibit E, (ii) provide nonexclusive, non-attended automatic passenger elevator service at all times, (iii) replace Building standard lamps, starters and ballasts (all nonstandard lighting within the Premises shall be the responsibility of Tenant).

(c) Landlord shall be responsible for maintaining and repairing all structural portions and latent defects of the Building (to the extent constructed by Landlord, its agents, employees, contractors and/or subcontractors), and shall maintain the roof, sidewalls, and foundations of the Building in good, clean and safe condition and repair. Landlord shall be entitled to approve, in its sole discretion, the sealing of any roof penetrations caused by Tenant Improvements. Landlord shall also maintain all landscaping, driveways, parking lots, fences, signs, sidewalks and the Project Common Areas. Landlord shall be responsible for maintenance and repair of all plumbing, heating, electrical, air conditioning and ventilation systems. Except as otherwise provided in this Lease, Landlord shall have no liability to Tenant, nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord making any reasonable repairs or changes which Landlord is required or permitted by this Lease or by any other tenants' lease or required by law to make in or to any portion of the Building or the Premises. Landlord shall use reasonable efforts to minimize any interference with Tenant's business at the Premises. If Tenant fails to maintain the Premises as required in Section 11(a), Landlord may give Tenant thirty (30) days' written notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to promptly commence such work within such time period and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the Prime Rate plus two percent (2%) per annum, from the date of such work, but not to exceed the maximum amount then allowed by law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as the result of performing any such work. For the purpose of this Lease, the "**Prime Rate**" shall mean the rate, or base rate, reported in the Money Rates column or section of The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) on the first date on which The Wall Street Journal is published in the month preceding the month in which the subject costs are incurred.

(d) If Landlord fails to provide repairs or maintenance as required under this Lease, and such failure interferes with Tenant's use of the Premises, and Tenant has notified Landlord of the necessity of such repairs or maintenance in writing, then Tenant may perform such repairs or maintenance at Landlord's cost by taking whatever action is reasonably necessary to do so, provided:

(1) Tenant gives Landlord (and any mortgagee whose address has been provided to Tenant) notice of Tenant's intent to take such action at least ten (10) business days prior to taking any such action. Landlord further fails or refuses to commence repairs within three (3) business days after a second written notice to Landlord and such mortgagee (which notice cannot be effective until the lapse of the aforementioned ten (10) business day period) (if the nature of the required repair is such that Landlord's failure to act is reasonably likely to result in injury to Tenant's employees or visitors, or damage to Tenant's personal property, the aforementioned notice period shall be one (1) business day, and there shall be no requirement that Tenant notify Landlord's mortgagee);

(2) If such repairs or maintenance will affect the Building's electrical or mechanical systems, or the structural integrity of the Building, Tenant shall use only those contractors used by Landlord in the Building that work on the Building's systems, equipment or structure (unless such contractors are unwilling or unable to perform such work, or the urgent nature of the required repair makes using those contractors impractical, in which events Tenant may utilize the services of any other qualified contractor approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed).

If Landlord does not deliver a detailed written reasonable objection to Tenant within thirty (30) days after receipt of any invoice from Tenant of the reasonable costs and expenses incurred by Tenant in so repairing or maintaining (such invoice to contain a reasonably particularized breakdown of the costs and expenses incurred by Tenant in connection therewith) then Tenant shall be entitled to deduct from Rent next due the amount set forth in such invoice (to the extent not previously paid by Landlord).

12. WASTE

Tenant shall not use the Premises in any manner that will constitute waste, nuisance, or unreasonable annoyance (which includes excessive noise and/or vibration) to owners or occupants of adjacent properties or to other tenants of the Building.

13. LIENS

Tenant shall keep the Premises and the Project free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant. For any work in excess of One Hundred Thousand and No/100ths Dollars (\$100,000.00), Landlord may require, at its sole option, that Tenant shall provide to Landlord, at Tenant's sole cost and expense, labor and materials or a completion bond in an amount equal to one and one-half (1 1/2) times any and all estimated cost of any improvements, additions, or alterations to the Premises to be made by Tenant, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of work. Landlord may, at its election, and upon ten (10) days' notice to Tenant, remove any liens, in which case Tenant shall pay to Landlord the cost of removing the lien, including reasonable attorneys' fees. Landlord shall have the right at all times to post on the Premises any notices permitted or required by law for the protection of Landlord, the Premises, the Building or the Project from mechanics' and materialmen's liens. To the extent a lien arises out of any work performed, materials furnished, or obligations incurred by Tenant, Tenant shall have thirty (30) days to remove such lien, or provide a bond to Landlord in an amount sufficient to satisfy the lien.

14. UTILITIES AND SERVICES

(a) Landlord agrees to furnish to the Premises during the Business Hours, subject to the conditions and in accordance with the standards set forth in this Lease, adequate quantities of electric current for normal lighting and fractional horsepower office machines, water for lavatory and drinking purposes (hot and cold), heat and air conditioning required in the comfortable use and occupation of the Premises, and elevator service by non-attended automatic elevators. Tenant acknowledges and agrees that Landlord may impose a reasonable charge for the use of any additional or unusual janitorial services required by Tenant's carelessness or the nature of Tenant's business. Landlord shall not be obligated to service, maintain, repair or replace any system or improvement in the Premises that has not been installed by Landlord at Landlord's expense, or which is a specialized improvement requiring additional or extraordinary maintenance or repair (by way of example only, if the standard premises in the Building contain fluorescent light fixtures, Landlord's obligation shall be limited to the replacement of fluorescent light tubes, irrespective of any incandescent fixtures that may have been installed in the Premises at Tenant's expense). Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of rent by reason of Landlord's failure to furnish any of the foregoing when such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character or for any other causes; provided, however, Landlord shall use its reasonable efforts to cause such services to be restored as soon as possible. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law, ordinance or governmental regulation permitting the termination of this Lease due to the interruption or failure of any services to be provided under this Lease.

(b) If the temperature otherwise maintained in any portion of the Premises by the HVAC systems of the Building is affected by reason of any lights, machines or equipment used by Tenant in the Premises utilized in excess of the utilities provided to the Premises, or by the occupancy of the Premises by more persons than are contemplated by the design criteria of the HVAC systems, then Landlord shall have the right to install machines or equipment that Landlord reasonably deems necessary to restore temperature balance, including modifications to the standard air-conditioning equipment and electrical systems serving the Premises. The cost of any such equipment and modifications, including the cost of installation and any additional cost of operation and maintenance of the same, shall be paid by Tenant to Landlord upon demand.

(c) Tenant acknowledges and agrees that Tenant's use of the Premises during Non-Business Hours imposes additional burden on the Project's janitorial services, fluorescent light tubes, HVAC and electrical services, and the Project Common Areas. Accordingly, non-Business Hours use of services will be made available to Tenant through an access or override switch accessible to Tenant from the Premises and will be billed as an after hours rent assessment. After hours use will be metered and such costs will be payable by Tenant to Landlord upon demand. Such costs are estimated to be \$20.00 per hour per unit and subject to change due to increases in electrical and maintenance costs. Tenant shall be entitled to access to the Premises, Building and Project Common Areas, twenty-four (24) hours a day, three hundred sixty five (365) days a calendar year.

(d) Except as otherwise provided in the Tenant Improvement Agreement, Tenant shall not, without the prior consent of Landlord, connect to the utility systems of the Building any apparatus, machinery or other equipment except typical office machines, devices such as electric typewriters, word processors, mini and micro-computers and office-size photocopiers, and microwave ovens and coffee machines. Nor shall Tenant, without the prior written consent of Landlord, connect to any electrical circuit in the Premises any apparatus or equipment with power requirements that exceed the designed electrical capacity of the Premises as described in the Work Letter. Tenant shall pay the cost of all utilities and services supplied to Tenant in connection with Tenant's use of additional office equipment approved by Landlord hereunder. Except as provided in the Tenant Working Drawings, Tenant shall not, without the prior consent of Landlord, connect to any dedicated electrical circuit in the Premises electrical apparatus or equipment of any type having in the aggregate electrical power requirements in excess of one and one-half (1.5) amps per outlet. Notwithstanding Landlord's consent to such excess loading of circuits, Tenant shall pay the cost of any additional or above-standard capacity electrical circuits necessitated by such excess loading circuits and the installation thereof.

(e) All sums payable hereunder by Tenant for additional services or for excess utility usage shall be payable within thirty (30) days after written request from Landlord, including reasonable supporting documentation,

except that Landlord may require Tenant to pay monthly for the estimated cost of Tenant's excess utility usage if such usage occurs on a regular basis, and such estimated amounts shall be payable in advance on the first day of each month.

15. ASSIGNMENT AND SUBLETTING

(a) Tenant shall not, without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed as provided in this Section 15: (a) assign, mortgage, pledge, encumber or otherwise transfer this Lease, the term or estate hereby granted, or any interest hereunder; (b) permit the Premises or any part thereof to be utilized by anyone other than Tenant (whether as concessionaire, franchisee, licensee, permittee or otherwise); or (c) except as hereinafter provided, sublet or offer or advertise for subletting the Premises or any part thereof. Any assignment, mortgage, pledge, encumbrance, transfer or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default.

Notwithstanding the foregoing and Subsections (b) and (c) below, Tenant may assign this Lease or sublet the Premises or a portion thereof, without Landlord's consent, but with prior written notice, to any corporation, partnership, individual or other entity which controls, is controlled by or is under common control with Tenant; or to any corporation, partnership, individual or other entity, resulting from the merger or consolidation with Tenant; or to any person or entity which acquires all of the assets of Tenant's business going concern, provided that (i) the assignee or subtenant assumes, in full, the obligations of Tenant under this Lease, (ii) Tenant remains fully liable under this Lease, (iii) the use of the Lease by such transferee conforms with the requirements of this Lease, and (iv) if Tenant is no longer a viable operating business, the proposed transferee shall have a net worth which is comparable to that of Tenant as of the Lease Date. Provided that Tenant is a corporation, and (i) the stock of Tenant is traded on a national exchange, the transfer of stock in Tenant shall not be considered an assignment, sublease or transfer under the Lease, or (ii) the stock of Tenant is not traded on a national exchange, the collective transfer of thirty percent (30.00%) or less of such stock shall not be considered an assignment, sublease or transfer under this Lease.

(b) If at any time or from time to time during the Term of this Lease, Tenant desires to assign this Lease with respect to, or to sublet, all or any part of the Premises, then at least thirty (30) days prior to the date when Tenant desires the assignment or subletting to be effective (the "**Transfer Date**"), Tenant shall give Landlord a notice (the "**Transfer Notice**") which shall set forth the name, address and business of the proposed assignee or subtenant, information (including financial statements and references) concerning the character of the proposed assignee or subtenant, in the case of a proposed sublease, a detailed description of the space proposed to be sublet, which must be a single, self-contained unit (the "**Space**"), any rights of the proposed assignee or subtenant to use Tenant's improvements and the like, the Transfer Date, and the fixed rent and/or other consideration and all other material terms and conditions of the proposed assignment or subletting, all in such detail as Landlord may reasonably require, if Landlord promptly requests additional detail, the Transfer Notice shall not be deemed to have been received until Landlord receives such additional detail. Notwithstanding the foregoing, upon receipt of such proposal, among Landlord's other rights, Landlord may elect to terminate the Lease as to the portion of the Premises proposed to be sublet or assigned and/or to enter into a direct lease with the proposed sublessee or assignee as to the portion of the Premises proposed to be sublet or assigned if such portion is greater than fifty percent (50%) of the square footage of the Premises and the sublease is for a term greater than fifty percent (50%) of the initial Term. If this Lease or any interest in this Lease is sold, assigned or transferred by Tenant, or Tenant subleases any part of the Premises, without Landlord's consent, Landlord may, cumulative of any other right or remedy available to Landlord, elect to terminate this Lease (as it affects the portion of the Premises sought to be sublet or assigned) as of the effective date of the proposed transfer. Landlord's acceptance of any name for listing on the Building directory will not be deemed, nor will it substitute for, Landlord's consent, as required by this lease, to any sublease, assignment or other occupancy of the Premises.

(c) Landlord shall be permitted to consider any reasonable factor in determining whether or not to withhold its consent to a proposed assignment or sublease and Landlord shall make such determination within ten (10) business days following Landlord's receipt of the Transfer Notice. The failure of Landlord to deliver written notice of such determination within such time period shall be deemed Landlord's approval thereof. Without limiting the other instances in which it may be reasonable for Landlord to withhold its consent to an assignment or sublease, it shall be reasonable for Landlord to withhold its consent if any of the following conditions are not satisfied:

(1) The proposed use by the transferee shall (i) comply with Tenant's permitted use, (ii) be consistent with the general character of businesses carried on by tenants of the Building, (iii) not materially increase the likelihood of damage or destruction, (iv) not materially increase the density of occupancy of the Premises or increase the amount of pedestrian and other traffic through the Building, (v) not be likely to cause an increase in insurance premiums for insurance policies applicable to the Building, (vi) not require new tenant improvements incompatible with then-existing Building systems and components, (vii) unless paid by Tenant, not require Landlord to make material modifications to the Building outside of the Premises (in order, for example, to comply with laws such as the ADA), (viii) not materially increase the electrical or HVAC usage in the Premises, and (ix) not otherwise have or cause a material adverse impact on the Premises, the Building, the Project, or Landlord's interest therein;

(2) The proposed transferee shall not be a labor union, foreign or domestic government entity.

(3) If Landlord has vacant space at the Building suitable for such proposed transferee, the proposed transferee shall not be an existing tenant or occupant of the Building or a person or entity with whom Landlord is then dealing, or with whom Landlord has had any dealings within the previous three (3) months, with respect to the leasing of space in the Building; and

(4) Any ground lessor or mortgagee whose consent to such transfer is required fails to consent thereto. Tenant shall have the burden of demonstrating that each of the foregoing conditions has been satisfied.

d) Provided Landlord has consented to such assignment or subletting, Tenant shall be entitled to enter into such Assignment or Sublease with the third party identified in the Transfer Notice subject to the following conditions:

(1) At the time of the transfer, no event of default under this Lease shall have occurred and be continuing;

(2) The assignment or sublease shall be on the same terms substantially set forth in the Transfer Notice given to Landlord;

(3) No assignment or sublease shall be valid and no assignee or sublessee shall take possession until an executed counterpart of the assignment or sublease has been delivered to Landlord;

(4) No assignee or sublessee shall have a right further to assign or sublet without Landlord's consent thereto in each instance, which consent in the case of a future assignment should not be unreasonably withheld or delayed;

(5) Any assignee shall have assumed in writing the obligations of Tenant under this Lease;

(6) Any subtenant shall have agreed in writing to comply with all applicable terms and conditions of this Lease with respect to the Space;

(7) In the event Tenant sublets the entire Premises or any part thereof, Tenant shall deliver to Landlord fifty percent (50.00%) of any excess rent within thirty (30) days of Tenant's receipt thereof pursuant to such subletting. As used herein, "**excess rent**" shall mean any sums or economic consideration per square foot of the Premises received by Tenant pursuant to such subletting in excess of the amount of the rent per square foot of the Premises payable by Tenant under this Lease applicable to the part or parts of the Premises so sublet; provided, however, that no excess payment shall be payable until Tenant shall have recovered therefrom all of the costs incurred by Tenant for brokerage commissions, tenant improvement work approved by Landlord, reasonable rent concessions, reasonable attorneys fees, and reasonable marketing fees, in conjunction with such sublease; and

(8) In the event Tenant assigns this Lease, Tenant shall deliver to Landlord fifty percent (50.00%) of any excess payment within thirty (30) days of Tenant's receipt thereof pursuant to such assignment. As used herein, "**excess payment**" shall mean the amount of payment received for such assignment of this Lease in excess of the rent payable by Tenant under this Lease; provided, however, that no excess payment shall be payable until Tenant shall have recovered therefrom all of the costs incurred by Tenant for brokerage commissions, tenant improvement work approved by Landlord, rent concessions, reasonable attorneys fees, and reasonable marketing fees, in conjunction with such assignment.

e) No subletting or assignment shall release Tenant of Tenant's obligations under this Lease or alter the liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments of the Lease or sublettings or amendments or modifications to the Lease with assignees of Tenant, after notifying Tenant, or any successor of Tenant, and after obtaining its or their consent thereto and any such actions shall not relieve Tenant of liability under this Lease.

(f) If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand, pay Landlord an administrative fee not to exceed Five Hundred and No/100ths Dollars (\$500.00) in connection with such act or request.

16. INDEMNITY

(a) Subject to the provisions of Section 18(e) below and to the extent not funded and paid to Landlord by any insurance maintained by Tenant, Tenant shall indemnify, defend and hold harmless Landlord against and from any and all claims, damages, liabilities, and expenses (including reasonable attorneys' fees) to the extent arising from Tenant's use of the Premises for the conduct of its business or from any activity, work or other thing done or permitted by the Tenant in or about the Building, and shall further indemnify, defend and hold harmless Landlord against and from any and all claims to the extent arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or from any act or negligence of the Tenant, or any officer, agent, employee, guest or invitee of Tenant, and from all and against all reasonable cost, attorney's fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon, and, if any case, action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel selected by Tenant and approved in writing by Landlord such approval not to be unreasonably withheld or delayed. Notwithstanding the preceding sentence, such indemnification by Tenant and such assumption and waiver of claims shall not include damage or injury to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees or contractors.

(b) Neither Landlord nor any of its Affiliates shall be liable for and there shall be no abatement of rent for (i) any damage to Tenant's property stored with Affiliates of Landlord, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, wind, earthquake, falling plaster, steam, gas, electricity, flood, water or rain which may leak from any part of the Building or the Project or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Building or the Project or from any other cause whatsoever, except to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees or contractors or (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building, whether within or outside of the Property. Tenant agrees that in no case shall Landlord ever be responsible or liable on any theory for any injury to Tenant's business, loss of profits, loss of income or any other form of consequential damage. Tenant shall give prompt notice to Landlord in the event of (a) the occurrence of a fire or accident in the Premises or in the Building, or (b) the discovery of any defect therein or in the fixtures or equipment thereof.

17. DAMAGE TO PREMISES OR BUILDING

All injury to the Premises or the Building caused by moving the property of Tenant or its employees, agents, guests or invitees into, in or out of the Building and all breakage done by Tenant or the agents, servants, employees, and visitors of Tenant shall be repaired as reasonably determined by the Landlord at the expense of the Tenant.

18. TENANT'S INSURANCE

(a) All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies which are rated by Best Insurance Reports as A-VII or better and acceptable to Landlord and Landlord's lender and licensed or authorized to do business in the State of California. Each general liability policy shall include Landlord, and at Landlord's request any mortgagee of Landlord, as an additional insured, as their respective interests may appear. Each policy shall contain (i) a separation of insureds condition, (ii) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance for Landlord's interest only, and (iii) a waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives. A copy of each certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is given possession of the Premises, and annually thereafter, within thirty (30) days after any demand by Landlord therefore. No such policy shall be cancelable, materially changed or reduced in coverage except after thirty (30) days' written notice to Landlord. In any event deductible amounts under all general liability insurance policies required to be carried by Tenant under this Lease shall not exceed Ten Thousand Dollars (\$10,000.00) per occurrence. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums, which shall be payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee and Tenant as required by this Lease.

(b) Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the term of the Lease, Tenant shall procure, pay for and maintain in effect policies of property insurance covering (i) any alterations, additions or improvements as may be made and funded by Tenant pursuant to the provisions of Section 10 hereof, and (ii) trade fixtures, merchandise and other personal property from time to time, in, on or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time, providing protection against all risks of physical loss or damage. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein, the proceeds shall be paid to Tenant.

(c) Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term of the Lease, Tenant shall procure, pay for and maintain in effect workers' compensation and employer's liability insurance and commercial general liability insurance which includes coverage for personal injury, contractual liability and Tenant's independent contractors. The commercial general liability should be procured and maintained with not less than Two Million and No/100ths Dollars (\$2,000,000.00) per occurrence combined single limit, and a Five Million and No/100ths Dollars (\$5,000,000.00) aggregate limit, for bodily injury, personal injury or property damage liability. If such insurance covers more than one location, and general aggregate limit shall apply on a per location basis.

(d) Intentionally Deleted.

(e) Landlord and Tenant each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, on account of loss by or damage to the waiving party of its property or the property of others under its control, to the extent that such loss or damage is insured against and payment is made under any "all risk" insurance policy which either may have in force at the time of the loss or damage. Tenant and Landlord shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation as contained in this Lease.

(f) During the term of this Lease, Landlord shall maintain the following policies of insurance with insurers of recognized responsibility, licensed to do business in the State of California, rated by Best Insurance

Reports as A-VII or better: (i) commercial general liability of One Million and No/100ths Dollars (\$1,000,000.00) per occurrence combined single limit, and Two Million and No/100ths Dollars (\$2,000,000.00) aggregate limit, for bodily injury, personal injury and property damage liability, (ii) workers' compensation insurance, in accordance with applicable law, and employer's liability insurance and bodily injury by accident of One Million and No/100ths Dollars (\$1,000,000.00) per accident, and bodily injury by disease One Million and No/100ths Dollars (\$1,000,000.00) policy limit, and (iii) property insurance, on "all risk" basis, insuring the Building for the full replacement costs thereof. Landlord shall be responsible for insuring the Tenant Improvements funded and installed by Landlord pursuant to the provisions of the Tenant Improvement Agreement.

19. AD VALOREM TAXES

Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof upon all Tenant's leasehold improvements, equipment, furniture, fixtures, and personal property located in the Premises, except that which has been paid for by Landlord and is the standard of the Building. In the event any or all of the Tenant's leasehold improvements, equipment, furniture, fixtures, and personal property shall be assessed and taxed with the Building, Tenant shall pay to Landlord its share of such taxes within thirty (30) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property with supporting documentation.

20. WAIVER

No delay or omission in the exercise of any right or remedy of Landlord or Tenant on any default by Tenant or Landlord shall impair such a right or remedy or be construed as a waiver. The subsequent acceptance of Rent by Landlord after breach by Tenant of any covenant or term of this Lease shall not be deemed a waiver of such breach, other than a waiver of timely payment for the particular Rent involved, and shall not prevent Landlord from maintaining an unlawful detainer or other action based on such breach. No act or conduct of Landlord, including without limitation the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Prior to the scheduled expiration of the term of the Lease, only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish an early termination of the Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord or Tenant of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease. The review, approval, or inspection by Landlord of any item to be reviewed, approved, or inspected by Landlord under the terms of this Lease shall not constitute the assumption of any responsibility by Landlord for the accuracy or sufficiency of any such item or the quality or suitability of such item for its intended use.

21. ENTRY BY LANDLORD

Landlord reserves, and shall at any and all reasonable times, upon advance oral or written notice to Tenant, have the right to enter the Premises to inspect the same, to supply any service to be provided by Landlord to Tenant hereunder, to show the Premises to prospective purchasers or tenants (with regard to prospective tenants, such entrance shall not occur earlier than one hundred eighty (180) days prior to the expiration of the Term), to post notices of non-responsibility, and to maintain and repair the Premises and any portion of the Building that Landlord may deem necessary or desirable, without abatement of Rent, and may for that purpose erect scaffolding and other necessary structures, where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be blocked thereby and further providing that the business of the Tenant shall not be interfered with unreasonably. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults, safes and files, and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in the event of an emergency (as determined by Landlord or its employees or representatives acting in good faith), in order to obtain entry to the Premises without liability to Landlord. Any entry to the Premises obtained by Landlord by any of said means or otherwise shall not under any circumstances be construed or be deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Tenant from the Premises or any portion thereof.

22. CASUALTY DAMAGE

(a) During the Term hereof, if the Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord. In case the Building shall be so damaged by fire or other casualty that substantial alteration or reconstruction of the Building shall be required (whether or not the Premises shall have been damaged by such fire or other casualty), (i) if such damage cannot be repaired within ninety (90) days thereafter, as reasonably determined by Landlord, (ii) if any mortgagee under a mortgage or deed of trust covering the Building requires that the insurance proceeds payable as a result of said fire or other casualty be used to retire or reduce such mortgage debt, or (iii) if such damage is not covered by insurance carried by Landlord, Landlord may, at its option, terminate this Lease and the term and estate hereby granted by notifying Tenant in writing of such termination within thirty (30) days after the date of such damage, in which event the Rent shall be abated as of the date of such damage. If Landlord elects to repair the Premises and/or the Building, Landlord shall within forty five (45) days after the date of such damage commence to repair and restore the Building and shall proceed with reasonable diligence to restore the Building (except that Landlord shall not be responsible for delays outside its control) to substantially the same condition in which it was immediately prior to the happening of the casualty, except that Landlord shall not be required to rebuild, repair or replace any part of Tenant's furniture and furnishings or fixtures and equipment removable by Tenant under the provisions of this Lease, but such work shall not exceed the scope of the work done by Landlord in originally constructing the Building. Tenant shall not be entitled to any compensation or damages from Landlord, and Landlord shall not be liable, for any loss of the use of the whole or any part of the Premises, the Building, Tenant's personal property, or any inconvenience or annoyance

occasioned by such loss of use, damage, repair, reconstruction or restoration, except that, subject to the provisions of the next sentence, Landlord shall allow Tenant a diminution of Rent on a square footage basis during the time and to the extent the Premises are unfit or unavailable for occupancy. If the Premises or any other portion of the Building are damaged by fire or other casualty resulting from the negligence of Tenant or any of Tenant's agents, employees, or invitees, Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the Building caused thereby to the extent such cost and expense is not covered by insurance proceeds. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or to the Premises shall be for the sole benefit of the party carrying such insurance and under its sole control. Tenant hereby specifically waives any and all rights it may have under any law, statute, ordinance or regulation to terminate the Lease by reason of casualty or damage to the Premises or Building, and the parties hereto specifically agree that the Lease shall not automatically terminate by law upon destruction of the Premises. Except as otherwise provided in this Section 22, Tenant hereby waives the provisions of Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code.

(b) In the event that Landlord elects to repair any damage to the Premises and/or Building (if such damage prevents Tenant from using the Premises pursuant to this Lease), Landlord shall deliver written notice to Tenant indicating Landlord's good faith estimate of the number of days required to repair such damage within thirty (30) days following the date of such damage. If Landlord's estimate is in excess of one hundred eighty (180) days following receipt of such notice, Tenant shall have the right, by delivery of written notice to Landlord within fifteen (15) days of receiving the estimate notice from Landlord, to terminate this Lease, which termination shall be effective upon delivery of such notice to Tenant by Landlord. The failure of Tenant to provide such written notice within such time period, shall be deemed a waiver of Tenant's right to terminate this Lease pursuant to the preceding sentence.

23. CONDEMNATION

(a) If the whole of the Building or Premises should be condemned, this Lease shall terminate as of the date when physical possession of the Building or the Premises is taken by the condemning authority. If less than substantially the whole of the Building or the Premises is thus taken or sold, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by written notice to Landlord given within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (ii) Landlord (whether or not the Premises are affected thereby) may terminate this Lease by giving written notice thereof to Tenant within sixty (60) days after the date of such taking, in which event this Lease shall terminate as of the date when physical possession of such portion of the Building or Premises is taken by the condemning authority. If, upon any such condemnation of less than substantially the whole of the Building or the Premises, this Lease shall not be thus terminated, the Rent payable hereunder shall be diminished by an amount representing that part of the Rent as shall properly be allocable to the portion of the Premises which was so condemned, and Landlord shall, at Landlord's sole expense, restore and reconstruct the remainder of the Building and the Premises to substantially their former condition to the extent that the same, in Landlord's reasonable judgment, may be feasible, but such work shall not exceed the scope of the work done in originally constructing the Building, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation awarded upon a taking of any part or all of the Building or the Premises. Subject to the rights of any mortgagee under a mortgage or deed of trust covering the Building, Landlord shall be entitled to and shall receive the total amount of any award made with respect to condemnation of the Premises or Building, regardless of whether the award is based on a single award or a separate award as between the respective parties, and to the extent that any such award or awards shall be made to Tenant or to any person claiming through or under Tenant, Tenant hereby irrevocably assigns to Landlord all of its rights, title and interest in and to any such awards. No portion of any such award or awards shall be allocated to or paid to Tenant for any so-called bonus or excess value of this Lease by reason of the relationship between the rental payable under this Lease and what may at the time be a fair market rental for the Premises, nor for Tenant's unamortized costs of leasehold improvements. The foregoing notwithstanding, and if Tenant be not in default for any reason, Landlord shall turn over to Tenant, promptly after receipt thereof by Landlord, that portion of any such award received by Landlord hereunder which is attributable to Tenant's fixtures and equipment which are condemned as part of the property taken but which Tenant would otherwise be entitled to remove, and the appraisal of the condemning authority with respect to the amount of any such award allocable to such items shall be conclusive. The foregoing shall not, however, be deemed to restrict Tenant's right to pursue a separate award specifically for its relocation expenses or the taking of Tenant's personal property or trade fixtures so long as such separate award does not diminish any award otherwise due Landlord as a result of such condemnation or taking. Tenant hereby specifically waives any and all rights it may have under any law, statute, ordinance or regulation (including, without limitation, Sections 1265.120 and 1265.130 of the California Code of Civil Procedure), to terminate or petition to terminate this Lease upon partial condemnation of the Premises or Building, and the parties hereto specifically agree that this Lease shall not automatically terminate upon condemnation.

(b) Landlord may, without any obligation or liability to Tenant and without affecting the validity and existence of this Lease other than as hereafter expressly provided, agree to sell and/or convey to the condemner the Premises or portion thereof sought by the condemner, without first requiring that any action or proceeding be instituted, or if such action or proceeding shall have been instituted, without first requiring any trial or hearing thereof (and Landlord is expressly empowered to stipulate to judgment therein), free from this Lease and the rights of Tenant hereunder.

(c) If all or any portion of the Premises is condemned or otherwise taken for a period (i) of less than ninety (90) days, this Lease shall remain in full force and effect and Tenant shall continue to perform all terms and covenants of this Lease; provided, however, Rent shall abate during such limited period in proportion to the portion of the Premises that is rendered unusable as a result of such condemnation or other taking, or (ii) of ninety (90) days or more, Tenant shall have the right to terminate this Lease by providing written notice of such election within thirty (30) days of such condemnation, in which case Rent shall be abated as of the date of such condemnation.

(d) The words “**condemnation**” or “**condemned**” as used herein shall mean the taking for any public or quasi-public use under any governmental law, ordinance, or regulation, or the exercise of, or the intent to exercise, the power of eminent domain, expressed in writing, as well as the filing of any action or proceeding for such purpose, by any person, entity, body, agency, or authority having the right or power of eminent domain, and shall include a voluntary sale by Landlord to any such person, entity, body agency or authority, either under threat of condemnation expressed in writing or while condemnation proceedings are pending, and shall occur in point of time upon the actual physical taking of possession pursuant to the exercise of said power of eminent domain.

24. TENANT’S DEFAULT

The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) The abandonment of the Premises by Tenant (failure to occupy and operate the Premises for thirty (30) days or more shall be deemed an abandonment).

(b) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder as and when due, which such failure shall continue for a period of five (5) days following Tenant’s receipt of written demand from Landlord.

(c) Tenant’s failure to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, other than as described in subparagraph (b) above, where such failure shall continue for a period of fifteen (15) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant’s default is such that more than fifteen (15) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said fifteen (15) day period and thereafter diligently prosecutes such cure to completion; provided that such cure shall not be in excess of ninety (90) days.

(d) The making by Tenant of any general assignment or general arrangement for the benefit of creditors, or the appointment of a trustee or a receiver to take possession of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease, where possession is not restored to Tenant within sixty (60) days, or the attachment, execution, or other judicial seizure of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease, where such seizure is not discharged in sixty (60) days.

(e) The filing of any voluntary petition in bankruptcy by Tenant, or the filing of any involuntary petition by Tenant’s creditors, which involuntary petition remains undischarged for a period of sixty (60) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and perform the obligations of Tenant hereunder, such trustee or Tenant shall, in such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease, and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant’s obligation under this Lease.

(f) Without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed, selling, leasing, assigning, encumbering, hypothecating, transferring, or otherwise disposing of all or substantially all of the Tenant’s assets, except as permitted pursuant to Section 15(a) above.

(g) If Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other person or entity is involved in any of the acts or events described in Sections (d) or (e) above.

25. REMEDIES FOR TENANT’S DEFAULT

In the event of Tenant’s default, Landlord may:

(a) Terminate Tenant’s right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant:

(1) the worth at the time of the award of any unpaid rent which had been earned at the time of such termination; plus

(2) the worth at the time of the 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 which Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss which Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all 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 (including, without limitation, the cost of recovering possession of the Premises, expenses of reletting including necessary renovation and alteration of the Premises, reasonable attorneys’ fees, and real estate commissions actually paid and that portion of the leasing commission paid by Landlord and applicable to the unexpired portion of this Lease); plus

(5) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in Subsections (1) and (2) above, the “**worth at the time of the award**” shall be computed by allowing interest at the lesser of ten percent (10%) per annum, or the maximum rate permitted by law per annum. As used in Subsection (3) 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%).

(b) Continue this Lease in full force and effect, and the Lease will continue in effect, as long as Landlord does not terminate Tenant’s right to possession, and Landlord shall have the right to collect Rent when due consistent with California Civil Code Section 1951.4. During the period Tenant is in default, Landlord may enter the Premises and relet them, or any part of them, to third parties for Tenant’s account. Tenant shall be liable immediately to Landlord for all costs Landlord reasonably incurs in reletting the Premises, including, without limitation, brokers’ commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord receives from any reletting. In no event shall Tenant be entitled to any excess rent received by Landlord. No act by Landlord allowed by this paragraph shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease. After Tenant’s default and for as long as Landlord does not terminate Tenant’s right to possession of the Premises, if Tenant obtains Landlord’s consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

(c) Cause a receiver to be appointed to collect Rent. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate the Lease.

(d) Cure the default at Tenant’s cost. If Landlord at any time, by reason of Tenant’s default, reasonably pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the lesser of ten percent (10%) per annum, or the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional Rent.

The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Landlord may have, and to any remedies Landlord may have under bankruptcy laws or laws affecting creditors’ rights generally. The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than a failure to pay the particular Rent so accepted, regardless of Landlord’s knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

26. SURRENDER OF PREMISES

On expiration of this Lease or within five (5) days after the earlier termination of the Term, Tenant shall surrender to Landlord the Premises in good condition (except for ordinary wear and tear, repair and maintenance which is the obligation of Landlord, and destruction to the Premises covered by Section 22). Tenant shall remove all its personal property within the above-stated time. Tenant shall perform all restoration made necessary by the removal of any alterations or Tenant’s personal property within the time periods stated in this paragraph.

Landlord may elect to retain or dispose of in any manner any alterations or any of Tenant’s personal property that Tenant does not remove from the Premises on expiration or termination of the term as allowed or required by this Lease by giving at least ten (10) days’ notice to Tenant. Title to any such alterations or any of Tenant’s personal property that Landlord elects to retain or dispose of on expiration of the ten (10) day period shall vest in Landlord. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord’s retention or disposition of any such alterations or any of Tenant’s personal property. Tenant shall be liable to Landlord for Landlord’s costs for storing, removing, and disposing of any alterations or any of Tenant’s personal property. If Tenant fails to surrender the Premises to Landlord on expiration or five (5) days after termination of the term as required by this paragraph, Tenant shall indemnify and hold Landlord harmless from all claims, liability and damages resulting from Tenant’s failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant resulting from Tenant’s failure to surrender the Premises.

27. SUBSTITUTION (Intentionally Deleted)

28. PARKING

During the Term of the Lease, Tenant shall be entitled to the use of four and one tenth (4.1) parking spaces for every one thousand (1,000) rentable square feet within the Premises at no cost to Tenant in the area exclusively-designated by Landlord for the Building (the “**Tenant Parking Area**”) pursuant to the parking map in **Exhibit H** attached hereto. Tenant agrees not to overburden the parking facilities and agrees to cooperate with Landlord and other tenants in the use of the parking facilities. Tenant acknowledges that Landlord may be required to allocate and assign parking spaces among Tenant and the other tenants, in order to comply with the policies of any transportation management association or any governmental ordinance, law or regulation. Landlord shall have the right, in

addition to pursuing any other legal remedy available, to tow any vehicle belonging to Tenant or Tenant's employees which is not in compliance with the regulations for the parking facility then in effect if a violation continues after the second notice of such violation, at the expense of Tenant. Notwithstanding the aforementioned, Landlord shall use reasonable efforts to ensure that Tenant has use of Tenant's designated number of parking spaces within the Tenant Parking Area throughout the Term. To this end, Landlord shall, enforce such parking rights by providing notice of violations to improperly parked cars, towing such cars and using other means reasonably necessary to ensure Tenant's parking rights within the Tenant Parking Area. Landlord shall not be liable for any claims, losses, damages, expenses or demands with respect to injury or damage to the vehicles of Tenant or Tenant's customers or employees that park in the parking areas of the Project, except for such loss or damage as may be caused by Landlord's gross negligence or willful misconduct. If Tenant leases additional space in the Building or Project, Tenant's reserved parking rights shall be increased on a proportionate basis within the Tenant Parking Area.

29. ESTOPPEL CERTIFICATE

Tenant shall at any time and from time to time upon not less than fifteen (15) days' prior written notice from Landlord execute, acknowledge, and deliver to Landlord a statement in writing, (a) 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 modified is in full force and effect) and the date to which the Rental and other charges are paid in advance, if any; (b) certifying that the Premises have been accepted by Tenant; (c) confirming the Commencement Date and the expiration date of the Lease; (d) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder, or specifying such defaults, if any are claimed, and (e) such other matters requested by Landlord. Any such statement may be relied upon by a prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part.

30. SALE OF PREMISES

In the event of any sale of the Project, Landlord shall be and hereby is entirely freed and relieved of all further liability under any and all of its covenants and obligations contained in or derived from this Lease and the purchaser, at such sale or any subsequent sale of the Premises, shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease. If any Security Deposit or prepaid Rent has been paid by Tenant, Landlord will transfer the Security Deposit and prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

31. SUBORDINATION, ATTORNMENT

(a) This Lease is and shall be subordinate to any encumbrance now of record or recorded after the date of this Lease affecting the Building, other improvements, and land of which the Premises are a part. Such subordination is effective without any further act of Tenant. If any mortgagee, trustee, or ground lessor shall elect to have this Lease and any options granted hereby prior to the lien of its mortgage, deed of trust, or ground lease, and shall give written notice thereof to Tenant, this Lease and such options shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease or such options are deeded prior or subsequent to the date of said mortgage, deed of trust, or ground lease, or the date of recording thereof.

(b) In the event any proceedings are brought for foreclosure, or in the event of a sale or exchange of the real property on which the Building is located, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure and sale and recognize such purchaser as the Landlord under this Lease.

(c) Tenant agrees to execute any documents reasonably required to effectuate an attornment or to make this Lease or any options granted herein prior to the lien of any mortgage, deed of trust, or ground lease, as the case may be, provided the rights of Tenant are not diminished or adversely affected as a result thereof.

(d) Landlord agrees that Tenant's obligations to subordinate under this Section 31 to any existing and future ground lease, mortgage, or deed of trust shall be conditioned upon Tenant's receipt of a non-disturbance agreement from the party requiring such subordination (which party is referred to for the purposes of this Section as the "**Superior Lienor**"). Such non-disturbance agreement shall provide, at a minimum, that Tenant's possession of the Premises shall not be interfered with following a foreclosure, provided Tenant is not in default beyond any applicable cure periods. Landlord's obligation with respect to such a non-disturbance agreement shall be limited to obtaining the non-disturbance agreement in such form as the Superior Lienor generally provides in connection with its standard commercial loans, however, Tenant shall have the right to negotiate, and Landlord shall use its good faith efforts and due diligence in assisting Tenant in the negotiation of, revisions to that non-disturbance directly with the Superior Lienor. Tenant agrees to use its good faith efforts to reach agreement with the Superior Lienor upon acceptable terms and conditions of a non-disturbance agreement. Lender's standard form non-disturbance agreement is attached as Exhibit E.

32. AUTHORITY OF TENANT

If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

33. BROKER

(a) Landlord and Tenant each warrants that it has had no dealings with any real estate broker or agents

in connection with the negotiation of this Lease except for the broker or brokers listed in the Basic Lease Information of this Lease (“**Broker**”), and it knows of no other real estate broker or agent who is entitled to a commission in connection with the Lease. Landlord agrees to pay any commission to which its Broker is entitled in connection with this Lease. Tenant agrees to indemnify and defend Landlord and hold Landlord harmless from any claims for brokerage commissions arising out of any discussion allegedly had by Tenant with any broker other than Broker. If the Broker has acted as the Broker for both the Landlord and Tenant in connection with the negotiation and execution of this Lease, by execution hereof, Landlord and Tenant acknowledge and agree that Broker has made a full disclosure of its representation of both Landlord and Tenant, and that Landlord and Tenant consent and approve of Broker’s dual representation of their interests in connection with this transaction.

34. HOLDING OVER

Upon termination of the Lease or expiration of the Term hereof, if Tenant retains possession of the Premises without Landlord’s written consent first had and obtained, then Tenant’s possession shall be deemed a month-to-month tenancy upon all of the terms and conditions contained in this Lease, except the base rent portion of the Rent which shall be increased to one hundred twenty five percent (125%) of the amount of the base rent portion of the Rent at the expiration or earlier termination of the Lease, as the case may be. Rent, as adjusted pursuant to this Section, shall be payable in advance on or before the first day of each month. If either party desires to terminate such month-to-month tenancy, it shall give the other party not less than thirty (30) days’ advance written notice of the date of termination.

35. RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the reasonable rules and regulations that Landlord shall from time to time promulgate. Landlord reserves the right from time to time to make all reasonable modifications to said rules. The additions and modifications to those rules shall be binding upon Tenant upon delivery of a copy to them to Tenant (a copy of the present Rules and Regulations is attached hereto as Exhibit D). Landlord shall use its reasonable efforts to enforce compliance with such rules in a uniform manner, but shall not be responsible to Tenant for the nonperformance of any of said rules by other tenants or occupants.

36. OTHER RIGHTS RESERVED BY LANDLORD

In addition to any other rights contained in this Lease, Landlord retains and shall have the rights set forth below, exercisable without notice and without liability to Tenant for damage or injury to property, person or business and without effecting an eviction, constructive or actual, or disturbance of Tenant’s use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (a) to install, affix and maintain any and all signs on the exterior and interior of the Building; (b) to grant to anyone the exclusive right to conduct any business or render any service in or to the Building and its tenants, provided such exclusive right shall not operate to require Tenant to use or patronize such business or service or to exclude Tenant from its use of the Premises expressly permitted herein; (c) to prohibit the placing of vending or dispensing machines of any kind in or about the Premises without the prior written permission of Landlord, unless such vending or dispensing machines are for the exclusive use of Tenant’s employees, visitors, and representatives, in which case no Landlord consent shall be required; and (d) to reduce, increase, enclose or otherwise change at any time and from time to time the size, number, location, layout and nature of the Project Common Area and facilities and other tenancies and premises in the Project and to create additional rentable areas through use or enclosure of Project Common Area, provided that access to and from the Premises is not impaired thereby.

37. GENERAL PROVISIONS

(a) **Plats and Riders:** Clauses, plats, and riders, if any, signed by the Landlord and Tenant and endorsed on or affixed to this Lease are a part hereof.

(b) **Consents:** Except as provided in the Lease, whenever the Lease requires the consent or approval of Landlord, Landlord agrees that such consent or approval shall not be unreasonably withheld or delayed.

(c) **Joint Obligation:** If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several.

(d) **Marginal Headings:** The marginal headings and titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

(e) **Time:** Time is of the essence in this Lease and with respect to each and all of its provisions in which performance is a factor.

(f) **Quiet Possession:** Upon Tenant paying the Rent reserved hereunder, and observing and performing all of the covenants, conditions, and provisions on Tenant’s part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.

(g) **Prior Agreements:** This Lease contains all of the agreements of the parties hereto with respect to 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 may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

(h) **Force Majeure.** Except as provided in this Lease, in the event Landlord or Tenant, is delayed, interrupted or prevented from performing any of its obligations under this Lease, and such delay, interruption or prevention is due to fire, act of God, failure of utility service provider to provide utility service, government regulation or restriction, governmental delay in issuing permits, approvals and inspections, weather which causes delay of construction, strike, labor dispute, unavailability of materials or any other cause outside the reasonable control of such party (excepting, however, such party's financial inability), then the time for performance of the affected obligations of such party shall be extended for a period equivalent to the period of such delay, interruption or prevention (but in no event shall the time for performance of any obligation for payment of money be extended pursuant to this provision).

(i) **Jury Trial:** The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and/or any claim of injury or damage.

(j) **Limitation on Liability:** In consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord (except for a default under the Tenant Improvement Agreement prior to the Commencement Date): (1) Tenant's sole and exclusive recourse shall be against Landlord's interest in the Project. Tenant shall not have any right to satisfy any judgment which it may have against Landlord from any other assets of Landlord; (2) no partner, stockholder, director, officer, employee, beneficiary or trustee (collectively, "Partner") of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction over Landlord); (3) no service of process shall be made against any Partner of Landlord (except as may be necessary to secure jurisdiction over Landlord); (4) no Partner of Landlord shall be required to answer or otherwise plead to any service of process; (5) no judgment will be taken against any Partner of Landlord; (6) any judgment taken against any Partner of Landlord may be vacated and set aside at any time nunc pro tunc; (7) no writ of execution will ever be levied against the assets of any Partner of Landlord; and (8) these covenants and agreements are enforceable both by Landlord and also by any Partner of Landlord.

(k) **Limitation on Liability:** The obligations of Tenant under this Lease do not constitute personal obligations of the individual officers and employees of Tenant. The liability of Tenant and each of its successors for any default by Tenant (or its successors) under the terms of this Lease shall be limited to such claims and causes of action which accrue during Tenant's and each of its successors' respective occupancy of the Premises.

(l) **Modification For Lender:** If, in connection with obtaining construction, interim or permanent financing for the Building, the lender shall request reasonable modifications to this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

(m) **No Construction Against Drafter:** The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party.

(n) **Separability:** Any provisions of this Lease which shall prove to be invalid, void, and illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

(o) **Choice of Law:** This Lease shall be governed by the laws of the State in which the Premises are located.

(p) **Signage:**

(i) Tenant shall be entitled to one (1) building standard door sign and one (1) strip on the Building's main directory, the initial listing for which shall be at Landlord's expense. Subsequent modification to Tenant's name or information on the door sign or within the main directory shall be at Tenant's expense.

(ii) Tenant shall be entitled, on a non-exclusive basis, to Building parapet signage ("**Building Signage**") to be installed on the west side of the Building. The size (not to exceed three (3) feet high), style, material and attachment of such exterior signage shall be subject to the reasonable approval of Landlord and Tenant and such exterior signage shall comply with all applicable laws, statutes and ordinances, and the conditions, covenants and restrictions encumbering the Project per the attached Exhibit G, and Landlord shall not restrict the size of Building Signage to anything less than what is permitted under Exhibit G. Upon the termination of this Lease, the Building Signage shall be removed by Landlord, at Tenant's expense. In the event that Landlord leases any space in the Building to Health Net of California, Inc. ("Health Net") during the Term of this Lease and provided that Tenant does not exercise Tenant's right to terminate this Lease pursuant to Section 40(f) below, Landlord shall not permit Health Net to install any Building Signage.

(q) **Project Name:** Tenant may use the name of the Project in which the Premises are located in all Tenant's advertising in connection with Tenant's business at the Premises and for no other purpose, except with Landlord's consent.

(r) **Late Charges:** Tenant acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and

impracticable to fix. Such costs include, without limitation, processing charges, accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any delinquent installment of Rent or other sums due from Tenant is not received by Landlord on or before the first day of each calendar month, Tenant shall pay to Landlord an additional sum equal to ten percent (10.00%) of such overdue amount as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the administrative and other costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord.

(s) **Interest:** Notwithstanding any other provisions of this Lease, any installment of Rent or other amounts due under this Lease not paid to Landlord when due shall bear interest from the date due or from the date of expenditure by Landlord for the account of Tenant, until the same have been fully paid, at a rate per annum which is equal to the Prime Rate, plus two (2) percentage points, but not to exceed the highest rate permitted under applicable law. The payment of such interest shall not constitute a waiver of any default by Tenant hereunder.

(t) **Attorneys' Fees:** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "**Defaulting Party**") shall reimburse the other party (the "**Non-Defaulting Party**") upon demand for any costs or expenses that the Non-Defaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and costs.

(u) **Modification:** This Lease and all exhibits attached hereto contain the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Lease shall be of no force or effect, excepting a subsequent modification in writing signed by the party to be charged.

(v) **Successors and Assigns:** Subject to the provisions of Section 15, this Lease and each of its covenants and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(w) **Waiver of California Code Sections:** Notwithstanding any other provision of this Lease and in addition to any waivers which may be contained in this Lease, Tenant waives the provisions of Civil Code Section 1932(2) and 1933(4) with respect to the destruction of the Premises; Civil Code Sections 1932(1), 1941 and 1942 with respect to Landlord's repair duties and Tenant's right of repair; and Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises for public or quasi-public use by statute, by right of imminent domain, or by purchase in lieu of imminent domain; and any right of redemption or reinstatement of Tenant under any present of future case law or statutory provision (including Code of Civil Procedure Section 473, 1174(c) and 1179 and Civil Code Section 3275) in the event Tenant is dispossessed from the premises for any reason. This waiver applies to future statutes enacted in addition or in substitution to the statute specified herein, and this waiver shall apply even though Tenant may be the subject of a voluntary or involuntary petition in bankruptcy.

(x) **Government Energy or Utility Controls:** In the event of imposition of federal, state or local governmental controls, regulations or restrictions on the use or consumption of energy or other utilities during the term, both Landlord and Tenant shall be bound thereby.

(y) **Accord and Satisfaction; Allocation of Payments:** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than account of the earliest due Rent, nor shall any endorsement or statement on any check or 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 the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant which is then due or delinquent.

(z) **Furnishing Financial Statements:** In order to induce Landlord to enter into this Lease, and at any time during the Term, Tenant agrees that it shall promptly furnish Landlord, upon Landlord's written request, with annual financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with the Lease are true, correct and complete in all respects as of the date of delivery.

(aa) **Recording:** Tenant shall not record this Lease or a memorandum thereof, or any other reference to this Lease, without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes.

(bb) **Execution of Lease, No Options:** The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to Lease, or otherwise created any interest of Tenant in the Premises or any other Premises within the Building. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.

38. NOTICES

All notices and demands required to be sent to the Landlord or Tenant under the terms of this Lease shall be

personally delivered or sent by certified mail, postage prepaid or by overnight courier (i.e., Federal Express), to the addresses indicated in the Basic Lease Information, or to such other addresses as the parties may from time to time designate by notice pursuant to this paragraph. In addition, Notices to Tenant shall also be sent to Stuart Huizinga at (a) 281 East Java Drive, Sunnyvale, CA 94089 (if such Notice is made prior to September 1, 2004) and (b) 440 Middlefield Avenue, Mountain View, CA 94043 (if such Notice is made after September 1, 2004). Notices shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice (ii) if mailed, two (2) days following the date of posting by the U.S. Postal Service, and (iii) if by overnight courier, on the business day following the deposit of such notice with such courier.

39. TRANSPORTATION MANAGEMENT ASSOCIATION

Tenant hereby agrees to designate one (1) of its employees to act as a liaison with Landlord to facilitate and coordinate such programs as may be required by governmental agencies to reduce the traffic generated by the Gold Pointe Corporate Center office project, as required by the County of Sacramento, and to facilitate the use of public transportation. Tenant further agrees to become a member of, and participate in the programs initiated by Highway 50 Transportation Management Association (Highway 50 TMA). Membership dues for the Highway 50 TMA are based upon number of employees located at the site. The annual estimate of dues for Tenant is \$500.00.

40. ADDENDA/ADDITIONAL PROVISIONS

(a) Telecommunications Carrier's Access.

(1) Tenant's right to select and utilize a telecommunications and data carrier (the "Carrier") shall be conditioned on the execution by such Carrier of a mutually acceptable license agreement, pursuant to which Landlord shall grant to the Carrier a license (which shall be coextensive with the rights and privileges granted to Tenant under this Lease) to install, operate, maintain, repair, replace, and remove cable and related equipment within the Premises and the Building's main telephone/electrical closet and vertical and horizontal pathways within the Building but outside of the Premises that are necessary to provide telecommunications and data services to Tenant at the Premises.

(2) The license contemplated herein to be granted to the Carrier shall permit the Carrier to provide services only to Tenant and not to any other tenants or occupants of the Building and shall require all of the Carrier's equipment (other than connecting wiring) to be located in the Tenant's Premises. The License shall not grant an exclusive right to Tenant or to the Carrier. Landlord reserves the right, at its sole discretion, to grant, renew, or extend licenses to other telecommunications and data carriers for the purposes of locating telecommunications equipment in the Building which may serve Tenant or other tenants in the Building.

(3) Except to the extent expressly set forth herein, nothing herein shall grant to the Carrier any greater rights or privileges than Tenant is granted pursuant to the terms of this Lease or diminish Tenant's obligations or Landlord's rights hereunder.

(4) Tenant shall be responsible for ensuring that the Carrier complies with the terms and conditions of the license agreement relating to the use of the Premises or the making of any physical Alterations imposed upon Tenant under this Lease to the extent the Carrier operates or maintains any equipment or delivers any services in the Premises. Any failure by the Carrier to observe and comply with such terms, conditions, agreement, and covenants on behalf of Tenant, to the extent the Carrier operates or maintains any equipment or delivers any services in the Premises or the Licensed Areas, shall be a default under the Lease.

(b) Exclusivity.

Landlord agrees that no other health insurance companies shall be allowed to lease or sublease space on the first floor of the Building.

(c) Lunch Area.

Landlord, at Landlord's sole expense, shall construct a private fenced patio area, including associated furniture, for Tenant's exclusive use on the northwest side of the building, or other area as mutually agreed upon between Landlord and Tenant. It is envisioned that this patio area will be located adjacent to their break room.

(d) Option to Renew.

Tenant shall, provided this Lease is in full force and effect and Tenant is not and has not been in default under any of the terms and conditions of this Lease, have one (1) successive option to renew this Lease for a term of five (5) years, for the Premises in "as is" condition and on the same terms and conditions set forth in this Lease, except as modified by the terms, covenants and conditions set forth below:

(1) If Tenant elects to exercise such option, then Tenant shall provide Landlord with written notice no earlier than the date which is two hundred seventy (270) days prior to the expiration of the then current term of this Lease, but no later than 5:00 p.m. (Pacific Standard Time) on the date which is one hundred eighty (180) days prior to the expiration of the then current term of this Lease. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend or renew the term of this Lease.

- (2) The Base Rent in effect at the expiration of the then current term of this Lease shall reflect ninety-five percent (95%) of the prevailing fair market rental rate. For purposes hereof, the term "Fair Market Rental Rate" or "FMRR" shall mean the current annual rent per rentable square foot that a willing, comparable, full floor or greater non-renewal, non-sublease, non-expansion, non-equity Tenant would pay, and a willing comparable Landlord of like and comparable buildings found in the Highway 50 office submarket would accept, at arm's length, for comparable space, giving consideration to annual rental rates per rentable square foot, escalation (including type, gross or net, and if gross, whether Base Year or Expense "Stop"), abatement provisions reflecting free rent and/or no rent during the lease term, the building standard work letter, tenant improvement allowances, the age and location of the Building, the location and floor levels of the Premises being leased (giving full consideration to the distinction between the office and retail premises), the quality of the construction of the Building and the Premises, the services provided under the terms of the leases, the types, quantity, quality, costs and location (on site, adjacent, off site, underground, above ground) of parking rights and obligations, and other generally applicable terms and considerations of tenancy for the space in question at or about the time that such FMRR is deemed to take effect. Additionally, Tenant shall be granted a new Base Year for the Renewal Term.
- (3) Landlord shall advise Tenant of the new Base Rent for the Premises for the applicable renewal term which will be based on Landlord's determination of 95% of the FMRR, no later than fifteen (15) days after receipt of notice of Tenant's exercise of its option to renew. Tenant shall have thirty (30) days after receipt of such notification from Landlord to accept the new Base Rent, terms and conditions. If Landlord and Tenant are unable to agree upon the FMRR for Base Rent for the Renewal Term within such thirty (30) day period, then within fifteen (15) days after the expiration of the thirty (30) day period, each party, by giving notice to the other party, shall appoint a commercial real estate broker who is active in the greater Sacramento office market, with at least ten (10) years of experience. If the two (2) brokers are unable to agree on the FMRR for the Renewal Term within twenty (20) days, they shall select a third broker meeting the qualifications stated in this Section within five (5) days after the last day the two (2) brokers are given to set the FMRR for the Renewal Term. The third broker, however selected, shall be a person who has not previously acted in any capacity for either party. Within twenty (20) days after the selection of the third broker, a majority of the brokers shall set the FMRR for the Renewal Term. If a majority of the brokers is unable to set the FMRR within the twenty (20) day period, the two (2) closest FMRR shall be added together and their total divided by two (2). The resulting quotient shall be the FMRR and Tenant shall pay to Landlord said 95% of the FMRR for the Renewal Term. Each party shall be responsible for the costs, charges and fees of the broker appointed by that party plus one-half of the cost of the third broker.
- (4) Tenant's right to exercise any option(s) to renew under this Section shall be conditioned upon Tenant occupying the entire Premises and the same not being occupied by any assignee, subtenant or licensee other than Tenant or its affiliate at the time of exercise of any option and commencement of the renewal term. Tenant's exercise of any option to renew shall constitute a representation by Tenant to Landlord that as of the date of exercise of the option and the commencement of the applicable renewal term, Tenant does not intend to seek to assign this Lease in whole or in part, or sublet all or any portion of the Premises.
- (5) Any exercise by Tenant of any option to renew under this Section shall be irrevocable. If requested by Landlord, Tenant agrees to execute a lease amendment or, at Landlord's option, a new lease agreement on Landlord's then standard lease form for the Building, reflecting the foregoing terms and conditions, prior to the commencement of the renewal term. The option(s) to renew granted under this Section is/are not transferable; the parties hereto acknowledge and agree that they intend that each option to renew this Lease under this Section shall be "personal" to the specific Tenant named in this Lease and that in no event will any assignee or sublessee have any rights to exercise such option(s) to renew.

(e) **Right of First Refusal.**

Provided Tenant is not, and has not been, in default of its obligations under this Lease, and if Landlord receives an offer to lease space on the first floor of the Building, Tenant shall have a Right of First Refusal to lease such space notwithstanding provisions to the contrary in this Section.

In the event Landlord receives a bona fide offer to lease from an initial third party, Landlord will notify Tenant and Tenant shall have five (5) business days to notify Landlord in writing of Tenant's desire to exercise its Right of First Refusal, on the same terms and conditions as the offer to lease that Landlord has received. In the event Tenant fails to give Landlord notice of Tenant's election to lease the adjacent space within such time period, Landlord shall be free to lease the premises to a third party and Tenant's Right of First Refusal shall continue to be in effect. If, on the other hand, Tenant exercises its Right of First Refusal in the manner provided above, Tenant shall immediately deliver to Landlord payment for the first month's rent and security deposit for the adjacent premises (in the same manner as provided for in this Lease), and the lease of such expansion premises shall be consummated without delay in accordance with the terms set forth in the lease offer, the terms of which shall be made a part of this Lease by an appropriate amendment to this Lease to incorporate such terms.

Notwithstanding anything to the contrary herein contained, Tenant's right to the expansion premises shall be conditioned upon the following: (i) at the time Tenant agrees to accept the expansion premises and at

the time of the commencement of the term for the expansion premises, Tenant shall be in possession of and occupying the primary premises for the conduct of its business therein and the same shall not be occupied by any assignee, subtenant or licensee and, provided further, that the option for additional space shall be applicable hereunder only if the expansion premises will actually be occupied by Tenant and (ii) the agreement of acceptance shall constitute a representation by Tenant to Landlord, effective as of the date of the agreement of acceptance and as of the date of commencement of the lease for the expansion premises, that Tenant intends to use the expansion premises for Tenant's purposes in the conduct of Tenant's business therein.

(f) **Health Net Lease/Sublease and Lease Termination Option.**

During the first twenty four (24) months of the Term, Landlord shall notify Tenant within five (5) business days of either executing a signed letter of intent to lease space in the Building with Health Net or of approving a sublease of space to Health Net in the Building (each, a "Notice Date"). On or after the Notice Date, Tenant shall have the option to terminate this Lease provided all the following conditions are met:

- (1) Tenant gives Landlord at least sixty (60) days prior written notice of Tenant's intent to terminate the Lease and vacate the Premises, provided that— if the Scheduled Lease Commencement Date is less than sixty (60) days from the Notice Date— then the effective date of the Lease termination pursuant to this option (the "Lease Termination Date") shall be the later of (a) thirty (30) days prior to scheduled commencement date set forth in any letter of intent, sublease agreement or other agreement that sets forth Health Net's acquisition of a leasehold interest in the Building, or (b) the date Tenant vacates the Premises, the "Lease Termination Date";
- (2) Tenant is not in material default of the terms of this Lease; and
- (3) As of the Lease Termination Date, Tenant is current with Rent, Additional Rent and all other amounts payable under this Lease;

On the Lease Termination Date, Tenant shall deliver the Premises to Landlord in the condition required under Section 26 of this Lease. Additionally, Tenant shall still be obligated for reconciliation of Operating Expenses and for all other obligations under this Lease accrued prior to the Lease Termination Date, and any obligations which survive expiration or termination of this Lease. Any security deposit or prepaid rental or portion thereof that Tenant may be entitled to under this Lease shall be returned to Tenant per Section 6 of this Lease.

(g) **Fair Dealing Clause.**

Tenant does not have any rights to expand within the Building, other than the First Right of Refusal granted in Section 40(e) above, however, if Tenant wishes to expand and there is additional space within the Building available Landlord will consider a request by Tenant to lease additional space. Such request shall at all times be secondary to any First Right of Refusal action, as defined above, or any First Right of Refusal or expansion right held by any other tenant in the Building. Additionally, any space under negotiation with Tenant on the second floor of the Building shall be subject to the prior right of taking by a third party.

Should Tenant wish to lease additional space in the building (Expansion Space), Tenant shall notify Landlord of such wish to expand. Landlord shall advise Tenant if there is available space in the Building and if so, what the base rental rate shall be within five (5) days of such notice. Such rental rate shall be based upon Landlord's determination of the Fair Market Rental Rate. For purposes hereof, the term "Fair Market Rental Rate" or "FMRR" shall mean the same as defined in Section 40(d) above. Tenant shall have five (5) days after receipt of such notification from Landlord to accept the FMRR, terms and conditions. If Landlord and Tenant are unable to agree upon the FMRR for the Expansion Space within such five (5) day period, then within five (5) days after the expiration of the five (5) day period, each party, by giving notice to the other party, shall appoint a commercial real estate broker who is active in the greater Sacramento office market, with at least ten (10) years of experience. If the two (2) brokers are unable to agree on the FMRR for the Expansion Space within ten (10) days, they shall select a third broker meeting the qualifications stated in this Section within five (5) days after the last day the two (2) brokers are given to set the FMRR for the Expansion Space. The third broker, however selected, shall be a person who has not previously acted in any capacity for either party. Within five (5) days after the selection of the third broker, a majority of the brokers shall set the FMRR for the Expansion Space. If a majority of the brokers are unable to set the FMRR within the five (5) day period, the two (2) closest FMRR shall be added together and their total divided by two (2). The resulting quotient shall be the FMRR and Tenant shall pay to Landlord said FMRR for the Expansion Space. Each party shall be responsible for the costs, charges and fees of the broker appointed by that party plus one-half of the cost of the third broker.

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SIGNATURE PAGE

IN WITNESS WHEREOF, this Lease is executed on the date and year first above written.

**LANDLORD: GOLD POINTE E, LLC,
A limited liability company**

By: /s/ Michael E. Diepenbrock
Michael E. Diepenbrock
Title: Managing Member

**TENANT: EHEALTHINSURANCE SERVICES, INC.,
a Delaware Corporation**

By: /s/ Stuart Huizinga
Name: Stuart Huizinga
Title: CFO

EXHIBIT A
DESCRIPTION OF PREMISES-SPACE PLAN

EXHIBIT B
LEASE IMPROVEMENT AGREEMENT

This Lease Improvement Agreement (“**Improvement Agreement**”) sets forth the terms and conditions relating to construction of the initial tenant improvements described in the Plans to be prepared and approved as provided below (the “**Tenant Improvements**”) in the Premises. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Lease (the “**Lease**”) to which this Improvement Agreement is attached and forms a part.

1. Base Building Work. The “Base Building Work” described on Schedule 1 to this Exhibit B, if any, has been or will be performed by Landlord at Landlord’s sole cost and expense.

2. Plans and Specifications.

2.1. Landlord shall retain the services of the space planner/architect designated by Landlord (the “Space Planner”) to prepare a detailed space plan (the “**Space Plan**”) mutually satisfactory to Landlord and Tenant for the construction of the Tenant Improvements in the Premises. Tenant shall approve or disapprove the Space Plan and any proposed revisions thereto in writing within three (3) business days after receipt thereof, which approval shall not be unreasonably withheld. Additionally, all other consultants, contractor/subcontractors retained by Landlord or Space Planner to perform services related to the construction of the Tenant Improvements shall be subject to Tenant’s approval, which shall not be unreasonably withheld.

2.2. Based on the approved Space Plan, Landlord shall cause the Space Planner to prepare detailed plans, specifications and working drawings for the construction of the Tenant Improvements (the “**Plans**”). Landlord and Tenant shall diligently pursue the preparation of the Plans. Tenant shall approve or disapprove the Plans and any proposed revisions thereto, including the estimated cost of the Tenant Improvements, in writing within three (3) business days after receipt thereof. If Tenant fails to approve or disapprove the Space Plan or Plans or any revisions thereto within the time limits specified herein, Tenant shall be deemed to have approved the same. Landlord and Tenant shall use diligent efforts to cause the final Plans to be prepared and approved no later than thirty (30) days after the execution of the Lease. Landlord and Tenant shall use diligent efforts to prepare and approve the tenant improvement cost estimate no later than thirty (30) days after completion of the final Plans.

2.3. Landlord shall obtain from Contractor, and cause Contractor to obtain from each subcontractor for the express benefit of Landlord and Tenant, a warranty that the Tenant Improvements have been constructed in accordance with the Plans and Applicable Laws, and in a good and workmanlike manner, and that they shall be free from defects in material and workmanship. Such warranty(ies) shall be effective for a minimum of one (1) year following completion of the Tenant Improvements (collectively, the “Warranties”) and Landlord hereby assigns to Tenant all Warranties, and Tenant hereby waives all claims against Landlord relating to, or arising out of the design or construction of, the Tenant Improvements. Landlord shall not be responsible for errors or omissions contained in the furniture layout design plan, verification of such furniture dimensions, compliance with applicable regulations, or installation of such furniture systems, all of which shall be the responsibility of Tenant’s furniture vendor.

3. Specifications for Standard Tenant Improvements.

3.1. Specifications and quantities of standard building components which will comprise and be used in the construction of the Tenant Improvements (“**Standards**”) are set forth in Schedule 2 to this Exhibit B. As used herein, “**Standards**” or “**Building Standards**” shall mean the standards set forth on Schedule 2 of this Exhibit B, or such other standards of equal or better quality as may be mutually agreed between Landlord and Tenant in writing.

3.2. No deviations from the Standards are permitted.

4. Tenant Improvement Cost.

4.1. Except for the Tenant Improvement Allowance (defined below), the cost of the Tenant Improvements shall be paid for by Tenant, including, without limitation, the cost of: space plans and studies; architectural and engineering fees; permits, approvals and other governmental fees; labor, material, equipment and supplies; construction fees and other amounts payable to contractors or subcontractors; taxes; sales taxes on materials used; filing and recording fees; premiums for insurance and bonds, and all other costs expended or to be expended in the construction of the Tenant Improvements to the extent approved by Tenant pursuant to Section 4.4 below. To the extent that any services performed pursuant to this Agreement are performed by a party affiliated with Landlord, the costs and fees charged by such affiliated entity must be equivalent to those costs or fees charged by a non-affiliated entity involved in an arms-length transaction with Landlord.

4.2. Provided Tenant is not in default (following notice and passage of the applicable cure period) under the Lease, including this Improvement Agreement, Landlord shall contribute a one-time tenant improvement allowance not to exceed ~~\$28.00~~ per rentable square foot, or ~~\$700,000.00~~ based upon 25,000 rentable square feet (which may be adjusted per Section 1(c), (“**Tenant Improvement Allowance**”) to be credited by Landlord toward the cost of the initial Tenant Improvements. If the cost of the Tenant Improvements exceeds the Tenant Improvement Allowance, and Tenant has approved such excess in writing, Tenant shall pay Landlord such excess cost within twenty (20) business days following Substantial Completion. If the final cost of construction is less than the Tenant Improvement Allowance, Landlord shall credit the unused balance against Tenant’s rent obligation.

4.3. If Tenant requests any change(s) in the Plans after approval of the estimate of the cost of the Tenant Improvements and any such requested changes are approved by Landlord in writing in Landlord’s sole discretion, Landlord shall advise Tenant promptly of any cost increases and/or delays such approved change(s) will

cause in the construction of the Tenant Improvements. Tenant shall approve or disapprove any or all such change(s) within three (3) business days after notice from Landlord of such cost increases and/or delays. To the extent Tenant disapproves any such cost increase and/or delay attributable thereto, Landlord shall have the right, in its sole discretion, to disapprove Tenant's request for any changes to the approved Plans. If the cost of the Tenant Improvements increases due to any changes in the Plan(s) requested by Tenant, Tenant shall pay Landlord the amount of such increase (to the extent that the Tenant Improvement Allowance is exhausted) within twenty (20) business days following Substantial Completion.

4.4.

(a) In no event shall any of the following costs or expenses be deducted from the Tenant Improvement Allowance, it being acknowledged that the following costs shall be borne by Landlord:

(i) the Base Building Work;

(ii) attorneys' fees; and

(iii) any costs which have not been authorized by Tenant pursuant to the procedure set forth in Paragraph (b) below.

(b) All work shall be competitively bid by Landlord, and Tenant may require Landlord to solicit bids from individual qualified, acceptable contractors requested by Tenant. To the extent that any of the above services are performed by a party affiliated with Landlord, the costs and fees charged by such affiliated entity must be equivalent to what would be charged by an entity unaffiliated with Landlord in an arms-length transaction. Prior to commencing construction, Landlord shall present Tenant with a final budget for the cost of construction, and unless such budget is exceeded by virtue of Tenant's request for a change orders or additional work, Tenant's responsibility for construction costs shall be limited to those shown on the approved budget.

5. Construction of Tenant Improvements.

5.1. Upon Tenant's approval of the Plans including the estimate of the cost of the Tenant Improvements, Landlord shall cause its contractor to proceed to secure a building permit and commence construction of the Tenant Improvements provided that Tenant shall cooperate with Landlord in executing permit applications and performing other actions reasonably necessary to enable Landlord to obtain any required permits or certificates of occupancy; and provided further that the Building has in Landlord's discretion reached the stage of construction where it is appropriate to commence construction of the Tenant Improvements in the Premises.

5.2. Landlord shall not be liable for any direct or indirect damages suffered by Tenant as a result of delays in construction beyond Landlord's reasonable control, including, but not limited to, delays due to strikes or unavailability of materials or labor, or delays caused by Tenant (including delays by the Space Planner, the contractor or anyone else performing services on behalf of Landlord or Tenant).

5.3. If any work is to be performed on the Premises by Tenant or Tenant's contractor or agents:

(a) Such work shall proceed upon Landlord's written approval of Tenant's contractor, public liability and property damage insurance carried by Tenant's contractor, and detailed plans and specifications for such work, shall be at Tenant's sole cost and expense and shall further be subject to the provisions of Paragraphs 10 and 13 of the Lease.

(b) All work shall be done in conformity with a valid building permit when required, a copy of which shall be furnished to Landlord before such work is commenced, and in any case, all such work shall be performed in accordance with all applicable Regulations. Notwithstanding any failure by Landlord to object to any such work, Landlord shall have no responsibility for Tenant's failure to comply with all applicable Regulations.

(c) If required by Landlord or any lender of Landlord, all work by Tenant or Tenant's contractor or agents shall be done with union labor in accordance with all union labor agreements applicable to the trades being employed.

(d) All work by Tenant or Tenant's contractor or agents shall be scheduled through Landlord.

(e) Tenant or Tenant's contractor or agents shall arrange for necessary utility, hoisting and elevator service with Landlord's contractor and shall pay such reasonable charges for such services as may be charged by Tenant's or Landlord's contractor.

(f) Tenant's entry to the Premises for any purpose, including, without limitation, inspection or performance of Tenant construction by Tenant's agents, prior to the date Tenant's obligation to pay rent commences shall be subject to all the terms and conditions of the Lease except the payment of Rent. Tenant's entry shall mean entry by Tenant, its officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors.

(g) Tenant shall promptly reimburse Landlord upon demand for any reasonable expense actually incurred by the Landlord by reason of faulty work done by Tenant or its contractors or by reason of any delays caused by such work, or by reason of inadequate clean-up.

6. Completion and Rental Commencement Date.

6.1. Tenant's obligation to pay Rent under the Lease shall commence on the applicable date described in Paragraph 4 of the Lease. However:

(a) If Tenant delays in preparing or approving the Space Plans or the Plans, or fails to approve the estimate of the cost of the Tenant Improvements or any other matter requiring Tenant's approval, or to pay the excess cost of Tenant Improvements, in each case within the time limits specified herein; or

(b) If the construction period is extended because Tenant requests any changes in construction, or modifies the approved Plans or if the same do not comply with applicable Regulations; or

(c) If Landlord is otherwise delayed in the construction of the Tenant Improvements for any act or omission of or breach by Tenant or anyone performing services on behalf of Tenant or on account of any work performed on the Premises by Tenant or Tenant's contractors or agents,

then the December 1, 2004 delivery date described in Paragraph 4 of the Lease shall be deemed to be postponed by the total number of days of Tenant delays described in (a) through (c) above (each, a "**Tenant Delay**"), calculated in accordance with the provisions of Paragraph 6.2 below. Notwithstanding the foregoing, no Tenant Delay shall be deemed to have occurred unless and until Landlord has provided notice to Tenant (the "**Delay Notice**"), specifying the action or inaction by Tenant which Landlord contends constitutes the Tenant Delay. If such action or inaction is not cured by Tenant within three (3) business days of receipt of such Delay Notice (the "**Grace Period**"), then a Tenant Delay, as set forth in such Delay Notice, shall be deemed to have occurred commencing as of the expiration of the Grace Period. The remedy set forth in this Section 6 for a Tenant Delay shall be the sole remedy of Landlord for such Tenant Delay.

6.2. If the Term of the Lease has not already commenced pursuant to the provisions of Paragraph 4 of the Lease and Substantial Completion of the Tenant Improvements has been delayed on account of any Tenant Delays, then upon actual Substantial Completion of the Tenant Improvements (as defined in Paragraph 4 of the Lease), Landlord shall notify Tenant in writing of the date Substantial Completion of the Tenant Improvements would have occurred but for such Tenant Delays, and such date shall thereafter be deemed to be the Commencement Date for all purposes under the Lease. Tenant shall pay to Landlord, within three (3) business days after receipt of such written notice (which notice shall include a summary of Tenant Delays), the per diem Base Rent times the number of days between the date the Commencement Date would have otherwise occurred but for the Tenant Delays (as determined by the Space Planner or Landlord's contractor), and the date of actual Substantial Completion of the Tenant Improvements.

6.3. Promptly after Substantial Completion of the Tenant Improvements, Landlord shall give notice to Tenant and Tenant shall conduct an inspection of the Premises with a representative of Landlord and develop with such representative of Landlord a punchlist of items of the Tenant Improvements that are not complete or that require corrections. Upon receipt of such punchlist, Landlord shall proceed diligently to remedy such items at Landlord's cost and expense provided such items are part of the Tenant Improvements to be constructed by Landlord hereunder and are otherwise consistent with Landlord's obligations under this Improvement Agreement and provided Tenant has fully paid Landlord for the cost of the Tenant Improvements exceeding the Tenant Improvement Allowance (with any dispute between Landlord and Tenant pertaining thereto to be resolved by the Space Planner or Landlord's general contractor). Substantial Completion shall not be delayed notwithstanding delivery of any such punchlist.

6.4. A default under this Improvement Agreement shall constitute a default under the Lease, and the parties shall be entitled to all rights and remedies under the Lease in the event of a default hereunder by the other party (notwithstanding that the Term thereof has not commenced).

**SCHEDULE 1
TO EXHIBIT B**

BASE BUILDING WORK

1. The Building shall include a built-out and finished interior core with stairwell enclosures. The Building core on each floor will include men's and women's rest room facilities, with showers in the first floor restrooms, drinking fountain(s), electrical, telephone, janitorial and mechanical closets, stairways and an elevator lobby, all of which shall be of sufficient capacity to serve the Premises. The rest room facilities on each floor of the Premises and in the common areas of the Building meet current applicable federal, state and local governmental codes including ADA.

2. The concrete floor shall have a smoothed trowel finish, level consistent with current industry standards (1/8" within a distance of 10') for installation of glued-down carpet. Perimeter walls may be utilized for grounded electrical, data communications and telephone wiring installations in the Premises, at locations to be determined by Tenant. Landlord cannot guarantee that upon shell building completion, the moisture content or Ph of the concrete slab and decks are at acceptable levels for floorcovering installation. Any bead blasting, sealing, or other special treatment of the slab or concrete decks necessary for Tenant's floorcovering is excluded from the Base Building Work.

3. The ground-level building lobby, elevator lobbies and common corridors, shall be fully finished, including finished walls, ceiling, lighting, mechanical and floorcovering.

4. The Building shall be equipped with a fire-alarm system as required by the Fire Marshall having jurisdiction over the property. It shall consist of sprinklers, smoke detectors, internal fire alarm and enunciator system, elevator recall, emergency lighting, self-illuminating exit signs, and extinguishers as required by applicable codes. The sprinkler system will have an approved water flow alarm connection and tamper-proof detection device, connected to a central station or direct to the fire/police departments. It will include all distribution of mains, laterals, uprights and upright heads.

5. Electrical distribution will be provided to the main panel boxes in the electrical closets on each floor. The Building is serviced by a 2,500-amp main service breaker. All panel boards are currently provided with typewritten identification labels identifying what each breaker feeds.

6. The Building ground system is in accordance with the N.E.C. All existing metal conduits, cabinets, raceways, wireways, and non-current carrying metal components of the electrical system are grounded to the equipment grounding system and building steel.

7. The Building is equipped with two 75-ton TRANE units with hot water re-heat variable air volume boxes controlled by an ALC energy management system. Trunk lines are stubbed to first floor and distributed in an "L" formation into each of the two wings of the Building. The system will be designed to maintain temperature and humidity levels specified in accordance with ASHRAE (American Society of Heating, Refrigeration and Air Conditioning Engineers) Standard 55-1981, Thermal Environmental Conditions for Human Occupancy, for employees in typical business attire. Ventilation shall comply with the most current ASHRAE Ventilation Standard with the conditions set forth in ASHRAE 62-1989 as a minimum requirement.

8. Telephone service, as provided by the local utility, will be brought to Building's main telephone room. If conduit or sleeves are required by local code, base building will include necessary conduit/sleeves to distribute data and telephone cables between floors.

9. One hydraulic passenger/freight elevator is provided. The elevator cab is equipped with an emergency communications/alarm system, including a bell enunciator, connected to a central alarm system. The elevator and elevator controls shall conform to current ADA and be in strict compliance with federal, state and local codes and regulations governing the same.

**SCHEDULE 2
TO EXHIBIT B**

BUILDING STANDARDS

The following constitutes the Building Standard tenant improvements (“Standards”) in the quantities specified:

MAIN ENTRANCES

Doors: Recessed 8’ x 10”, single or double doors with sidelights.

Flooring: Building standard stone flooring in recessed doorway.

DOORS

Interior: 3’ x 8’ 10” solid core, plain sliced cherry, with medium cherry stained finish to match building standard, rated where necessary by building code.

Frames: Black aluminum door frames with integral 18” sidelights standard on all office and conference room doors.

Hardware: Schlage ‘L’ series hardware in satin brass finish, non-locking except at entrance/exit doors or as otherwise specified in Plans.

PARTITIONS

Demising Walls: 2 1/2” metal studs at 24” o.c. with 5/8” gypboard, each side.

Interior Walls: 2 1/2” metal studs with 5/8” gypboard on each side, grid height. Conference room walls to be built 6” above grid height with batt insulation.

Paint: All walls to be taped smooth and ready for finish. Paint color to be chosen by tenant from Landlord’s building standard selection.

CEILING SYSTEM

Height: 9’.

Grid: 2’ x 4’ heavy duty, low gloss white ceiling grid.

Tile: 2’ x 4’ lay in, “second look”, bevel edged, white tile.

LIGHTING 2’ x 4’ fluorescent lights with parabolic lenses installed one fixture per 85 square feet or as required by Title 24.

SPRINKLERS Installed per code - semi-recessed.

WINDOW COVERINGS

Vertical Blinds: Off-white color at exterior windows. Interior windows may have horizontal, metal miniblinds, color to match window frame.

FLOORCOVERING

Carpet: 26 ounce loop or cutpile carpeting, glue direct or over pad in private offices. Color to be chosen from Landlord’s building standard selection, or other as specified by Tenant.

Tile: Armstrong Vinyl Composite Tile to be installed in storage, computer, telephone, break and copy rooms. Color to be chosen by tenant from Landlord’s building standard selection.

Base: Roppe 4” rubber base set straight over cutpile carpet and coved over loop carpet or tile floor. Color to be chosen by Landlord’s building standard selection.

SUPPLEMENTAL HVAC

Tenant shall have the right to install Supplemental HVAC unit(s) within the premises at its sole cost or as a part of the Tenant Improvement. Tenant shall be responsible for all electrical, maintenance and repair costs for such unit(s), as well as providing Landlord with copies of the maintenance logs provided by the mechanical service company.

COMMUNICATION CABLING

All communication cabling to be Tenant’s responsibility. Note- the Building has an open-air plenum and all cabling shall be required to be plenum rated.

EXHIBIT C
FIRST AMENDMENT TO LEASE AND ACKNOWLEDGMENT

This First Amendment to Lease and Acknowledgment ("**First Amendment**") is made as of _____, 19__, with reference to that certain Lease Agreement ("**Lease**") by and between _____, a _____ corporation, as "Landlord" therein, and _____, as "Tenant" therein, regarding that certain premises ("**Premises**") located at _____, and which is more particularly described in the Lease.

The undersigned hereby confirms the following and the provisions of the Lease are hereby amended by the following:

- 1) That Tenant accepted possession of the Premises from Landlord on _____, 200_, and acknowledges that the Premises are as represented by Landlord, in good condition and repair; and that the improvements, if any, required to be constructed for Tenant by Landlord pursuant to the Lease, have been so constructed and are satisfactory completed in all respects, excepting _____.
- 2) That all conditions which are to be satisfied prior to the full effectiveness of the Lease have been satisfied and that Landlord has fulfilled all of its duties of an inducement nature.
- 3) That in accordance with Section 4 of the Lease, the Commencement Date is _____, 200_, and that, unless sooner terminated, the Expiration Date is _____.
- 4) That the Lease is in full force and effect and that the same represents the entire agreement between Landlord and Tenant concerning Tenant's lease of the Premises.
- 5) That there are no existing defenses which Tenant has against the enforcement of the Lease by Landlord, and no offsets or credits against any amounts owed by Tenant pursuant to the Lease.
- 6) That Tenant's obligations to pay the Rent is presently in effect and that all rentals, charges and other obligations on the part of Tenant under the Lease commences to accrue on _____, 20__.
- 7) That Tenant has not made any prior assignment, hypothecation or pledge of the Lease or of the rents thereunder.

Except as modified herein, the Lease remains in full force and effect.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date set forth below.

LANDLORD:

By: _____
Name: _____
Title: _____

TENANT:

_____,
a _____

By: _____
Name: _____
Title: _____

EXHIBIT D
RULES AND REGULATIONS

1. Landlord shall have the right to control and operate the public portions of the Building and the public facilities, 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. No tenant shall invite to the demised Premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of the entrances, corridors, elevators and facilities of the Building by other tenants.
2. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building outside of normal business hours as Landlord may deem to be advisable for the protection of the property. All tenants, their employees, or other persons entering or leaving the Building at any time when it is so locked may be required to sign the Building register when so doing, and the watchman in charge may refuse to admit to the Building while it is so locked. Tenant or any of Tenant's employees, or any other person, without a pass previously arranged, or other satisfactory identification showing his right of access to the Building at such time. Landlord assumes no responsibility for any damage resulting from any error in regard to any such pass or identification, or from the admission of any unauthorized person to the Building.
3. Landlord reserves the right to exclude or expel from the Building or in regard to any such pass or identification, or from the admission of any unauthorized person to the Building, or 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 the Rules and Regulations of the Building or in violation of any law, order, ordinance, or governmental regulation.
4. The entries, corridors, stairways and elevators shall not be obstructed by any tenant, or used for any other purpose than ingress or egress to and from its respective offices. Tenant shall not bring into or keep within the Building any animal or vehicle.
5. Freight, furniture, business equipment, merchandise and bulky matter of any description ordinarily shall be delivered to and removed from the demised Premises only in the designated freight elevator and through the service entrances and corridors, but special arrangements will be made for moving large quantities or heavy items of equipment and supplies into or out of the Building.
6. All entrance doors in the demised Premises shall be left locked when the demised Premises are not in use.
7. Tenant shall not attach or permit to be attached additional locks or similar devices to any door, transom or window of the demised Premises; change existing locks or the mechanism thereof; or make or permit to be made any keys for any door thereof other than those provided by Landlord or as agreed to in the Lease Improvement Plan. (If more than two keys for one lock are desired, Landlord will provide them upon payment therefore by Tenant).
8. Canvassing, soliciting or peddling in the Building is prohibited and each tenant shall cooperate to prevent the same.
9. Tenant shall not advertise the business, profession or activities of Tenant in any manner which violates the letter or spirit of any code of ethics adopted by any recognized association or organization pertaining thereto or use the name of the Building for any purpose other than the business address of the Tenant.
10. The drinking fountains, lavatories, water closets and urinals shall not be used for any purpose other than those for which they were installed.
11. No awnings or other projections over or around the windows or entrances of the demised Premises shall be installed by any tenant. Tenant shall not change the draperies or the color of induction unit enclosures in any manner which will alter the Building's appearance from the outside of the Building.
12. Rooms or other areas used in common by tenants shall be subject to such regulations.
13. Landlord is not responsible to any tenant for the non-observance or violation of the Rules and Regulations by any other tenant, except if Landlord is separately at fault.
14. Landlord reserves the right by written notice to Tenant, to rescind, alter to waive any rule or regulation at any time prescribed for the Building when, in Landlord's reasonable judgment, it is necessary, desirable or proper for the best interest of the Building and its tenants.
15. The Tenant shall not exhibit, sell or offer for sale on the demised Premises or in the Building any article or thing except those articles and things essentially connected with the stated use of the demised Premises by the Tenant without the advance consent of the Landlord.
16. The Tenant shall never use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence without the Landlord's consent.
17. The Tenant shall cooperate fully with the Landlord to assure the effective operation of the Building's air conditioning system. If Tenant shall so use the demised Premises that noxious or objectionable fumes, vapors and odors exist beyond the extent to which they are discharged or eliminated by means of the flues and other devices contemplated by the various plans, specifications and leases, then Tenant shall provide proper ventilating equipment for the discharge of such excess fumes, vapors and odors so that they shall not enter into the air conditioning system or be discharged into other vents or flues of the Building or annoy any of the tenants of the Building or adjacent properties. The design, location and installation of such equipment shall be subject to Landlord's approval.
18. All loading and unloading of merchandise, supplies, materials, garbage and refuse shall be made only through such entryways and elevators and at such times as the Landlord shall designate. In its use of the loading areas in the basement, the Tenant shall not obstruct or permit the obstruction of said loading area and at no time shall park or allow its officers, agents or employees to park vehicles therein except for loading or unloading.
19. There shall not be used or kept anywhere in the Building by any tenant or persons or firms visiting or transacting business with a tenant any hand trucks, except those equipped with rubber tires and side guards, or other vehicles of any kind.
20. The Tenant shall not contract for any work or service which might involve the employment of labor incompatible with the Building employees or employees of contractors doing work or performing services by or on behalf of the Landlord.
21. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with any window or door of the demised Premises without the prior written consent of the Landlord.

22. No sign, advertisement notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside of the demised Premises or of the Building, without the prior written consent of Landlord. In the event of any violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for Tenant by Landlord at the expense of Tenant, and shall be of a quality, quantity, type, design, color, size, style, composition, material, location and general appearance acceptable to Landlord.
23. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant, nor shall any bottles, parcels, or other articles be placed on the window sills, or in the public portions of the Building.
24. Tenant shall not mark, paint, drill into or in any way deface any part of the demised Premises or the Building. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.
25. No animal or bird of any kind shall be brought into or kept in or about the demised Premises or the Building.
26. Neither Tenant nor any of Tenant's agents, servants, employees, contractors, visitors or licensees shall at any time bring or keep upon the demised Premises any inflammable, combustible or explosive fluid, chemical or substance.
27. No additional locks, bolts or mail slots of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any change be made in existing locks or the mechanism thereof. Tenant must, upon the termination of the tenancy, restore to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay to Landlord the cost thereof.
28. Landlord shall have the right to prohibit any advertising referring to the Building which, in Landlord's reasonable opinion, tends to impair the reputation of the Building or its desirability as a first-class building for offices, and upon notice from Landlord, Tenant shall refrain from or discontinue such advertising.
29. Tenant's contractors shall, while in the Building or elsewhere in the complex of which the Building forms a part, be subject to and under the control and direction of the Superintendent of the Building (but not as agent or servant of said Superintendent or of Landlord).
30. If the demised Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the demised Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.
31. The requirements of Tenant will be attended to only upon application at the office of the Building. Building personnel shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of Landlord.
32. Excepting bottled water utilized by Tenant and the supplemental HVAC approved by Landlord pursuant to Schedule 2 to **Exhibit B**, no water cooler, air conditioning unit or system or other apparatus shall be installed or used by Tenant without the written consent of Landlord.
33. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the demised Premises.
34. Tenant shall not use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the demised Premises, nor shall Tenant use any picture of the Building in its advertising, stationery or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefore.

EXHIBIT E
JANITORIAL SPECIFICATIONS

RESTROOMS

DAILY:

1. Clean and sanitize commodes, urinals, sinks and countertops.
2. Clean and refill dispensers.
3. Clean mirrors and polish chrome.
4. Empty all trash receptacles and women's sanitary receptacles.
5. Spot wash walls, partitions and doors.
6. Sweep and damp mop floors with disinfectants.

WEEKLY:

1. Pour disinfectant down floor drains.
2. Dust horizontal surfaces (mirrors, partitions, walls, etc.).

MONTHLY:

1. Seal and wax floors; strip if necessary.
2. Dust air vents.

COMMON AREAS

DAILY:

1. Vacuum all carpets (including edges and stairwells) and spot clean as required.
2. Damp mop all tile floors, where applicable.
3. Spot clean all glass entrances.
4. Clean complete interior and exterior cab including vacuuming, wiping elevator thresholds/tracks, mirrors (if required), etc.
5. Spot clean walls wherever needed.
6. Maintain janitorial storage areas in a neat and orderly manner.
7. Dust all horizontal surfaces to include picture frames, woodwork, doorjamb, window mullions, etc.
8. Clean directory glass, drinking fountains and firehouse glass, as needed.
9. Spot clean walls, door surfaces, glass, woodwork, etc.
10. Spot clean carpet as needed.
11. Empty building entrance ash urns and trash receptacles (interior & exterior).

WEEKLY:

1. Clean and polish railing in lobby where applicable.
2. Sweep and clean all walkways and verandas.
3. Clean all air vents and signs.
4. Clean kick plates and thresholds.

MONTHLY:

1. Clean lobby tile floors.
2. Sweep and dust stairwells.
3. Shampoo elevator cabs and common area carpet.
4. Dust return air vents.

AS REQUIRED:

1. Remove cobwebs from high areas.
2. Clean smudges, marks, etc. on all doors (i.e. restrooms, tenant suites, janitorial closets, SMUD/Electrical rooms, etc.)

TENANT SUITES

1. Vacuum all open carpet and spot clean as required.
2. Empty all wastebaskets and remove trash to designated areas.
3. If applicable to the building, empty any large recycle bins to designated areas.
4. Thoroughly dust and clean all office furnishings including telephone sets, wall switches, kitchen countertops, shelving, credenzas, thermostats, etc. (Desk tops to be worked out with property management, if required).
5. Spot clean all walls, door surfaces, glass, woodwork, etc.
6. Restock kitchen, break room, & restroom supplies, as required.

EXHIBIT E
CONTINUED

WEEKLY:

1. Dust all table legs, chairs and windowsills.
2. Clean and dust all high surfaces including ceiling vents, partition ledges, doorjamb, etc.

MONTHLY:

1. Clean and dust all low surfaces including baseboards.
2. Vacuum all non-reached areas including corners, behind desks, edges, etc.
3. Wash all interior partition glass.
4. Seal and wax any VCT (vinyl) and hard surface flooring; strip if necessary.

QUARTERLY:

1. Dust blinds where applicable.

DAY CUSTODIAN ASSIGNMENTS

1. The entrance lobby and plaza areas are to be kept neat and clean at all times.
2. Unlock doors of building at specified time.
3. Clean and maintain all lobbies and hallways, doors, drinking fountains, exit signs, etc.
4. Clean entry and exit doors on both sides of building daily.
5. Clean window and side glass in all hallways weekly.
6. Wipe down metal and marble surfaces daily.
7. Dust and polish all brass daily.
8. Clean cigarette urns and screen sand daily as necessary.
9. Empty trash receptacles as necessary.
10. Clean lobby elevator saddles, doors and frames daily.
11. Clean sides of elevator cars daily.
12. Check all rest rooms daily and restock.
13. Sweep off walkways removing dirt and debris.
14. Change lights and ceiling tiles as necessary.
15. Wash lower lobby windows as necessary.
16. Perform miscellaneous project for property manager.
17. Report arrival and departure to property manager.
18. Insure outside parking lot drains are free of debris.

Exhibit F
Lender's Standard Form Subordination and Non-Disturbance Agreement

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

CITYBANK
201 Merchant Street
Honolulu, Hawaii 96813
Attention: _____

Assessor's Parcel No.:

SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") made to be effective as of the __ day of _____ 2003, by and among CITY BANK, a Hawaii banking corporation ("Lender"), ("Landlord"), and ("Tenant");

W I T N E S S E T H

WHEREAS, Lender is or will be the owner and holder of a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of _____, 2003 (the "Deed of Trust"), covering the real property described in **EXHIBIT "A"**, attached hereto and made a part hereof for all purposes, and the buildings and improvements thereon, provided in the Lease (as hereinafter defined) (hereinafter collectively called the "Property"), which Deed of Trust shall be recorded in the Official Records of _____ County, California, securing the payment of a loan (the "Loan") made by Lender to Borrower, pursuant to that certain Loan Agreement dated as of _____, 2003 ("Loan Agreement"), and that certain Promissory Note by Borrower in favor of Lender dated as of _____, 2003 ("Note") (with the Loan Agreement, Note, Deed of Trust and the other documents executed by Borrower in connection with the Loan being hereinafter sometimes referred to individually and collectively as "Loan Documents"); and

WHEREAS, Tenant is the holder of a leasehold estate pursuant to a lease (hereinafter called the "Lease") covering a portion of the Property as more particularly described in Supplement I ("Premises"); and

WHEREAS, Borrower (with such party and its successors and assigns occupying the position of landlord under the Lease being referred to collectively hereinafter as "Landlord") has assigned its rights as landlord under the Lease to Lender to facilitate repayment of the Loan and performance of its obligations under the Deed of Trust; and

WHEREAS, Tenant and Lender desire to confirm their understanding with respect to the Lease and the Deed of Trust;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. **SUBORDINATION.** The Lease is hereby made, and shall at all times continue to be, subject and subordinate in each and every respect, to the lien of the Deed of Trust and to any and all liens, interests and rights created thereby and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Deed of Trust or the indebtedness or other obligations secured thereby.

2. **NONDISTURBANCE.** So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Lender in the exercise of any of its rights under the Loan Documents or by any party who acquires the Property from Lender as a result of the exercise by Lender of any such rights, (b) Tenant's occupancy of the Premises shall not be disturbed by Lender in the exercise of any of its rights under the Loan Documents during the term of the Lease or any extensions or renewals thereof or by any party who acquires the Property from Lender as a result of the exercise by Lender of any such rights, and (c) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Deed of Trust or any other instrument evidencing or securing the Loan.

3. **ATTORNMENT.** If any proceedings are brought for the foreclosure of the Deed of Trust, or if the Property is sold pursuant to a trustee's sale under the Deed of Trust, or if Lender becomes owner of the Property by acceptance of a deed or assignment in lieu of foreclosure or otherwise, Tenant shall attorn to the Lender or purchaser, as the case may be, upon any such foreclosure sale or trustee's sale, or acceptance by Lender of a deed or

assignment in lieu of foreclosure, and Tenant shall recognize Lender or such purchaser, as the case may be, as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to execute and deliver at any time, and from time to time, within five (5) business days after the request of Landlord, any holder(s) of any of the indebtedness or other obligations secured by the Deed of Trust, or any such purchaser, all instruments or certificates which, in the reasonable judgment of Landlord, such holder(s) or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment. In the event of any such attornment, Tenant further waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligation of Tenant thereunder as a result of any such foreclosure proceeding or trustee's sale.

4. LENDER'S RIGHTS, REMEDIES AND LIABILITY AS A LANDLORD OR LENDER IN POSSESSION. If Lender shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Property upon any foreclosure of the Deed of Trust or any trustee's sale under the Deed of Trust, Lender or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants and conditions of the Lease on Tenant's part to be performed that Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of Landlord. Thereafter, Lender or such purchaser shall be bound to Tenant under all the terms, covenants, and conditions of the Lease, and Tenant shall, from and after the succession to the interest of Landlord under the Lease by Lender or such purchaser, have the same remedies against Lender or such purchaser for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender or such purchaser had not succeeded to the interest of Landlord, and Tenant shall be bound to Lender or such purchaser under all of the terms, covenants and conditions of the Lease. However, Lender or such purchaser shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord); or

(b) subject to offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord), unless the same was paid to and received by Lender; or

(d) bound by any representation or warranty contained in the Lease or made by any party to Tenant, including, but not limited to, Landlord; or

(e) bound by any amendment or modification of the Lease made without Lender's consent; or

(f) liable for any security deposit or other sum(s) paid by Tenant to Landlord.

Neither Lender nor any other party who from time to time shall be included in the definition of Lender hereunder, shall have any liability or responsibility under or pursuant to the terms of this Agreement from the date it ceases to own an interest in or to the Property. Tenant further acknowledges and agrees that neither Lender nor any purchaser of the Property at any foreclosure sale nor any grantee of the Property named in a deed-in-lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Lender or of any such purchaser or grantee, has or shall have any personal liability for the obligations of Landlord under the Lease, except to the extent of the rents, security deposits, and insurance and condemnation proceeds actually received and the equity in the Property then owned by such party.

5. NO WAIVER. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed.

6. NOTICES. Tenant hereby acknowledges and agrees that:

(a) From and after the date hereof, in the event of any act or omission of Landlord which would give Tenant the right, either immediately or after notice, the lapse of time, or both, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to Lender, and (ii) until the expiration of thirty (30) days following such giving of notice to Lender in which time period Lender shall be entitled to cure any such acts or omissions of Landlord, or begin the cure and diligently pursue the cure if such cure, by its nature, cannot reasonably be effected within such thirty (30) day period.

(b) Tenant shall send to the Lender a copy of any default, notice or statement sent by Tenant to Landlord under the Lease, at the same time such default, notice or statement is sent to Landlord.

(c) If Lender notifies Tenant of a default under the Deed of Trust and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all of the sums due under the Lease directly to Lender or as otherwise required pursuant to such notice. In connection therewith, Landlord, by its execution of this Agreement, hereby acknowledges and agrees that in the event of a default under the Deed of Trust, Tenant may pay all rents and all of the sums due under the Lease directly to Lender as provided hereinabove upon notice from Lender that Landlord is in default. If Tenant shall make rental payments to the Lender following receipt of notice that Landlord is in default, Landlord hereby waives any claims against Tenant for the amount of such payments made by Tenant to Lender.

7. COVENANTS. Tenant shall not, without obtaining the prior written consent of Lender, (a) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, (b) voluntarily surrender the Premises or terminate the Lease without cause, or (c) assign the Lease or sublet the Premises other than pursuant to the provisions of the Lease.

8. AMENDMENTS/SUCCESSORS. This Agreement and the Lease may not be amended or modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns, and any purchaser or purchasers at foreclosure of the Property, and their respective heirs, personal representatives, successors and assigns.

9. NOTICE OF MORTGAGE. To the extent that the Lease shall entitle the Tenant to notice of any mortgage or deed of trust, this Agreement shall constitute such notice to the Tenant with respect to the Deed of Trust and to any and all modifications, renewals, extensions, replacements and/or consolidations of the Deed of Trust and to any and all other mortgages or deeds of trust which may hereafter be subject to the terms of this Agreement as provided above. Tenant has not received notice of any assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease or the rents or other amounts payable thereunder other than that given to Lender. Tenant consents to the Deed of Trust and to the assignment of Landlord's rights under the Lease to Lender. Lender may, at its election, in its sole and absolute opinion and judgment, subordinate the lien of the Deed of Trust to the Lease and the leasehold interest created thereby, and make said lien subject to the Lease by providing Landlord and Tenant written notice of such election at any time prior to completion of a foreclosure of the Deed of Trust, whether judicial or through the power of sale contained in the Deed of Trust, or the acceptance of any assignment or deed in lieu of foreclosure. From and after delivery of such notice to Tenant, the lien of the Deed of Trust shall be subject and subordinate to the Lease and the leasehold estate created thereby.

10. MULTIPLE COUNTERPARTS. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

11. CAPTIONS. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH MAY ALLOW THE PARTIES AGAINST WHOM YOU CLAIM AN EQUITABLE INTEREST IN REAL PROPERTY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

“Lender”

CITY BANK,
a Hawaii banking corporation

By: _____
Name: _____
Title: _____

“Landlord”

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

“Tenant”

By: _____
Name: _____
Its: _____

[ALL SIGNATURES MUST BE ACKNOWLEDGED]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Exhibit G
Signage Guidelines

Gold Pointe Sign Criteria. The following criteria will aid in eliminating excessive and confusing sign displays, preserve and enhance the appearance of the Gold Pointe Corporate Center development values, and will encourage signage, which by good design, is integrated with and is harmonious to the buildings and sites that it occupies. These sign requirements are intended to complement the County of Sacramento sign ordinances.

1. General Requirements.

- a. A sign program shall be submitted to the Architectural Committee along with each individual project special permit application to the County Planning staff.
- b. In no case shall flashing, moving or audible signs be permitted.
- c. In no case shall the wording of the signs describe the product sold, prices, or any type of advertising except as part of the occupant's trade name or insignia.
- d. No signs shall be permitted on canopy roofs or building roofs.
- e. No sign or any portion thereof may project above the building or top of the wall upon which it is mounted.
- f. No signs perpendicular to the front of the building shall be permitted.
- g. No exposed bulb sign shall be allowed.
- h. No off-site signage shall be allowed.

2. Design Requirements.

- a. The location of signs shall be only as shown on the special permit site plan approved by the Architectural Committee and Sacramento County.
- b. All electrical signs shall bear the UL label and their installation must comply with all local building and electrical codes.
- c. No exposed conduit, tubing, or raceways will be permitted.
- d. No exposed neon lighting shall be used on signs, symbols, or decorative elements.
- e. All conductors, transformers, and other equipment shall be concealed.
- f. All signs, fastenings, bolts and clips shall be of hot dipped galvanized iron, stainless steel, aluminum, brass or bronze, no black iron of any type will be permitted.
- g. All exterior letters or signs exposed to the weather shall be mounted at least three-fourths inch (3/4") from the building to permit proper dirt and water drainage.
- h. Location of all openings for conduit and sleeves in sign panels of building shall be indicated by the sign contractor on drawings submitted to the Architectural Committee. Installation shall be in accordance with the approved drawings.
- i. No signmakers labels or other identification will be permitted on the exposed surface of signs, except those required by local ordinance which shall be located in an inconspicuous locations.

3. Individual Lot Building Attached Signs.

- a. If the specific signage program is not known, the applicant shall designate a zone or alternative zones on the building facade(s) on which attached signage may be located and the location or alternative locations of detached signage. The Architectural Committee shall approve the acceptable location(s) or zone(s) as part of a Special Permit application process.
- b. A specific or conceptual location sign program shall be submitted with individual project Special permit applications per Section 12.4.1(a).
- c. All signs shall comply with the following material, construction and Design, and shall be approved by the Architectural Committee and the appropriate Sacramento County Agency consistent with these guidelines:
 - i. Signs may be constructed of solid metal individual letters, marble, granite, ceramic tile or other comparable materials which convey a rich quality, complimentary to the material of the building exterior. Examples of acceptable metal materials are chrome, brass, stainless steel or fabricated sheet metal. Plastics or wood signs are specifically prohibited.

- ii. Individual solid metal letters shall be applied to the building face with a non-distinguishable background. Letters shall be pegged-out from the building face at least one and one-half (1 1/2) inches and be reverse pan channel construction in one of the following:
 - a. Fabricated aluminum letters with a polished chrome-plated finish in fourteen (14) gauge aluminum with three inch (3") returns.
 - b. Fabricated polished brass letters with clear lacquer finish in fourteen (14) gauge brass plate with three inch (3") returns.
 - c. Fabricated sheet metal letters painted Dourandodic Bronze #313 or semi-gloss enamel in fourteen (14) gauge sheet metal with three inch (3") returns. If painted, only subdued hues or color tones may be used. Examples of such color tones are dark blue, rust, green, brown and black.

4. Illumination.

- a. Letters may be internally illuminated to create a halo backlighted effect or non-illuminated letters shall be lighted with white neon tubing and thirty (30) milliamperes transformers.
- b. Lighting shall not produce a glare on another properties are in the vicinity and the source of light shall not be visible from adjacent property or a public street.
- c. Internally lit plastic signs are prohibited.

5. Location.

- a. Signs must be attached to and parallel to a building face. A sign may not project above the wall on which it is located.
- b. Signs may be located anywhere on face of building subject to (c) below and approval of the Architectural Committee, and may be oriented toward the freeway.
- c. Signs may be located in the upper signage area. Upper signage area shall be defined as the area bounded by the (i) top of the windows of the tallest floor of the building; (ii) the building parapet line; and (iii) the two vertical edges of the building face on which the sign is attached.

6. Wording and Logos.

- a. A sign may consist of a company logo and /or a company name. No other wording is permitted.

7. Maximum Signage.

- a. A sign located in the upper signage area shall not exceed 10 percent of that area.
- b. The length of a sign shall not exceed 30 percent of the length of linear building face on which the sign is affixed.
- c. In a scale consistent with (A), (B), and (C) above, the Planning Director shall determine the maximum size of the following types of signs:
 - i. Signs located other than as specified in (a) and (c) above.
 - ii. Signs located on buildings with a unique or unusual architectural design.

Exhibit H
Tenant Parking Area

Gold Points
CORPORATE CENTER

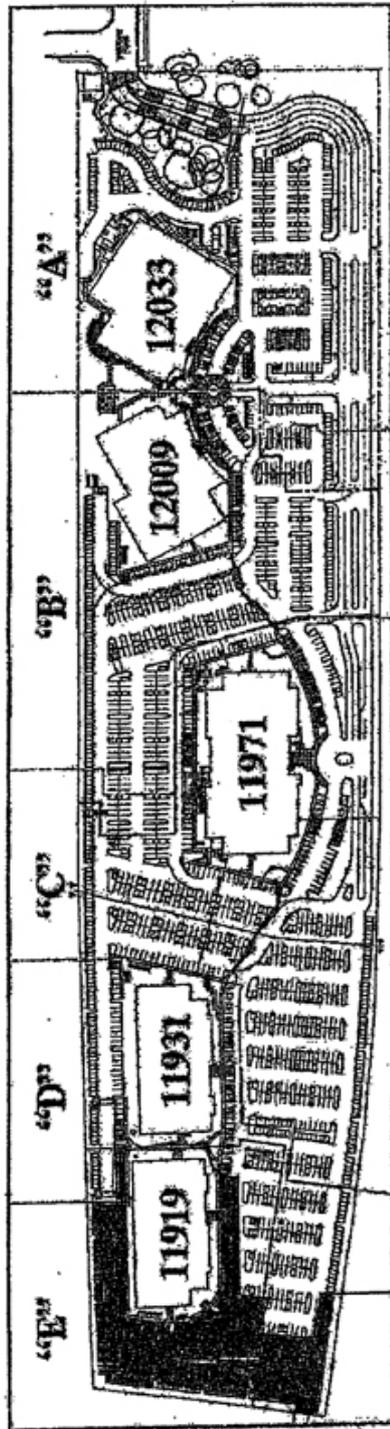


Exhibit I
EXCLUSIONS FROM OPERATING EXPENSES
AND REAL ESTATE TAXES

Landlord and Tenant agree that the "Operating Expenses and Real Estate Taxes" shall not include any of the following"

- (a) Any ground lease rental;
- (b) Costs incurred by Landlord with respect to goods and service (including utilities sold and supplied to tenants and occupants of the Building) to the extent that Landlord is entitled to reimbursement for such costs other than through the operating expense pass-through provisions of such tenants' leases;
- (c) Costs incurred by Landlord for the repair of damage to the Building to the extent that Landlord is reimbursed by insurance or condemnation proceeds or by tenants, warrantors or other third parties;
- (d) Costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for other tenants in the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Building;
- (e) Salaries and bonuses of officers and executives of Landlord above the level of Building manager;
- (f) Depreciation and amortization, except as provided herein, and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party, all as determined in accordance with generally accepted accounting practices, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its useful life;
- (g) Attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of the Building (including costs incurred due to Violations by tenants of the terms and conditions of their leases);
- (h) Costs of a capital nature, including, without limitation, capital improvements, capital replacements, capital repairs, capital equipment and capital tools, all as determined in accordance with generally accepted accounting practices, consistently applied;
- (i) Brokerage commissions, finders' fees, attorneys' fees and other costs incurred by Landlord in leasing or attempting to lease space in the Building;
- (j) Expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Building;
- (k) Costs incurred by Landlord due to the violation by Landlord of the terms and conditions of any lease of space in the Building;
- (l) Any costs representing an amount paid to any person, firm, corporation or other entity related to or affiliated with landlord, which amount is in excess of the amount which would have reasonably been paid in the absence of such relationship for comparable work or services involving the Building or comparable buildings in the area in which the Building is located;
- (m) Interest, points, and fees on debt or amortization on any mortgage or mortgages encumbering the Building;
- (n) Landlord's general corporate overhead, except as it relates to the specific management of the Building;
- (o) Subject to the provision set forth in subparagraph (h) above, rental payments incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, except equipment not affixed to the Building which is used in providing janitorial, parking lot maintenance, window washing or similar services;
- (p) Advertising and promotional expenditures and, except for the Building directory and interior signs identifying retail use tenants and signage for various equipment room and common areas, costs of signs in or on the Building identifying the owner or any tenant of the Building;
- (q) All items and services for which Tenant or any other tenant in the Building reimburses Landlord (other than through operating expenses pass-through provisions) or which Landlord provides selectively to one or more, but not all, tenants without reimbursement;
- (r) Tax penalties and interest incurred as a result of landlord's negligence or inability or unwillingness to make tax payments when due, so long as such penalties or interest do not result from Tenant's breach of the Lease or Tenant's failure to make timely payment of any sum due under the Lease;

Exhibit I
Continued

- (s) Any charge or expense to the extent that it is in excess of that charged by landlords for similar buildings in the area in which the Building is located;
- (t) Costs due to violation of law; and

AMENDMENT NUMBER ONE TO THAT LEASE AGREEMENT BETWEEN GOLD POINTE E, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS LANDLORD, AND EHEALTHINSURANCE SERVICES, INC, A DELAWARE CORPORATION, AS TENANT, DATED JUNE 10, 2004, FOR THE PREMISES LOCATED AT 11919 FOUNDATION PLACE, SUITE 100, GOLD RIVER, CALIFORNIA.

Effective December 23, 2005, the above described Lease Agreement shall be modified as follows:

The Basic Lease Information – Premises shall be replaced in its entirety as follows:

Tenant Contact: Stuart Huizinga
eHealthInsurance Services, Inc.
440 Middlefield Avenue
Mountain View, CA 94043
650/210-3180
650/961-2135

Premises: The Premises referred to in this Lease consist of approximately 25,747 rentable square feet on the first floor of the Building.

Tenant's Proportionate Share: 40.74%, based on a Building rentable area of approximately 63,202 square feet.

Lease Commencement Date: December 20, 2004

Lease Expiration Date: May 31, 2010

Base Rent:

<u>Months:</u>	<u>Monthly Base Rent for Premises</u>
12/20/04-05/19/05:	Free Rent and Building Operating Expenses.
05/20/05-05/31/05:	\$18,126.00
06/01/05-11/30/07:	\$45,315.00
12/01/07-05/31/10:	\$47,632.00

All other terms and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year written below.

LANDLORD:

GOLD POINTE E, LLC,
a California limited liability company

By: /s/ Michael E. Diepenbrock,
Michael E. Diepenbrock,
Managing Member

TENANT:

EHEALTHINSURANCE SERVICES, INC.
A Delaware Corporation

By: /s/ Stuart Huizinga
Stuart Huizinga
Its: Chief Financial Officer

ORIGINAL

SECOND AMENDMENT TO STANDARD LEASE AGREEMENT (OFFICE)

Gold Pointe Corporate Center
11919 Foundation Place, Gold River, CA 95670

This Second Amendment to Standard Lease Agreement (Office) dated for reference purposes as June 15, 2005 (the **"Second Amendment"**), is entered into by and between **Carlsen Investments, LLC** a California limited liability company as successor in interest to Gold Pointe E, LLC, a California limited liability company, (**"Landlord"**), and **EHealthInsurance Services, Inc.**, a Delaware corporation (**"Tenant"**).

RECITALS

A. Landlord's predecessor-in-interest and Tenant entered into that certain Standard Lease Agreement (Office) dated as of June 10, 2004 (**"Original Lease"**), for certain premises, more particularly described therein (**"Premises"**), located in the building at 11919 Foundation Place, Suite 100, Gold River, California 95670 (**"Building"**).

B. The Original Lease, Amendment Number One dated December 23, 2004 and Exhibits A, A-1, B, C, D, E, F, G, H and I shall hereinafter be referred to as the **"Lease."**

C. The Premises currently comprises a total of approximately twenty-five thousand seven hundred forty seven (25,747) rentable square feet. It is now the intention of the parties to amend the Lease to expand the Premises into Suite 250 on the second floor of the Building by approximately three thousand sixty-six (3,066) rentable square feet including (2,804) usable square feet, (the **"Expansion Premises"**) to total approximately twenty-eight thousand eight hundred thirteen (28,813) rentable square feet within the Building (the **"Amended Premises"**) and to amend other matters as herein provided.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreement of the parties hereto to the terms and conditions set forth below, the parties agree as follows:

AGREEMENT

1. Effective Date. This Second Amendment shall be effective on the date when executed by both Landlord and Tenant and Landlord has delivered a fully executed Second Amendment to Tenant, which date shall hereinafter be referred to as the **"Effective Date."**

2. Lease at 11919 Foundation Place, Suite 250. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the **"Expansion Premises"**, 11919 Foundation Place, Suite 250, Gold River, California on all the terms and conditions set forth in the Lease, subject to the terms and conditions of this Second Amendment. All references in the Lease to the **"Amended Premises"** and the **"Expansion Premises"** demised under this Second Amendment and as referenced on the attached Exhibit A.

3. Term. The term of the Lease for the **"Expansion Premises"** shall be co-terminus with the Lease Term for the "Premises" commencing upon the earlier of the following dates (the **"Commencement Date"**): (i) the date on which the **"Expansion Premises"** is Substantially Complete (as defined below); (ii) the date on which the **"Expansion Premises"** would have been Substantially Complete had there been no delays caused by or attributable to the

Tenant; or (iii) the date upon which the Tenant takes possession of the **“Expansion Premises”** with the Landlord’s written consent. Within thirty (30) days after the Commencement Date, Landlord and Tenant shall execute an amendment to this Lease setting forth the Commencement Date for the Expansion Premises. For purposes of the foregoing, the **“Expansion Premises”** shall be deemed to be **“Substantially Complete”** when (i) Tenant is tendered direct access to the **“Expansion Premises”** with building services furnished to the **“Expansion Premises”**, and (ii) the identified construction to be provided by Landlord, as set forth in this Second Amendment has been completed, with the exception of minor punch list items. Completion of Landlord’s construction shall be certified by Landlord’s contractor that the defined scope of work has been completed.

4. Rent. The Base Rent for the **“Expansion Premises”** shall be on the same terms and conditions as set forth in Amendment Number One to the Lease, Base Rent, excepting therefrom Tenant shall be entitled to Base Rent and Operating Expense abatement for the **“Expansion Premises”** for the initial two (2) months of the lease term effective with the Commencement Date. Subject to the rent abatement, Tenant’s Base Rent for the **“Expansion Premises”** effective with the Commencement Date shall be \$5,396.16 per month.

5. Tenant’s Proportionate Share. Tenant’s proportionate share of the total rentable area of the Building shall be increased by 4.85% to 45.59% effective with the **“Commencement Date”**.

6. Tenant Improvements. Landlord shall provide Tenant a tenant improvement allowance in the amount of \$28.00 per rentable square foot, or \$85,848, in accordance with Exhibit B, Lease Improvement Agreement to the Lease.

7. Ratification. Except as modified by this Second Amendment, the Lease is ratified, affirmed, in full force and effect, and incorporated herein by this reference. This Second Amendment is intended to modify the lease and shall be deemed to amend any language in the Lease which is read or interpreted contrary to the agreements set forth herein. Any covenant or provision of the Lease which is not inconsistent with this Amendment shall remain in full force and effect.

8. Counterparts. This Second Amendment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.

Signatures begin on next page

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date set forth below.

LANDLORD:

CARLSEN INVESTMENTS, LLC
a California limited liability company

By: /s/ James R. Carlsen
James R. Carlsen,
Managing Member

Date: June 16, 2005

Address: c/o PDC Properties, Inc.
8395 Jackson Road, Suite F
Sacramento, CA 95826

TENANT:

EHEALTHINSURANCE SERVICES, INC.
a Delaware corporation

By: /s/ Stuart Huizinga
Stuart Huizinga,
Chief Financial Officer

Date: June 24, 2005

Office Lease Contract**Lessor: Xiamen Torch Hi-tech Industrial Development Zone Finance Services Center**

(Hereinafter PARTY A)

Office Address: #111, Ground Floor, Torch Building, Xiamen Torch Hi-tech Industrial
Development Zone

Zip Code: 361006

Tel: 0592-3923086

Fax: 0592-5716361

Legal Representative: Shan, ZhongXin 单忠信

Title: Chairman of the Board

Bank Account: Chengjian Sub-branch of China Construction Bank, Xiamen

Account No: 35101564901052500460

Property Management: Xiamen Software Industry Investment & Development Co., Ltd.

(Hereinafter PARTY B)

Office Address: 3F-B, Huaxun Building #2, Xiamen Software Park

Zip Code: 361005

Tel: 0592-2512525

Fax: 0592-2513132

Legal Representative: Yu, Hong Sheng 余红胜

Title: Chairman of the Board

Bank Account: Lianhua Sub-branch of Agricultural Bank of China, Xiamen

Account No: 324001040007103

Renter: eHealth China (Xiamen) Technology Co., Ltd.

(Hereinafter PARTY C)

Office Address: 6F, Kexun Building, Xiamen Software Park

Zip Code: 361005

Tel: 0592-2517000

Fax: 0592-2517111

Legal Representative: Gary Lauer

Title: Chairman of the Board

Bank Account: Xiamen University Sub-branch of Bank of China

Account No: 840062474708091001

In accordance with relevant Chinese laws, decrees and pertinent rules and regulations, PARTY A, PARTY B and PARTY C have reached an agreement based on the principles of equality, mutual benefits and friendly consultation and concluded the following office lease contract.

Site, Area, Property Rights, Usage

1. PARTY A will provide PARTY C with Room 9F-A (1423.21 m²) and 9F-B (1045.01 m²) of Chuangxin Building, Xiamen Software Park, with a designed load of 2.0KN/m². PARTY A is required to reassure PARTY C that the leased premises is compatible with PARTY C's business purposes, without any hidden peril, or any hypothec on the leased premises.

2. The 9F-A of Chuangxin Building, Xiamen Software Park, has an actual area of 1423.21m², and the 9F-B of Chuangxin Building, Xiamen Software Park, has an actual area of 1045.01m², while chargeable area reaches to 2715.04m²{actual area*(1+10%)}, 10% is the ratio for public area share which includes passage, elevator, staircase, scaling ladder, wash room, power distribution room, hallway and public facilities setup room etc.

3. The leased premises usage is limited to PARTY A's ratified operation of PARTY C, and any subtenancy or sublet to the third party is not allowed without the prior consent of PARTY A, which shall not be unreasonably withheld. This contract may be terminated in accordance with the provisions herein. The lease of the premises may be cancelled in accordance with the terms of this contract. Programs operated by PARTY C should meet environmental standards. Operation of business or production with over rated noise, industrial water waste or exhaust gas, radioactive, toxic or corrosive materials are strictly prohibited. Any violation by PARTY C of such standards that is not cured upon thirty (30) calendar days written notice by PARTY A to PARTY C will entitle PARTY A's rights to terminate the contract and take back the premises. In this case PARTY A reserves the right to claim damages from PARTY C.

Rental Fees, Deposit, Expenses

4. The standard rental will be RMB26.00/m² per month.

5. The rental fee for 9F-A and 9F-B of Chuangxin Building, Xiamen Software Park will be RMB70591.04 per month.

6. A deposit equal to two months' standard rental is RMB 141182.08 in total. It shall be fully and promptly returned to PARTY C at the expiration of the contract, or in the event of PARTY A breaching the contract. In case PARTY C breaches this contract with any actual loss caused to PARTY A, PARTY A has the right to deduct the relevant compensation for actual loss from the deposit. In case the deposit is not sufficient to cover such items, PARTY A has the right to claim for compensation for actual loss.

7. PARTY C shall conclude a Property Management Service Contract with a property management company designated by PARTY A and pay property management fees to such company.

8. The rental fee will not cover electricity, water and other related service charges. Public share for water and electricity will be charged according to actual monthly consumption, as well as office architectural area. Such fees may vary with Xiamen governmental charge adjustment. Other service expenses will be settled in detail under particular circumstances in accordance with relevant regulations.

Payment, Late Fee

9. Rental payments will be rendered monthly. The first rental (rental for June 1st, 2006 to June 30th, 2006) and deposit in the amount of RMB 211773.12 shall be paid within ten days of signing the contract by all the parties hereto.

10. Except for the first rental payment, PARTY C shall pay the rental for the coming month by the end of, each current month (starting from the end of June, 2006). PARTY C shall pay the rental to the designated bank account of PARTY A as set forth in the first page of this contract. The date on the transfer receipt from the designated bank shall be deemed as the date of payment.

11. PARTY A will regularly issue a lease invoice to PARTY C before each rental payment, and PARTY C will pay each rental after receiving such invoices. Property management service invoice will be issued by the property management company, while other invoices or receipts (e.g., water and electricity) will be issued by relevant service providers.

12. This contract shall be automatically terminated in the event PARTY C fails to pay the deposit and first rental within the 10 days period referenced in Article 9 above. Each delayed payment for rental or property management fee shall be rendered with a grace period of 15 days from the first day of each calendar month. Any delay in rendering the rental or property management fee after such grace period shall cost PARTY C 1% of the total amount due per day as late fee. PARTY A has the right to take back the premises and take other legal actions in case of any non-payment by PARTY C for more than 30 days after the grace period.

Premises Transfer and Obligations

13. Within 3 days of PARTY C paying the first rental and deposit, PARTY A will hand over the leased premises to PARTY C. PARTY A shall guarantee that the public facilities can properly function, including without limitation, windows, doors, fire hydrant, washing room, elevator and power distribution room, etc.

14. Before starting remodeling the leased premises, PARTY C shall submit its remodeling plan that accords with fire control requirements and has been approved by the fire control department. The remodeling plan

shall state construction material, water, electricity capacity and number of phone lines, PARTY C Shall get a prompt confirmation about the plan from PARTY A before commencement of the remodeling plan and such confirmation shall not be unreasonably withheld or delayed. PARTY C shall not damage the original structure of the leased premises main body as well as outdoor construction layout. The usage of the leased premises by PARTY C shall be compliant with relevant regulations, and PARTY C shall compensate any damages to the premises or attached facilities, or public area caused by its fault and negligence, except for natural erosion and normal wear and tear.

15. Both PARTY A and PARTY C shall operate in compliance with applicable Chinese laws, municipal and Hi-Tech district's pertinent rules and regulations. Either party may terminate the contract upon thirty (30) calendar days' written notice to the other party in the event of illegal operation by the other party if such illegal operation is not cured within such thirty (30) days period. Under such circumstances, the terminating party may claim compensation from the breaching party if such illegal operation causes actual loss to the terminating party.

16. PARTY A shall cooperate with PARTY C in installing water and electricity supply and telephone lines; and PARTY A shall provide services in connection with PARTY C's governmental and/or business registration and documentation request. PARTY A is responsible for sanitation maintenance, and maintaining and repairing public facilities in the leased premises, if the public facilities are damaged due to no fault of PARTY C. PARTY A shall repair the premises within a reasonable time. IF PARTY A fails to perform the forgoing obligations within a reasonable time, PARTY C may undertake such obligations on behalf of PARTY A and shall be reimbursed for all actual costs and expenses incurred by PARTY A. If PARTY A's failure to perform its obligations under this Article affects the normal usage of the premises by PARTY C, PARTY A shall accordingly deduct rent or extend the lease as compensation.

17. When PARTY C returns the leased premises due to expiration or earlier termination of this, PARTY A and PARTY C shall conduct a site inspection and PARTY A shall return any rental paid in advance and deposit per Article 6 of this contract. PARTY C shall repair or compensate for damages to the premises or facilities caused by PARTY C's fault or negligence. Certain fixtures such as pendant lamps, floor, solid partition wall, wire tubing, switch, and electrical outlet, installed by PARTY C shall not be removed, if PARTY A fairly reimburses PARTY C. In case of dissent on the amount of compensation, PARTY C has the right to remove the fixtures without damaging the original structure, equipments and public facilities of the premises. Other equipments like air-conditioners may be moved by PARTY C.

Term and Miscellaneous Provisions

18. Unless PARTY C substantially breaches the contract and such breach is not cured within thirty (30) calendar days written notice by PARTY A to PARTY C, PARTY A shall not unilaterally terminate the

contract during the Initial Term (as defined below) and renewal terms. The term of the contract is one year, effective from April 1st, 2006 to March 31st, 2007 (the "Initial Term"). PARTY A shall grant PARTY C a rent-free remodeling period of two months (April 1st, 2006 to May 31st, 2006). Rental is going to be charged commencing from June 1st, 2006. After the completion of the Initial Term, this Agreement shall automatically renew for additional one-year periods on condition that no dissent arises between the two parties. The Initial Term and the renewal term shall not exceed five years all together. In the event that PARTY C terminates the contract in good faith prior to the expiration of the contract, PARTY C shall notify PARTY A, in writing, three months prior to such termination. Additionally, either party may terminate this contract upon thirty (30) calendar days' written notice of a material breach by the other party, provided such breach is not cured within such thirty (30) days period.

19. If PARTY C does not operate in the leased premises in the Xiamen Software Park for three consecutive months after the signing of the contract, PARTY A will have the right to take back the leased premises for other, arrangement in the event of a housing shortage. If PARTY C doesn't pay the rent, utility or property management fee for three consecutive months, PARTY A has the right to take back the leased premises. In either of the scenarios stated above, PARTY A will not return the rent and other fees already paid by PARTY C; however under first situation mentioned above, PARTY A shall return the deposit in full amount on condition that PARTY C has paid rental and fees in full. In the event that PARTY A takes back the leased premises and PARTY C does not dispose its personal property left on the leased premises, PARTY A shall make a list of the items and keep such items for three months. For clarification, such items will remain the property of PARTY C within the mentioned three months. If PARTY C does not claim or otherwise dispose of such properties in three months, PARTY A has the right of disposal.

20. For matters not covered by this contract, PARTY A, PARTY B and PARTY C shall make supplementary agreement which shall become part of the contract through friendly consultation. If no such kind of supplementary agreement has been reached, then, any issues arisen will be settled according to the Contract Law of China. In case that disputes may occur from execution of the contract, both parties shall settle the disputes through friendly consultation. If no agreement can be reached by consultation, disputes shall be submitted to the Xiamen Arbitration Committee for resolution.

21. This contract is executed in both Chinese and English. In case of any discrepancy between the terms of the English version and the terms of the Chinese version, the Chinese version shall prevail.

22. There are three copies of the contract, and each bears equal legal validity. Each party holds one copy. The contract becomes effective once the representatives or authorized representatives of PARTY A, PARTY B and PARTY C sign and seal the contract with the official stamps.

23. The office lease contracts concerning the premises located on the 6th floor of Kexun Building previously signed by PARTY A, PARTY B and PARTY C dated February 16, 2004, the first amendment thereto dated

November 18, 2004, and a supplementary agreement thereto dated July 11, 2005 (collectively, "Kexun Contracts") shall terminate on the day PARTY C moves into Chuangxin Building no later than May 31st, 2006, PARTY C shall pay PARTY A rental of the premises located on the 6th floor of Kexun Building up to the termination date of the Kexun Contracts.

24. All the terms and provisions of this contract shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

25. During the term of this contract, PARTY A shall ensure the validity and legality of all the authorizations, permits, approvals and licenses necessary for the performance of this contract.

26. This contract shall constitute an entire agreement and undertaking among PARTY A, PARTY B and PARTY C on leasing an office space, and shall supersede all prior agreements and undertakings, both oral and written, between the parties hereto. Any waiver, modification or amendment of any provision of this contract will be effective only if in writing and signed by the parties hereto.

27. Invalidity of any provision in the contract shall not affect the validity of any other provisions herein.

PARTY A

Xiamen Torch Hi-tech Industrial Development Zone Finance Services Center

Seal:

Representative: Hong Sheng Yu

PARTY B

Xiamen Software Industry Investment & Development Co., Ltd.

Seal:

Representative:

PARTY C

eHealth China (Xiamen) Technology Co., Ltd.

Seal:

Representative:

Date: March 31st, 2006.

Appendix 1 to Office Lease Contract

Party A: Xiamen Software Industry Investment & Development Co., Ltd.

Party B: eHealth China (Xiamen) Technology Co., Ltd.

Both parties agree to following items based on friendly negotiation:

- Item 1 This agreement is the Appendix 1 to the Office Lease Contract (the Office Lease Contract) signed by Party A, Party B and Xiamen Torch Hi-tech Industrial Development Zone Finance Services Center on March 31st, 2006. This agreement shall be effective from the date the Office Lease Contract comes into validity.
- Item 2 For a period of 6 months from the effective date of the Office Lease Contract signed by Party A, Party B and Xiamen Torch Hi-tech Industrial Development Zone Finance Services Center on March 31st, 2006, B-10F (approximate 934.9 m²) of Chuangxin Building, Xiamen Software Park shall be reserved for PARTY B by PARTY A (from April 1st, 2006 to September 30th, 2006).

PARTY A

Xiamen Software Industry Investment & Development Co., Ltd.

Seal:

Representative: Hong Sheng Yu

PARTY B

eHealth China (Xiamen) Technology Co., Ltd.

Seal:

Representative:

Date: March 31st, 2006.

Property Management Service Contract

Chapter I: General Principals

Article 1: Parties of the Contract

Client (hereinafter referred to as "Party A"): eHealth China (*Xiamen*) Technology Co., Ltd.

Assignee (hereinafter referred to as "Party B"); Xiamen Software Industry Investment and Development Co, Ltd.

Party A and Party B shall hereinafter be referred to collectively as the Parties.

Article 2: In order to regulate the property management within the Xiamen Software Park, ("Park") to clarify the rights and obligations between the Owners (users) and the Property Management office, to ensure the reasonable usage of the property of the Xiamen Software Park, to build an environment of neatness, security and comfort, in accordance with relevant state laws and regulations, considering the practice of the Software Park, the Parties concluded this contract, based on friendly negotiation.

Articles 3: Party A rents the property of the Xiamen Software Park. The premises of the lease are room 9F-A and 9F-B of Chuangxin Building, with a designed load of 2715.04m². In accordance with the relevant property management statutes and decrees, Party A and owners of this property and other users consign the property to Party B, and Party B will provide Party A with uniform and chargeable property management services discussed below.

Article 4: The beneficiary of the service provided by Party B are the owners and users of the property of the Xiamen Software Park; Party A and owners of this property and any other users shall follow this contract and bear corresponding responsibilities.

Chapter II Property Management Services

During the term of this Contract, Party B shall provide the following property management services:

Article 5: Maintenance, conservation, and management of the public area of the building, including without limitation: floor cap, roof, outside wallboard, bearing structure, staircase, hallway and hall.

Article 6: Maintenance, conservation, operation and management of public facilities and equipment, including without limitation: shared main water pipe, rainspout, public lighting, fire control water pump room, fire control facilities and equipment, rooftop water tank and elevator.

Article 7: Maintenance, conservation and management of the accessorial construction and structure of the property, including without limitation: path, extraventricular service pipe and drainpipe, cesspool, ditch, pool, well, bicycle shed, parking lot and trash can.

Article 8: Conservation and management of public green belt.

Article 9: Sanitation of public area, including without limitation: the sanitation of public area and shared area of the building, and gathering, transporting and cleaning garbage.

Article 10: Management of traffic and parking.

Article 11: Maintenance of security, including without limitation: security at the gates, surveillance and patrolling.

Article 12: Safekeeping of archives and data of the property include but not limited to: archives of maintenance fee and corresponding income and expenses.

Article 13: Safety management service.

Article 14: Owners and users are responsible for maintenance and conservation of the other areas of the building, facilities and equipments occupied or owned by themselves; if required and consigned, Party B may accept and charge the consigner based on the price negotiated by both parties otherwise.

Article 15: Maintenance, conservation of the leased area of the building, adjacent parts of the equipment of Party A and any item requiring services of Party B by special arrangement. By special arrangement with Party B, the maintenance and conservation of other areas of the building and equipment that are either occupied or owned by Party A.

Chapter III Property Management Service Fees

Article 16: Party B accepts all of the above service requirements. In accordance to the statute of property management and Xiamen Price Control Article [2001] #033 issued by Xiamen Bureau of Price Stabilization of Buildings of the civic OPS, Party B can charge all owners and users the following fees:

16.1 General Management Service Fee

The general management service fee is charged for property management services provided by Party B, which excludes fees for maintenance, renewal, remodeling of public area of the building, shared facilities and shared equipment, and fees for maintenance of self-managed area, water and electricity, parking lots. Party B shall charge Party A RMB 2.8 per square meter per month as set forth in the Xiamen Price Control Article [2001] #033 issued by Xiamen Bureau of Price Stabilization of Buildings.

The following items fall under general management services: 1. Sanitation of the public area, including without limitation cleaning and clearing away the garbage in hallway, corridor, section paths, stairs, elevator (hall), green belt and parking lots; 2. Daily

conservation of shared area of the building, public facilities and shared equipment; 3. Safety surveillance including: security, fire protection, patrolling around the building, 24-hour security shift; 4. Conservation and management of the landscape; 5. Management of parking lots and parking order of vehicles.

16.2 Public Maintenance Fee

Public maintenance fee is charged for daily maintenance, renewal and remodeling of the public area of the building, public facilities and shared equipment. Any maintenance expenses, no matter regular routine expenses, or incidental large-amount maintenance expense, major or medium maintenance, renewal, and remodeling expenses should be shared by all owners and users pro rate. In the event that such expenses exceed the aggregate public maintenance fee collected from all owners and users, Party B shall be responsible for paying such excess amount. Maintenance expenses should be paid out of the aggregate public maintenance fee collected from all owners and users, referring to Xiamen Price Control Article [2001] #001 issued by Xiamen Bureau of Price Stabilization "Administrative Regulation on Public Maintenance Fee of Buildings in Xiamen:" all owners and users using the premises shall pay RMB 0.5 yuan per m² per month for the public maintenance fee from the day they begin to use the building.

16.3 Water and Electricity Fees

(1) Private-consumed water and electricity fees:

This fee shall be collected by actual readings of the relevant meters. Party A should pay water and electricity bills in time every month, otherwise, Party A will be responsible for delaying the payment for water and electricity bills. In case Party A has difficulty paying such monthly bills due to its business reasons, a late fee free grace period of 15 days shall be granted; a late fee for water and electricity charges will be collected from the end of the grace period till the actual payment date, at a rate of 0.03% of the total late fee each day. If Party A doesn't pay water or electricity fees after notice from Party B, Party B has the right to suspend the power and water supply in accordance to relevant laws and regulations regarding the supply of water and electricity, and Party B is entitled to claim the water and electricity fees as well as the late fees.

(2) Public-consumed water and electricity fees:

The sharing of public-consumed electricity of the property is based on the Xiamen Price Control Article [2001] #004 issued by Xiamen Bureau of Price Stabilization "Interim Resolution on Sharing Public-Consumed Electricity for Xiamen Residential Buildings". The actual cost of public-consumed water shall be shared by all owners and users of this property at reasonable proportions; in each current month, Party A shall pay its monthly share of the cost for the previous month; Party B shall calculate the shared costs based on the actual cost of the public-consumed water for the previous month and the square meters rented by each owner or user, and collect from all owners and users of the property.

16.4 Special Services Fees

Service items that any individual owner (user) needs and consigns to Party B shall be reasonably charged based on negotiation of the parties.

Article 17: Management Service Fees to Be Paid by Party A:

17.1. General Management Fee and Public Building Maintenance Fee: shall be paid every quarter, calculated by the square meters rented by Party A. Party A shall pay general management fee of RMB (¥22,806.34) for the current quarter (from April 1st, 2006 to June 30th, 2006); Party A should pay public maintenance fee of RMB (¥4072.56) for the current quarter (from April 1st, 2006 to June 30th, 2006); Party A shall pay Party B above items within one week of signing of this contract by both parties hereto. Each future payment shall be made quarterly, within the first 7 days of each calendar quarter, with quarterly general management fee in the amount of (¥22,806.34) and quarterly public maintenance fee in the amount of (¥4072.56).

17.2 Water and Electricity Fee: Shall be paid promptly each month according to invoices provided by Party B (enclosed with a list of charged water and electricity fees and a list of calculated share)

17.3 Special service fees and fixed parking lot fees shall be paid according to negotiation of the parties.

Article 18 If Party A delays the payment of general management fees or pertinent fees due to its financial difficulties or other reasons, Party B shall grant Party A a late fee free grace period of 15 days. Party A shall be liable for a late fee of 0.03% of total due payments each day, starting from the end of the grace period till the actual payment date.

Chapter IV Rights and Obligations of Both Parties

Article 19 Rights and Obligations of Party A

Party A shall be:

19.01 Entitled to enjoy and protect legitimate rights and interests as the owners (users).

19.02 Entitled to make inquiries with the management department of Party B about pertinent proceedings of property management and receive corresponding answers.

19.03 Entitled to make recommendations, express its opinion and criticism over any area of property management.

19.04 Entitled to make recommendations, express its opinion and criticism to management authority concerning the property management.

19.05 Entitled to request that Party B disclose the balance sheet of property management periodically.

19.06 Obligated to abide by the Pact of the Owners (users) of the building and pertinent property management regulations, and to comply with and carry out the resolutions passed by the property management.

19.07 Obligated to pay property management fees and other fees set forth in this contract on a timely basis.

19.08 Entitled to examine Party B's budget and plans about major and medium maintenance, renewal, and remodeling of public facilities and equipment.

19.09 Entitled to inspect and oversee the income and expenses of the aggregate public maintenance fee; examine and approve maintenance items overspending the aggregate public maintenance fee.

19.10 Entitled to inspect the companies hired by Party B to carry out the services stated in this contract; if any services provided fall short of the requirements in this contract, Party B shall be in breach of this contract and responsible for the damages.

19.11 Entitled to oversee and inspect the services provided by Party B.

19.12 Within the property of Xiamen Software Park, the following conduct is prohibited:

- (1). Damaging the main structure of the building.
- (2). Altering the design and outside features of the building without Party B's consent.
- (3). Misappropriate, mangle public facilities, common areas or equipment within the Park. Move or install elsewhere the shared equipment without Party B's consent.
- (4). Littering or huddling garbage and sundries.
- (5). Releasing toxic or harmful materials or emitting noises exceeding regulated standard.
- (6). Failure to park vehicles in the designated lots.
- (7). Other conducts prohibited by laws, regulations and the Pact of owners (users).

Owners (users) and property management department have the right to dissuade and prohibit any above-mentioned conducts within the area of the Park, and have the right to claim rehabilitation or legal damages.

Article: 20 Rights and Obligations of Party B

Party B shall be:

20.01 Obligated to carry out responsibilities stated in this contract and responsible for duties that are corresponding to charged items stated in this contract; but not responsible for management liability caused by delayed payment or non-payment by Party A; Party B should compensate Party A for any losses caused by any delay or failure in the maintenance, conservation or repair of the public facilities.

20.02 Responsible for communication to Party A of public property management regulations, which shall be implemented after consideration and approval of the owners (users)

20.03 In case of maintenance or remodeling of public facilities or equipment, responsible for preparing scheme and budget for major or medium maintenance, renewal, and

remodeling of public facilities and equipment. Party B shall also prepare and update the project, scale, status quo, and current major problems with the owners and users. Party B shall implement such projects and pay expenditure only with the prior approval of Owners' committee or Party A, otherwise, Party A has the right to refuse to pay any resulting expenses. In the event certain public facilities or equipments need immediate repair, Party B may arrange for immediate repair before report to Owners' Committee or Party A but no later than 24 hours. Party B shall make proposals to use the aggregate public maintenance fee and get approval from the Committee or Party A after immediate repair is done.

20.04 Entitled to use the public maintenance fee upon approval for the purposes of maintenance or remodeling, and shall report the income and expenses of the project to owners (users) once in a year; any expenses exceeding the quota should be implemented after the approval of the owners (users), but items requiring immediate repair can be reported after repairing but no later than 24 hours.

20.05 Entitled to charge Party A for property management services as stated in this contract.

20.06 Entitled to hire specialized companies to perform property management services, responsible for services provided by the property management companies.

20.07 Entitled to manage in accordance with the Pact of Owners (users) of the building and pertinent property management regulations. Any violation of the same shall be handled in according to the regulations.

20.08 Obligated to report to owners and users about the use of the aggregate public maintenance fee annually, accept the supervision of Owners' Committee or Party A, and at the beginning of each year submit an annual accounting report of the previous year and an annual budget for the current year. Party A shall not bear any expenses recognized as unreasonable, and Party B shall pay such expenses out of its own bankroll.

20.09 Obligated to, during the period of providing Party A with property management services, use the income from managing other commercial buildings or public facilities, equipment, and lots consigned by Owners' Committee or construction departments to fund the property management of the Park.

20.10 Entitled to, in order to protect interests of the public, owners, or users, and in the event of force majeure which includes but not limited to creepage, fire, broken water pipes, life-saving, assisting the police, deal with Party A concerning Party A's loss caused by emergent measures taken by Party B according to relevant laws and regulations.

Chapter V Miscellaneous Provisions

Article 21: The two parties can supplement or amend terms of this contract if such supplement or amendment is agreed to in writing by the Parties. Such supplement or amendment shall have the same effectiveness as this contract.

Article 22: This contract may be signed in counterparts which, when signed, shall constitute one document. Matters not covered in this contract, its accessories, or supplemental agreement shall follow laws, statutes and regulations of the People's Republic of China.

Article 23: Any dispute occurred during the implementation of this contract shall be settled through negotiation of both parties or intermediation of the appropriate administrative authority. In the event of an unsuccessful negotiation or intermediation, this dispute shall be referred to the Xiamen Arbitration Committee for resolution.

Article 24: The term of this contract shall be for the same period as the Office Lease Contract between the Parties hereto and Xiamen Torch Hi-tech Industrial Development Zone Finance Services Center dated March 31, 2006. (i.e., April 1st, 2006 to March 31st, 2007), Upon termination of the Office Lease Contract, this contract will automatically terminate.

Article 25: There are two copies of the contract, each party holds one copy, and each copies bears equal legal validity. The contract becomes effective once the representatives or authorized representatives of PARTY A and PARTY B sign and seal the contract with the official stamps.

Article 26: This contract is executed in both Chinese and English. In case of any discrepancy between the terms of the English version and the terms of the Chinese version, the Chinese version shall prevail.

Article 27: All the terms and provisions of this contract shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Article 28: During the term of this contract, PARTY B shall ensure the validity and legality of all the authorizations, permits, approvals and licenses necessary for the performance of this contract.

Article 29: Invalidity of any provision in the contract shall not affect the validity of any other provisions herein.

Article 30: This contract shall constitute an entire agreement and undertaking among PARTY A and PARTY B concerning property management, and shall supersede all prior agreements and undertakings, both oral and written, between the parties hereto. Any waiver, modification or amendment of any provision of this contract will be effective only if in writing and signed by the parties hereto. The Property Management Service Contract concerning the premises located on the 6th floor of Kexun Building previously signed by PARTY A and PARTY B dated March 22, 2004, and the first amendment thereto dated November 18, 2004 shall be terminated upon execution of this contract by the parties hereto.

Party A: eHealth China (Xiamen) Technology Co., Ltd. (EHC)

By: /s/ Sheldon Wang

Name: Sheldon Wang, President and CEO

Date: _____

Office Address: 6F, Kexun Building, Xiamen Software Park

Zip Code: 361005

Tel: 2517000

Fax: 2517111

Legal Representative: Gary Lauer

Title: Chairman of the Board

Bank Account: Xiamen University Sub-Branch of Bank of China

Account No: 840062474708091001

Party B: Xiamen Software Industry Investment and Development Co., Ltd.

By: /s/ Hong Sheng Yu

Name: Hong Sheng Yu

Date: _____

Office Address: 3F-B, Zong He Building #2, Xiamen Software Park

Zip Code: 361005

Tel: 3929787/3929759

Fax: 2513132

Legal Representative: Yu, Hong Sheng

Title: Chairman of the Board

Bank Account: Lianhua Sub-branch of Agricultural Bank of China, Xiamen

Account No: 324001040007103

Subsidiaries of the Registrant

eHealthInsurance Services, Inc.

eHealth China, Inc.

eHealth China (Xiamen) Technology Co., Ltd.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated March 10, 2006, in the Registration Statement (Form S-1) and related Prospectus of eHealth, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Palo Alto, California
April 21, 2006

April 25, 2006

VIA EDGAR

Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: Registration Statement on Form S-1 for eHealth, Inc.

Ladies and Gentlemen:

Attached for filing pursuant to the Securities Act of 1933, as amended, is a Registration Statement on Form S-1 (the "Registration Statement") covering the registration of shares of common stock of eHealth, Inc. (the "Registrant"), together with related documents. The Registrant will retain a fully executed copy of the Registration Statement for a period of not less than five years.

A wire transfer in the amount of \$9,095.00 has been wired into the SEC's account at Mellon Bank.

Please call the undersigned at (650) 321-2400 should you have any questions or comments with regard to this matter.

Very truly yours,

/s/ Amanda Galton

Amanda Galton

Attachment

cc: Bennett L. Yee, Esq.
Caine T. Moss, Esq.