UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
BURTON DOUGLAS MORRISS,)
ACARTHA GROUP, LLC,)
MIC VII, LLC,) Case No. 4:12-CV-00080-CEJ
ACARTHA TECHNOLOGY PARTNERS, LP, and)
GRYPHON INVESTMENTS III, LLC,)
)
Defendants, and)
)
MORRISS HOLDINGS, LLC,)
)
Relief Defendant.)
)

RECEIVER'S MOTION FOR ENTRY OF AN ORDER APPROVING AND CONFIRMING THE RECEIVER'S ELEVENTH INTERIM STATUS REPORT

By Order entered January 17, 2012, the Court appointed Claire M. Schenk as Receiver (the "Receiver") over Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC (collectively, the "Receivership Entities").

The Receiver herein moves this Court for entry of the proposed Order Approving and Confirming her Eleventh Interim Status Report of Receiver, filed simultaneously herewith as Exhibit A to this Motion.

This motion is administrative and not adversarial in nature.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: August 12, 2014

By /s / Kathleen E. Kraft

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2014, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

John R. Ashcroft, Esq.
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Counsel for Defendant Burton Douglas Morriss

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/s/ Kathleen E. Kraft

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BURTON DOUGLAS MORRISS, ACARTHA GROUP, LLC, MIC VII, LLC, ACARTHA TECHNOLOGY PARTNERS, LP, and GRYPHON INVESTMENTS III, LLC, Defendants, and MORRISS HOLDINGS, LLC, Relief Defendant.	)	Case No. 4:12-CV-00080-CEJ

ELEVENTH INTERIM STATUS REPORT OF RECEIVER

Claire M. Schenk (the "Receiver"), the Receiver for Defendants Acartha Group, LLC ("Acartha Group"), Acartha Technology Partners, LP ("ATP"), MCI VII, LLC ("MCI VII"), and Gryphon Investments III, LLC ("Gryphon Investments") (collectively, the "Receivership Entities"), submits this **Eleventh Interim Status Report** to update the Court on the activities of the Receiver occurring since May 22, 2014:

A. Receivership Litigation and Filings

All pending motions, except for the objections addressed in the Claims Process section below, and the Receiver's Ninth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals ("Ninth Fee Application"), are resolved and summarized in previous Receivership Reports. The Receiver's Ninth Fee Application was filed on May 20, 2014, and was followed by the Receiver's Notice of No Objection filed on June 4, 2014. The Receiver awaits the determination of the Court and has

not yet paid the vendors for the invoices submitted for the services rendered and the expenses advanced for the period between January 1, 2014 and March 31, 2014.

B. Claims Process

The Receiver's Ninth Interim Status Report provided a detailed summary as to the numbers of claims submitted, the Receiver's process of review and documentation of the claims, and the Receiver's recommendations regarding the allowance of certain claims and disallowance as to others as set forth and explained in the Receiver's Notices of Determination. The Receiver's Tenth Interim Status Report updated the reported numbers with information available as of March 10, 2014. As of the date of this Report, the Receiver's recommendations, as stated in the notices of determination, are summarized as follows:

Treatment	No. of Claims
Recommend allowance of claim (at least in part)	118
Recommend disallowance of entire claim	108
Total Claims Submitted	**226**

A listing of determinations by claim number is attached hereto as Exhibit A-1.

Regarding the recommended allowed claims listed above, 115 claims were investor claims, two claims were promissory note holder claims that did not involve a separate contribution, and one claim was submitted by a vendor. Of the disallowed claims, 92 claims were investor related claims, eight claims were former management claims, and eight claims were claims of vendors. These claims were disallowed for a variety of reasons. Eighty-seven investor related claims were disallowed because they claimed an interest in non-Receivership Entities. Two investor related claims were disallowed due to the failure to provide sufficient information to support a claim, and three investor related claims were disallowed because the Claimant had filed a duplicate claim. Four claims of former management were disallowed for multiple reasons; two claims of former management were disallowed for a failure to provide

sufficient information to support their claims; one claim was disallowed because it was resolved through a prior settlement agreement; and one claim was disallowed after the claimant chose to withdraw the claim. Two of the vendor claims were disallowed because the vendor did not perform work for any Receivership Entity, and one vendor claim was disallowed because it was resolved through a prior settlement agreement. Five claims of vendors were disallowed due to a failure to provide sufficient information to support a claim and/or for a failure to provide the services to which the parties had agreed.

On or about July 15, 2014, a "Pre-Petition Proof of Claim" was received from the New York State Department of Taxation and Finance ("NY State"). As described in previous reports, the Receiver and her accountants have successfully resolved most known historic tax and compliance matters. NY State, however, cited the continuing nature of pre-Receivership compliance issues in its efforts to pursue collection of the penalties and interest as set forth in the attached Notice. See Exhibit A-2. The Receiver has responded to NY State, asserting that NY State was a Claimant required to file a Claim under the Claims Bar Date Order, that it failed to timely file a claim under the Claims Bar Date Order, and that it failed to follow the claims process mandated by the Court, despite timely notice sent by the Receiver. She has further explained that its alleged claim was discharged due to NY State's failure to timely file a Claim. See Exhibit A-3.

The Receiver and her counsel have continued to focus their efforts upon the claimants providing notice to the Receiver of their objections to the Receiver's Notices of Determination. As noted in the Tenth Interim Status Report, the Receiver received objections from four claimants. With respect to each of these claimants, the Receiver recommended disallowance of the claims in their entirety. Pursuant to this Court's order amending the claims deadlines (Dkt.

No. 278), the objectors were allowed to file objections with the Court between May 13, 2014 and June 12, 2014.[1]

Claimant No. 16, UHY Advisors MO, Inc. ("UHY"), filed a timely objection to the Receiver's determination on UHY's claim with the Court (Dkt. No. 332). The Receiver recommended disallowance of UHY's claim for payment for professional accounting services rendered in the amount of $220,060 on various grounds set forth in the Receiver's Notice of Determination which was provided to UHY on January 13, 2014. The Receiver's response to UHY's objection was due on or before July 14, 2014. The Receiver and UHY are engaged in settlement negotiations and therefore entered into a joint stipulation to extend the time for the Receiver's response up to and including September 15, 2014. A copy of the parties' stipulation is on file with the Court (Dkt. No. 334). In recent weeks, the Receiver and UHY decided that they will submit to the mediation process in furtherance of their settlement negotiations. They have tentatively selected the date of October 6, 2014 for the mediation and made arrangements with the Honorable Wayne R. Andersen (Ret.) to serve as mediator. Costs will be shared between the parties. A copy of the proposed General Fee Schedule for the Mediation is attached here to as Exhibit A-4.

Claimant No. 57, Holtz Rubenstein Reminick (former vendor), filed an objection with the Receiver but did not file an objection with the Court during the requisite time frame. Therefore, the Receiver's recommendation of disallowance for Claim No. 57, which was filed in the amount of $42,500, will stand.

[1] The Claims Bar Date Order (Dkt. No. 234) and the order amending the Claims Bar Date Order (Dkt. No. 278) both provide that a claimant and the Receiver may stipulate to informally resolve their dispute and may extend by agreement without leave of Court the deadline for either party to file a motion to have the Court rule on the objection and determination.

Claimant No. 21, Ameet Patel (former management), filed an objection with the Receiver. The Receiver and Mr. Patel have reached a tentative settlement agreement regarding Claim No. 21. The tentative settlement is intended to result in the waiver of Claim No. 21, which claim was filed in the amount of $2,764,524.49. The parties are in the process of documenting the settlement. The Receiver will submit the final settlement documentation to the Court for approval as soon as practicable.

Claimant No. 20, Hany Teylouni (former management), also filed an objection with the Receiver. Mr. Teylouni left his position with the Receivership Entities before the Receiver's appointment. Mr. Teylouni's claim is based on alleged deferred compensation that accrued during his time at the Receivership Entities. Despite good faith efforts, the Receiver and Mr. Teylouni were unable to resolve their differences regarding the Receiver's determination on Mr. Teylouni's claim. Mr. Teylouni filed his objection with the Court on July 31, 2014 (Dkt. No. 337). The Receiver is in the process of preparing her response, which according to the time frame set forth in the Claims Bar Date Order, is due by September 2, 2014.

The Receiver and her professionals also resolved a number of potential objections through the claims process itself. With respect to a number of high-dollar claims, the Receiver issued notices of determination which contained the factual and legal bases for the disallowance of such claims. Following receipt of the Receiver's basis for disallowance of the claims, claimants elected not to contest the position of the Receiver:

Claim No.	Treatment	Amount of Claim Disallowed
12	Disallow in full	$100,000.00
17	Disallow in full	$450,363.05
18	Disallow in part	$6,459,707.25
19	Disallow in full	$25,718.85
43	Disallow in full	$432,391.24

59	Disallow in full	$61,066.33
67	Disallow in full	$172,734.91
68	Disallow in full	$1,053,333.33
226	Disallow in full	$350,000.00
	TOTAL:	**$9,105,314.96**

Since the beginning of the claims process, the total reduction in potential liability to the Receivership Entities through the claims process currently is approximately **$13,808,198.00**. This total amount does not include: claims subject to the process of resolving objections; or the 37 disallowed claims which lacked a specific amount for the claim and/or did not provide sufficient information for the Receiver to determine the claim amount before its disallowance.

C. Update to Report of Liabilities Asserted Against the Receivership Entities

In the Order Appointing Receiver (Dkt. No. 16), the Court directed the Receiver to "[p]resent to this Court a report reflecting the existence and value of the assets of the Investment Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Investment Entities." In the Seventh Interim Status Report (Dkt. No. 264-1), the Receiver filed her preliminary report of the Receivership Entities' assets and liabilities. Subsequently, at the time of the Ninth Interim Report (Dkt No. 315-1), the Receiver updated the asserted liabilities against the Receivership Entities as follows:

Receivership Entity(ies) Asserted Against	Asserted Dollar Amount
Acartha Group, LLC	$30,193,391.54
Acartha Technology Partners, L.P.	$7,161,948.26
MIC VII, LLC	$23,650,334.76
Gryphon Investments III, LLC	$1,602,266.40
Multiple Receivership Entities	$3,117,056.64
Total	**$65,724,997.60**

Due to the continuation of the claims process and the Receiver's receipt of additional information from claimants regarding the nature and amount of their claims, the Receiver is

filing this update to her report of liabilities asserted against the Receivership Entities. As of the filing of this report, the asserted liabilities against the Receivership Entities are as follows:

Receivership Entity(ies) Asserted Against	Asserted Dollar Amount
Acartha Group, LLC	$22,850,930.00
Acartha Technology Partners, L.P.	$7,681,921.86
MIC VII, LLC	$23,607,834.76
Gryphon Investments III, LLC	$1,602,266.40
Total	**$55,742,953.02**

The amounts listed above include claims where the claimants have asserted specific amounts of liability. They also include claims where the claimant did not state a specific amount but instead stated an equity interest; the Receiver has used the claimants' documentation to calculate a dollar amount for those equity-interest claims.[2] Thus, the figures listed are approximations, and the Receiver will continue to review and reconcile the amounts throughout the claims process.

The amounts listed above do not include the amounts claimed UHY, Mr. Teylouni, and Mr. Patel (totaling $3,337,116.64 against multiple Receivership Entities). These are the three claims that have been recommended for disallowance but to which the Receiver is working with the claimant regarding an objection or to which the claimant has filed an objection. The amounts listed above also do not include any liabilities of the Receivership Entities incurred after the institution of the Receivership (*i.e.*, professional fees and ongoing costs of administering the Receivership Entities and their related entities). The current reported figures account for all information provided by claimants after July 2013 to date.

[2] In a few instances, the calculated dollar amount of the claim is a negative number. In the Ninth Interim Report these claims were used to calculate the asserted liabilities. In this report, they have been treated as claims with $0 asserted liabilities.

D. Distributions

As the Receiver has reported in previous interim status reports, the Receivership has made several distributions of funds held by the Receivership relating to special purpose vehicles (SPVs) managed by the Receiver. In early 2012, the Receiver requested and obtained authority from the Court to return funds to investors in Acartha Special Situations Funding, LLC ("ASSF") (Motion at Dkt. Nos. 120, 121; Order at Dkt. No. 139). Investors in ASSF invested their funds in the month preceding the institution of the Receivership, on the promise that such funds would be used to support Acartha's ongoing operations once Acartha met certain specified benchmarks. Because those benchmarks were not satisfied prior to the institution of the SEC action and the Receivership, the Receiver requested and obtained authority to return the funds to the ASSF investors. The Receiver returned approximately $146,000 to the ten known investors in ASSF.

Second, in 2013, the Receiver requested and obtained authority to distribute certain funds held by Integrien Acquisition, LLC ("IA") and Integrien Acquisition II, LLC ("IAII" and together with IA, the "Integrien SPVs") to investors in the Integrien SPVs (Motion at Dkt. Nos. 241, 242; Order at Dkt. No. 262). The funds held by the Receivership following receipt of a portion of a cash payout that was escrowed as security as part of the sale of Integrien Corporation to VMWare, Inc., in August 2010. On or about July 24, 2013, the monies held at Reliance Bank in the account of IA, in the approximate amount of $193,194, were distributed to investors. Additionally, funds acquired by the Receiver, in the accounts of IA II in the approximately amount of $116,443.79 and IA in the amount of $381,885.83 were distributed to investors, less the sums due for the payment of expenses, as approved by the Court's order of June 25, 2013 (Dkt. No. 262).

Distribution of Receivership funds will be resolved following the conclusion of the claims process and subject to approval of the Court. The Receiver is reviewing potential distribution methods and intends to present a proposed plan of distribution to the Court for review and approval at a later date. It is unlikely that the Receivership Estate will have sufficient funds to satisfy all claims in full.

E. Tax Matters

As previously reported, Segue Partners closed the books of the Receivership Entities for fiscal year 2013. CliftonLarsonAllen LLP ("CLA") is again working with the Receiver to see that state, local, and federal tax requirements are handled in a timely and appropriate manner. To further develop and ensure the appropriate handling of certain tax matters, CLA requested extensions of the April tax filing deadlines. CLA has indicated that the returns will be prepared and ready for filing by approximately August 15, 2014.

During this reporting period, CLA and the Receiver analyzed the tax treatment of apparent Receivership Entity investors who did not file claims by the May 6, 2013 Claims Bar Date deadline established by the Court for the filing of claims. Since they did not file claims, those investors will be treated as no longer owning any right, title, and interest in any of the Receivership Entities as of May 6, 2013.[3] Those investors will receive a final Schedule K-1 related to their apparent interest covering the January 1, 2013 through May 6, 2013 timeframe.

[3] Specifically, the March 4, 2013 Claims Bar Date Order provides that: "Any Claimant who is required to submit a Proof of Claim, but fails to do so in a timely manner or in the proper form, (a) ***shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Claim against the Receiver, the Receivership Entities and their respective estates and property*** …"

The Schedule K-1 will show the capital account being reduced to $0 as of May 6, 2013, and these investors will receive no future Schedule K-1's related to any Receivership Entity.[4]

F. Update in Proceedings Involving Burton Douglas Morriss

(1) **Criminal Matter**

Pursuant to the plea agreement described in earlier reports, the Receiver is informed that Burton Douglas Morriss remains incarcerated.

(2) **Personal Bankruptcy**

During this reporting period, Burton Douglas Morriss filed schedules pertaining to his assets and liabilities which were due at the outset of the proceeding. A meeting of the creditors has not yet been held. Given that the Receiver has not had an opportunity to thoroughly analyze and discuss the schedules recently filed by the debtor or to participate in a creditor's meeting, the Receiver filed a request seeking an extension of the current August 9, 2014 deadline to object to discharge. The Receiver's motion was granted on July 24, 2014 and the deadline for the filing of an objection to the debtor's discharge was extended through January 31, 2015.

G. Document Analysis and Affirmative Receivership Claims

The Receiver continues to analyze and search through the voluminous documents made available since the Receiver's appointment in order to consider the appropriate handling of existing affirmative Receivership claims. Additionally, the Receiver continues to work closely with retained counsel, Spencer Fane Britt & Brown LLP. As previously reported, counsel was engaged to pursue Receivership claims against UHY. Counsel for the Receiver and counsel for UHY have continued their settlement discussions subject to the previously reported tolling

[4] Investors are advised by the Receiver to consult with their tax advisors regarding this matter either prior to or upon receipt of the final 2013 Schedule K-1. The information provided in this report, various tax filings and Schedule K-1s is not intended to be treated as tax advice.

agreement. Similarly, the Receiver and counsel have continued analysis of the available documents for the potential pursuit of other affirmative claims as well as offsetting claims as part of the claims resolution process.

H. Business Operations and Administrative Matters

As in previous reporting periods, the Receiver has continued to monitor and participate in matters involving the portfolio investments held by the Receivership Entities. During this reporting period, the Receiver participated in an extensive number of discussions regarding the acquisition of another entity by one of the portfolio concerns. The Receiver was informed that the acquisition is intended to generate additional cash and eliminate or diminish the need for additional funding, at least in the short term. The consequence of the acquisition is a restructuring of the corporation's equity as stated in the document attached hereto as Exhibit A-5. After soliciting the input and participation of interested investors, the Receiver consented to this transaction, subject to the Court's approval to the extent that such may be required.[5]

The Receiver has participated in other permissible shareholder activity involving the portfolio concerns of the Receivership Entities. For example, the Receiver participated in Board meetings and engaged in active discussions regarding the possibility of monetizing the other illiquid equity interests held by the Receiver. As part of this process, the Receiver developed legal and factual information which will allow her to determine whether or not such transactions are possible and in the best interests of the Receivership estate. To the extent that the Receiver believes it to be appropriate to sell property of one of the Receivership Entities, the Receiver will seek the approval of the Court and provide notice as appropriate before finalizing any sale.

[5] Consent to this transaction appears to be incident to the general powers allowed to the Receiver in the January 17, 2014 Receivership Order. Consent to this transaction does not involve a sale or divestiture of the equity interest held in Tervela by any Receivership Entity.

An updated copy of the Standarized Fund Accounting Report ("SFAR") to be filed with the Receiver's next and tenth Fee Application (for the second quarter of this year, covering April through June) is attached as Exhibit A-6. This report reflects known and current bank balances for the Receivership entities and the accounts otherwise subject to the control of the Receiver. It also shows expenses and payments during this quarter. A final and fully detailed report will be submitted to the Court at the conclusion of the Receivership.

The Receiver has continuously updated the general website hosted by Thompson Coburn LLP (which is linked to the website for the District Court for the Eastern District of Missouri). Additionally, she has continued to post documents on the extranet sites created for the investors. Access to the extranet sites is allowed subject to receipt of a nondisclosure agreement by the investors. Each site is periodically updated with information pertinent to business operations, *e.g.*, slide decks or presentations and transactional documents involving additional financings or other significant events. Claimants, investors and other interested parties are encouraged by the Receiver to frequently visit the sites which are available to them so that they will have a current understanding of Receivership operations and in order to avoid unnecessary expense through repeated individualized communications with the Receiver and her counsel.

Conclusion

The Receiver will continue to update this Report on a periodic basis to summarize relevant Receivership activities.

Dated: August 12, 2014

Respectfully submitted,

/s/ Claire M. Schenk
Claire M. Schenk, Receiver

EXHIBIT A-1

Claim No.	Receiver's Recommended Determination
1	Disallow
2	Disallow
3	Disallow
4	Allow
5	Allow
6	Allow
7	Allow
8	Allow
9	Allow
10	Disallow
11	Allow
12	Disallow
13	Allow
14	Allow
15	Allow
16	Disallow (objection filed with court)
17	Disallow
18	Allow in part; disallow in part
19	Disallow
20	Disallow (objection filed with court)
21	Disallow

Claim No.	**Receiver's Recommended Determination**
22	Allow
23	Allow
24	Allow
25	Disallow
26	Allow
27	Allow
28	Allow
29	Allow
30	Allow
31	Allow
32	Allow
33	Allow
34	Allow
35	Allow
36	Allow
37	Allow
38	Allow
39	Allow
40	Allow
41	Allow
42	Allow
43	Disallow

Claim No.	**Receiver's Recommended Determination**
44	Allow
45	Allow
46	Allow
47	Allow
48	Allow in part; disallow in part
49	Allow
50	Allow
51	Disallow
52	Allow
53	Allow
54	Allow
55	Disallow
56	Disallow
57	Disallow
58	Disallow
59	Disallow
60	Allow
61	Disallow
62	Allow in part; disallow in part
63	Disallow
64	Disallow
65	Disallow

Claim No.	Receiver's Recommended Determination
66	Disallow
67	Disallow
68	Disallow
69	Allow
70	Allow
71	Allow
72	Allow
73	Allow
74	Allow
75	Allow
76	Allow
77	Allow
78	Allow
79	Allow
80	Allow
81	Allow
82	Allow
83	Allow
84	Allow
85	Allow
86	Allow
87	Allow

Claim No.	**Receiver's Recommended Determination**
88	Allow
89	Allow
90	Allow
91	Allow
92	Allow
93	Allow
94	Allow
95	Allow
96	Allow
97	Allow
98	Allow
99	Allow
100	Allow
101	Allow
102	Allow
103	Allow
104	Allow
105	Allow
106	Allow
107	Allow
108	Allow
109	Allow

Claim No.	Receiver's Recommended Determination
110	Allow
111	Allow
112	Allow
113	Allow
114	Allow in part; disallow in part
115	Allow in part; disallow in part
116	Allow
117	Allow
118	Allow
119	Allow
120	Allow
121	Allow
122	Allow
123	Allow
124	Allow
125	Allow
126	Allow
127	Allow
128	Allow
129	Allow
130	Allow
131	Allow

Claim No.	Receiver's Recommended Determination
132	Allow
133	Allow
134	Allow
135	Allow
136	Allow
137	Allow
138	Allow
139	Allow
140	Allow
141	Allow
142	Allow
143	Allow
144	Disallow
145	Disallow
146	Disallow
147	Disallow
148	Disallow
149	Disallow
150	Disallow
151	Disallow
152	Disallow
153	Disallow

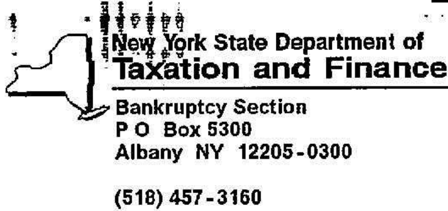
Claim No.	Receiver's Recommended Determination
154	Disallow
155	Disallow
156	Disallow
157	Disallow
158	Disallow
159	Disallow
160	Disallow
161	Disallow
162	Disallow
163	Disallow
164	Disallow
165	Disallow
166	Disallow
167	Disallow
168	Disallow
169	Disallow
170	Disallow
171	Disallow
172	Disallow
173	Disallow
174	Disallow
175	Disallow

Claim No.	Receiver's Recommended Determination
176	Disallow
177	Disallow
178	Disallow
179	Disallow
180	Disallow
181	Disallow
182	Disallow
183	Disallow
184	Disallow
185	Disallow
186	Disallow
187	Disallow
188	Disallow
189	Disallow
190	Disallow
191	Disallow
192	Disallow
193	Disallow
194	Disallow
195	Disallow
196	Disallow
197	Disallow

Claim No.	**Receiver's Recommended Determination**
198	Disallow
199	Disallow
200	Disallow
201	Disallow
202	Disallow
203	Disallow
204	Disallow
205	Disallow
206	Disallow
207	Disallow
208	Disallow
209	Disallow
210	Disallow
211	Disallow
212	Disallow
213	Disallow
214	Disallow
215	Disallow
216	Disallow
217	Disallow
218	Disallow
219	Disallow

Claim No.	**Receiver's Recommended Determination**
220	Disallow
221	Disallow
222	Disallow
223	Disallow
224	Disallow
225	Disallow
226	Disallow

EXHIBIT A-2



Bankruptcy Section
P O Box 5300
Albany NY 12205-0300

(518) 457-3160

Statement date: 7/15/2014

Case number: G00001082
Refer to this number for inquiries

Total claim amount: $7,484.78

Taxpayer ID#: B-26-2459437-5
B-20-2635641-7

Pre-Petition Proof of Claim

ACARTHA TECH PARTNERS, L.P.
CLAIRE M. SCHENK, RECEIVER
505 NORTH 7TH STREET
ST. LOUIS, MO 63101

This is a statement of tax liabilities for ACARTHA TECH PARTNERS, L.P. C/O CLAIRE S and MIC VII LLC. Penalty and interest for each liability is computed to 1/17/2012.

Secured Liabilities

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type	Warrant Date	Cnty
INCPTR	12/31/08	L-032554843-1	0.00	500.00	94.06	594.06	ACT	02/23/11	ALBA
INCPTR	12/31/09	L-034601097-9	0.00	6,250.00	640.72	6,890.72	ACT	02/23/11	ALBA
					Total $	7,484.78			

Current Annual Interest Rates by Tax Type: Income-Prtnrship - 7.5%
Liability Type Descriptions: ACT - Actual Return Filed

TC-988 (10/00) 140710130955000001

Exhibit A-3

Jayna Marie Rust
P 202.585.6929
F 202.318.6496
jrust@thompsoncoburn.com

Licensed in Virginia only.
(supervised by DC licensed attorneys)

July 31, 2014

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

New York State Department of Taxation and Finance
Bankruptcy Section
P.O. Box 5300
Albany, NY 12205-0300

Re: "Pre-Petition Proof of Claim" against Acartha Technology Partners, L.P.

To Whom It May Concern:

Thompson Coburn LLP is serving as retained counsel on behalf of Acartha Technology Partners, L.P., (the "Receivership Entity" or "ATP"). Our office is in receipt of your July 15, 2014 "Pre-Petition Proof of Claim." As previously described in the May 27, 2014, letter to Pioneer Credit Recovery, Inc. (attached here for your reference), the New York State Department of Taxation and Finance's ("NY Tax Department") claim of alleged interest and penalties against ATP was not timely asserted via the court-ordered claims process. The NY Tax Department is, therefore, barred, estopped, and enjoined from asserting a right to payment for the monies described in the "Pre-Petition Proof of Claim" against the Receiver, the Receivership Entities, and their respective estates or property because the Receivership Entity has been discharged of the alleged debt or liability. Pioneer Credit Recovery, Inc. ("Pioneer") and the NY Tax Department, as well as those acting on their behalf, are also barred from objecting to any distribution plan proposed by the Receiver and shall be denied any distributions under any distribution plan.

NY Tax Department and its assignees are barred, estopped, and enjoined from pursuing a claim against ATP. On January 17, 2012, the United States District Court for the Eastern District of Missouri ("Receivership Court") entered its Order placing ATP into receivership.[1] As part of this proceeding, the Receiver, among other things, was directed to administer and manage the affairs, funds, assets, choses in action, and other property of ATP, marshal and safeguard ATP's assets, and take all necessary actions for the protection of investors. Furthermore, the Receivership Court entered an order (as subsequently amended on August 22, 2013, the "Claims Bar Date Order") establishing May 6, 2013, as the date after which all claims against the

[1] Civil Action No. 4:12-cv-00080-CEJ (E.D. Mo. Jan. 17, 2012), Dkt. No. 16.

Receivership Entities arising before January 17, 2012, would be barred (the "Claims Bar Date") and procedures for the filing and review of claims asserted against the Receivership Entities.[2] On March 29, 2013, the Receivership sent notice of the Claims Bar Date to the NY Tax Department. The Receivership also published notice of the Claims Bar Date in the St. Louis Post-Dispatch and the Star-Ledger (Newark) and provided notice of the Claims Bar Date on the Receivership's website.

The Claims Bar Date Order provides that:

> Any Claimant who is required to submit a Proof of Claim, but fails to do so in a timely manner or in the proper form, (a) ***shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Claim against the Receiver, the Receivership Entities and their respective estates and property***, (b) shall not be permitted to object to any distribution plan proposed by the Receiver on account of such Claim, (c) shall be denied any distributions under any distribution plan implemented by the Receiver on account of such Claim, and (d) shall not receive any further notices on account of such Claim. ***Further, the Receivership Entities and their respective property or estates will be discharged from any and all indebtedness or liability with respect to such claim***. (emphasis added)

The Claims Bar Date Order defines "Claim" as:

> (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, against one or more of the Receivership Entities; (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, against one or more of the Receivership Entities; or (c) a right to a distribution from one or more of the Receivership Entities, including but not limited to a right based on an investment in or through one or more of the Receivership Entities.

The Claims Bar Date Order further defines "Claimant" as: any person or entity (including, without limitation, individuals, partnerships, corporations, estates, trusts, and governmental units) that holds a Claim.

Based on the above, the NY Tax Department was a Claimant with a Claim under the Claims Bar Date Order. The NY Tax Department was required to assert its Claim through the filing of a Proof of Claim with the Receiver on or before the Claims Bar Date, or else suffer the discharge of its Claim. The NY Tax Department and its assignees are barred, enjoined, and estopped from

[2] Civil Action No. 4:12-cv-00080-CEJ (E.D. Mo. Mar. 4, 2013), Dkt. No. 234.

pursuing their Claim against ATP, and the Claim of the Claimant was discharged due to the following reasons.

1. On or before the Claims Bar Date, the NY Tax Department did not file with the Receiver a Proof of Claim for the interest and penalties asserted in the petition. The Claims Bar Date Order established May 6, 2013, as the date after which all claims against the Receivership Entities arising before January 17, 2012, would be barred. The Claims Bar Date Order stated that claims—submitted via a Proof of Claim—would be considered timely if they are "(i) officially postmarked on or before the Bar Date, if sent by mail, (ii) actually received by the Receiver on or before the Bar Date, if hand-delivered or sent by courier, or (iii) transmitted on or before the Bar Date, if sent by electronic mail." The Receiver did not receive a Proof of Claim from the NY Tax Department before May 6, 2013.

2. The "Pre-Petition Proof of Claim" and any prior communications sent from the NY Tax Department did not comport with the Proof of Claim process that was required to file a Claim with the Receiver. The Claims Bar Date Order explained that each Claimant must "submit a completed and signed Proof of Claim Form under penalty of perjury and evidencing such Claimant's Claim, together with supporting documentation" in the manner indicated in the Claims Bar Date Order. The form was sent to the Claimant along with the notice of the Claims Bar Date, and it was also available on the Receivership website. The Claims Bar Date Order also explained that "Proofs of Claim filed in any other manner . . . will not be considered properly submitted." The NY Tax Department and Pioneer did not submit a Proof of Claim Form or supporting documentation. Thus, even if the NY Tax Department or Pioneer communications had been timely filed, they were not properly submitted because they did not comport with the process established by the Court. Therefore, the NY Tax Department and Pioneer are barred, enjoined, and estopped from asserting a Claim.[3]

For these reasons, the NY Tax Department and its assignees are barred, enjoined, and estopped from pursuing its Claim against ATP, and any such Claim has been discharged. Accordingly, **we demand that the NY Tax Department <u>cease all collection efforts and refrain from making further attempts to contact our client.</u> We further demand that the NY Tax Department take all necessary steps to remove any and all state tax warrants filed against ATP and/or the Receivership entity relating to the alleged interest and penalties.** As stated in our letter to Pioneer, under paragraph 15, page 6 of the Receivership Order, the Court enjoined all persons from prosecuting any actions or proceedings which affect property of ATP. The Order states, in pertinent part,

> During the period of this receivership, all persons, **including creditors … are enjoined from … disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or … ATP**. (emphasis added).

[3] As stated in the prior paragraph, any claim that the NY Tax Department would file now or in the future would be untimely, regardless of whether the claim were properly submitted.

The Receivership and ATP reserve the right to assert additional legal grounds related to the defense of the alleged interest and penalties and do not waive the right to raise such defenses at a later time.

Very truly yours,

Thompson Coburn LLP

By
Jayna Marie Rust

Enclosures

cc: Via Certified Mail, Return Receipt Requested
New York State Department of Taxation and Finance
Collections and Civil Enforcement Division
W A Harriman Campus
Albany, NY 12227

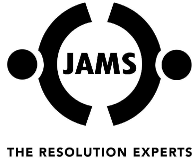
New York State Department of Taxation and Finance
OPTS Liability Resolution
W A Harriman Campus
Albany, NY 12227-0001

New York State Department of Taxation and Finance
Civil Enforcement-Collection Vendor Support Unit
P.O. Box 5290
Albany, NY 12205-0290

New York Department of Revenue
State Processing Center
P.O. Box 61000
Albany, NY 12261-0001

Pioneer Credit Recovery, Inc.
26 Edward Street
Arcade, NY 14009

EXHIBIT A-4



General Fee Schedule

Hon. Wayne R. Andersen (Ret.)

PROFESSIONAL FEES

$800 per hour

$600 per hour for Individual Employment Matters

NON-REFUNDABLE CASE MANAGEMENT FEE

- The Case Management Fee includes access to an exclusive nationwide panel of judges, attorneys, and other ADR experts, dedicated services including all administration through the duration of the case, document handling, and use of JAMS conference facilities including after hours and on-site business support. Weekends and holidays are subject to additional charges.
- The Case Management Fee is reassessed on cases that continue beyond originally scheduled professional time.
- Professional fees include time spent for sessions and pre- and post-sessions reading and research time.

Mediations

One day is defined as 10 hours of professional time	*Fee*
1-3 days	$275 per party, per day
Time in excess of initial 30 hours	10% of professional fees

Discovery, Court Reference and Contract Matters

One day is defined as 10 hours of professional time	*Fee*
1-3 days	$400 per party, per day
Time in excess of initial 30 hours	10% of professional fees

Arbitrations

See neutral's individual arbitration fee schedule.

CANCELLATION/CONTINUANCE POLICY

	Cancellation/Continuance Period	*Fee*
1 day or less	14 days or more prior to session	100% REFUNDABLE, except for time incurred
2 days or more	30 days or more prior to session	100% REFUNDABLE, except for time incurred
3 days or more	45 days or more prior to session	100% REFUNDABLE, except for time incurred
Sessions of any length	Inside the cancellation/continuance period	NON-REFUNDABLE

- Unused session time is non-refundable.
- Session fees are non-refundable if time scheduled (or a portion thereof) is cancelled or continued within the cancellation period unless the Neutral's time can be rescheduled with another matter. The cancellation policy exists because time reserved and later cancelled generally cannot be replaced. In all cases involving non-refundable time, the party causing the continuance or cancellation is responsible for the fees of all parties.
- A retainer for anticipated preparation and follow-up time is billed to the parties. Any unused portion is refunded.
- All fees are due and payable upon receipt of invoice and payment must be received in advance of session. JAMS reserves the right to cancel your session if fees are not paid by all parties by the applicable cancellation date and JAMS confirms the cancellation in writing.
- Receipt of payment for all fees is required prior to service of an order or award.

JAMS agreement to render services is with the attorney, the party, and/or other representatives of the party.

Exhibit A-5

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TERVELA INC.", FILED IN THIS OFFICE ON THE ELEVENTH DAY OF JULY, A.D. 2014, AT 3:13 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

Jeffrey W. Bullock, Secretary of State

4058991 8100

AUTHENTICATION: 1528604

140945461

DATE: 07-11-14

You may verify this certificate online
at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:13 PM 07/11/2014
FILED 03:13 PM 07/11/2014
SRV 140945461 - 4058991 FILE

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION OF

TERVELA INC.

Tervela Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), certifies that:

A. The name of the Corporation is Tervela Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 9, 2005.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Corporation's Certificate of Incorporation.

C. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Tervela Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Eric Schnadig, a duly authorized officer of the Corporation, on July 11, 2014.

/s/Eric Schnadig
Eric Schnadig
Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of the Corporation is Tervela Inc.

ARTICLE II

The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 615 South DuPont Highway, in the City of Dover, in the County of Kent, in the State of Delaware 19901. The name of the registered agent at such address is National Corporate Research, Ltd.

ARTICLE IV

The total number of shares of stock that the corporation shall have authority to issue is One Hundred Twenty-Two Million, Twenty-Two Thousand, Five Hundred Four (122,022,504), consisting of Sixty-Three Million, Nine Hundred Twenty-Four Thousand, Five Hundred Eighty-Four (63,924,584) shares of Common Stock, $0.001 par value per share (which shall be designated herein as "**Common Stock**", and Fifty-Eight Million, Ninety-Seven Thousand, Nine Hundred Twenty (58,097,920) shares of Preferred Stock, $0.001 par value per share divided into 12 series. The first Series of Preferred Stock shall be designated "**Series A Preferred Stock**" and shall consist of Twenty Thousand (20,000) shares, the second Series of Preferred Stock shall be designated "**Series B Preferred Stock**" and shall consist of Sixty-Three Thousand, Five Hundred Ninety-Six (63,596) shares, the third Series of Preferred Stock shall be designated "**Series B-1 Preferred Stock**" and shall consist of Thirty-One Thousand, Three Hundred Twenty-Eight (31,328) shares, the fourth Series of Preferred Stock shall be designated "**Series C Preferred Stock**" and shall consist of Seventy Thousand, Eight Hundred One (70,801) shares, the fifth Series of Preferred Stock shall be designated "**Series C-1 Preferred Stock**" and shall consist of Twenty-Three Thousand, Nine Hundred Twelve (23,912) shares, the sixth Series of Preferred Stock shall be designated "**Series D Preferred Stock**" and shall consist of Five Hundred Sixty Seven Thousand, Seven (567,007) shares, the seventh Series of Preferred Stock shall be designated "**Series D-1 Preferred Stock**" and shall consist of Two Hundred Twenty Thousand, Seven Hundred Seven (220,707) shares, the eighth Series of Preferred Stock shall be designated "**Series AA Preferred Stock**" and shall consist of Two Million, Eight Hundred Eighty-Seven Thousand, Four Hundred Eighty-One (2,887,481) shares, the ninth Series of Preferred Stock shall be designated "**Series AA-1 Preferred Stock**" and shall consist of One Million, Four Hundred Ninety-Two Thousand, Fourteen (1,492,014) shares, the tenth Series of Preferred Stock shall be designated "**Series BB Preferred Stock**" and shall consist of Twenty-Two Million, Sixty Thousand, Nine Hundred Twenty Three (22,060,923) shares, the eleventh Series of Preferred Stock shall be designated "**Series BB-1 Preferred Stock**" and shall consist of Fourteen Million, Four Hundred Forty-Six Thousand, Ninety-Five (14,446,095) shares and the

twelfth Series of Preferred Stock shall be designated "**Series CC Preferred Stock**" and shall consist of Sixteen Million, Two Hundred Fourteen Thousand, Fifty-Six (16,214,056) shares.

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. Definitions. For purposes of this ARTICLE V, the following definitions shall apply:

(a) "**Accrued Dividends**" shall mean an amount equal to (x) $9.45 per share with respect to the Series A Preferred Stock, (y) $15.07 per share with respect to the Series B Preferred Stock and (z) $15.07 per share with respect to the Series B-1 Preferred Stock.

(b) "**Adjusted Net Cash**" shall mean the sum of (i) the product of (A) two (2) multiplied by (B) the difference of (1) the cash or cash equivalents actually received by the Corporation or any subsidiary of the Corporation in respect of the products or services of the business of Visual Mining, Inc. (the "**VMI Business"**) from the closing date of the acquisition of the VMI Business by the Corporation pursuant to the Asset Purchase Agreement by and between the Corporation and Visual Mining, Inc., dated as of June 19, 2014 (the "**VMI Closing Date**") through the earlier of (a) the date of determination of Adjusted Net Cash or (b) the fifth (5th) anniversary of the VMI Closing Date minus (2) the aggregate expenses (including operating and capital expenses) of the Corporation and its subsidiaries attributable to the VMI Business during such same period plus (ii) the difference of (A) the cash or cash equivalents actually received by the Corporation or any subsidiary of the Corporation in respect of the VMI Business following the fifth (5th) anniversary of the VMI Closing Date through the earlier of (a) the date of determination of Adjusted Net Cash or (b) the tenth (10th) anniversary of the VMI Closing Date minus (2) the aggregate expenses (including operating and capital expenses) of the Corporation and its subsidiaries attributable to the VMI Business during such same period. The calculation of Adjusted Net Cash shall be made by the Corporation's senior management, in good faith, and may be requested by any holder of Preferred Stock as of a certain date with ten days prior written notice to the Corporation.

(c) "**Conversion Price**" shall mean: (p) $59.00 per share for the Series A Preferred Stock, (q) $76.00 per share for the Series B Preferred Stock, (r) $76.00 per share for the Series B-1 Preferred Stock, (s) $112.00 per share for the Series C Preferred Stock, (t) $112.00 per share for the Series C-1 Preferred Stock, (u) $41.60 per share for the Series D Preferred Stock, (v) $41.60 per share for the Series D-1 Preferred Stock, (w) $3.471 per share for the Series AA Preferred Stock, (x) $3.471 per share for the Series AA-1 Preferred Stock, (y) $0.272 per share for the Series BB Preferred Stock and (z) $0.272 per share for the Series BB-1 Preferred Stock (in each case, subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

(d) "**Convertible Securities**" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(e) "**Corporation**" shall mean Tervela Inc.

(f) "**Distribution**" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, and (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right. In no event shall a distribution of assets of the Company pursuant to Section 3 hereof constitute a Distribution.

(g) "**Dividend Rate**" shall mean an annual rate of (p) six percent (6%) of the Original Issue Price of the Series A Preferred Stock, (q) six percent (6%) of the Original Issue Price of the Series B Preferred Stock, (r) six percent (6%) of the Original Issue Price of the Series B-1 Preferred Stock, (s) six percent (6%) of the Original Issue Price of the Series C Preferred Stock, (t) six percent (6%) of the Original Issue Price of the Series C-1 Preferred Stock, (u) six percent (6%) of the Original Issue Price of the Series D Preferred Stock, (v) six percent (6%) of the Original Issue Price of the Series D-1 Preferred Stock, (w) six percent (6%) of the Original Issue Price of the Series AA Preferred Stock, (x) six percent (6%) of the Original Issue Price of the Series AA-1 Preferred Stock, (y) six percent (6%) of the Original Issue Price of the Series BB Preferred Stock and (z) six percent (6%) of the Original Issue Price of the Series BB-1 Preferred Stock (in each case, subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein). The Dividend Rate with respect to the Series CC Preferred Stock shall be zero percent (0%).

(h) "**Junior Preferred Stock**" shall mean the Series A Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series C-1 Preferred Stock, the Series D Preferred Stock and the Series D-1 Preferred Stock.

(i) "**Liquidation Preference**" shall mean (o) $100.00 per share for the Series A Preferred Stock, (p) $159.60 per share for the Series B Preferred Stock, (q) an amount per share of Series B-1 Preferred Stock equal to the difference of (i) $159.60 minus (ii) the remainder of (A) the aggregate Liquidation Preference payable to the holders of shares of Series CC Preferred Stock in respect of such shares divided by (B) the aggregate number of shares of Series B-1 Preferred Stock then outstanding, provided that in the event the calculation in this clause (q)(ii) would result in an amount greater than $159.60, the amount in this clause (q)(ii) shall be deemed to be $159.60 (the amount as determined in this clause (q)(ii) , the "**B-1 Preference Reduction**"), (r) $285.30 per share for the Series C Preferred Stock, (s) an amount per share of Series C-1 Preferred Stock equal to the difference of (i) $285.30 minus (ii) the remainder of (A) the difference of (1) the aggregate Liquidation Preference payable to the holders of shares of Series CC Preferred Stock in respect of such shares minus (2) the product of the B-1 Preference Reduction multiplied by the number of shares of Series B-1 Preferred Stock then outstanding, divided by (B) the aggregate number of shares of Series C-1 Preferred Stock then outstanding, provided that in the event the calculation in this clause (s)(ii) would result in an amount greater than $285.30, the amount in this clause (s)(ii) shall be deemed to be $285.30 (the amount as determined in this clause (s)(ii), the "**C-1 Preference Reduction**"), (t) $41.60 per share for the Series D Preferred Stock, (u) an amount per share of Series D-1 Preferred Stock

equal to the difference of (i) $41.60 minus (ii) the remainder of (A) the difference of (1) the aggregate Liquidation Preference payable to the holders of shares of Series CC Preferred Stock in respect of such shares minus (2) the product of the B-1 Preference Reduction multiplied by the number of shares of Series B-1 Preferred Stock then outstanding minus (3) the product of the C-1 Preference Reduction multiplied by the number of shares of Series C-1 Preferred Stock then outstanding, divided by (B) the aggregate number of shares of Series D-1 Preferred Stock then outstanding, provided that in the event the calculation in this clause (u)(ii) would result in an amount greater than $41.60, the amount in this clause (u)(ii) shall be deemed to be $41.60 (the amount as determined in this clause (u)(ii), the "**D-1 Preference Reduction**"), (v) $3.471 per share for the Series AA Preferred Stock, (w) an amount per share of Series AA-1 Preferred Stock equal to the difference of (i) $3.471 minus (ii) the remainder of (A) the difference of (1) the aggregate Liquidation Preference payable to the holders of shares of Series CC Preferred Stock in respect of such shares minus (2) the product of the B-1 Preference Reduction multiplied by the number of shares of Series B-1 Preferred Stock then outstanding minus (3) the product of the C-1 Preference Reduction multiplied by the number of shares of Series C-1 Preferred Stock then outstanding minus (4) the product of the D-1 Preference Reduction multiplied by the number of shares of Series D-1 Preferred Stock then outstanding, divided by (B) the aggregate number of shares of Series AA-1 Preferred Stock then outstanding, provided that in the event the calculation in this clause (w)(ii) would result in an amount greater than $3.471, the amount in this clause (w)(ii) shall be deemed to be $3.471 (the amount as determined in this clause (w)(ii), the "**AA-1 Preference Reduction**"), (x) $0.272 per share for the Series BB Preferred Stock (in each case, (y) an amount per share of Series BB-1 Preferred Stock equal to the difference of (i) $0.272 minus (ii) the remainder of (A) the difference of (1) the aggregate Liquidation Preference payable to the holders of shares of Series CC Preferred Stock in respect of such shares minus (2) the product of the B-1 Preference Reduction multiplied by the number of shares of Series B-1 Preferred Stock then outstanding minus (3) the product of the C-1 Preference Reduction multiplied by the number of shares of Series C-1 Preferred Stock then outstanding minus (4) the product of the D-1 Preference Reduction multiplied by the number of shares of Series D-1 Preferred Stock then outstanding minus (5) the product of the AA-1 Preference Reduction multiplied by the number of shares of Series AA-1 Preferred Stock then outstanding, divided by (B) the aggregate number of shares of Series BB-1 Preferred Stock then outstanding, provided that in the event the calculation in this clause (y)(ii) would result in an amount greater than $0.272, the amount in this clause (y)(ii) shall be deemed to be $0.272 (the amount as determined in this clause (y)(ii), the "**BB-1 Preference Reduction**"), and (z) an amount per share of Series CC Preferred Stock equal to the remainder of (i) the aggregate Adjusted Net Cash received by the Corporation from the VMI Closing Date until the date of determination of the Liquidation Preference for a share of Series CC Preferred Stock divided by (ii) the number of shares of Series CC Preferred Stock then outstanding, *provided,* that such Liquidation Preference specified for such share of Series CC Preferred Stock shall not exceed an amount equal to the sum of the Liquidation Preferences specified for a share of Series BB-1 Preferred Stock, a share of Series AA-1 Preferred Stock, a share of Series B-1 Preferred Stock, a share of Series C-1 Preferred Stock and a share of Series D-1 Preferred Stock as of the date of determination calculated as if there are no shares of Series CC Preferred Stock outstanding as of such date of determination, in each case subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein, in each case subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein.

(j) "**Options**" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(k) "**Original Issue Price**" shall mean (p) $100.00 per share for the Series A Preferred Stock, (q) $159.60 per share for the Series B Preferred Stock, (r) $159.60 per share for the Series B-1 Preferred Stock, (s) $285.30 per share for the Series C Preferred Stock, (t) $285.30 per share for the Series C-1 Preferred Stock, (u) $41.60 per share for the Series D Preferred Stock, (v) $41.60 per share for the Series D-1 Preferred Stock, (w) $3.471 per share for the Series AA Preferred Stock, (x) $3.471 per share for the Series AA-1 Preferred Stock, (y) $0.272 per share for the Series BB Preferred Stock and (z) $0.272 per share for the Series BB-1 Preferred Stock (in each case, subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein). The Original Issue Price with respect to the Series CC Preferred Stock shall be $0 per share.

(l) "**Preferred Stock**" shall mean the Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series AA Preferred Stock, Series AA-1 Preferred Stock, Series BB Preferred Stock, Series BB-1 Preferred Stock and Series CC Preferred Stock.

(m) "**Recapitalization**" shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

2. Dividends.

(a) Preferred Stock. In any calendar year, the holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Preferred Stock (the "**Preferred Dividend**"). If dividends are declared by the Board of Directors, the Dividend Rate for any share of Preferred Stock shall be based upon the issue date for such share of Preferred Stock. No Distributions shall be made with respect to the Common Stock unless dividends on the Preferred Stock have been declared in accordance with the preferences stated herein and have been paid or set aside for payment to the Preferred Stock holders. The right to receive dividends shall not be cumulative, and no right to dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid. Payment of any dividends to the holders of the Preferred Stock shall be on a pro rata, *pari passu* basis in proportion to the Dividend Rates for each series of Preferred Stock. Subject to Section 3 hereof, the Accrued Dividends shall be payable to the holders of the Series A Preferred Stock, Series B Preferred Stock and Series B-1 Preferred Stock, in preference to and before any distribution or payment shall be made to the holders of any Common Stock upon the occurrence of any of the following events: (i) upon redemption of the respective series of Preferred Stock in accordance with Section 6, or (ii) upon a liquidation, dissolution or winding up of the Corporation pursuant to Section 3.

(b) Additional Dividends. After the payment or setting aside for payment of the dividends described in Section 2(a), any additional dividends (other than dividends on Common Stock payable solely in Common Stock and the payment of cash in lieu of

the issuance of fractional shares of Common Stock) declared or paid in any fiscal year shall be declared or paid among the holders of the Preferred Stock (other than in respect of shares of Series CC Preferred Stock, which shall not be entitled to receive any dividends therefor) and Common Stock then outstanding in proportion to the greatest whole number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock (other than shares of Series CC Preferred Stock) were converted at the then-effective Conversion Rate (as defined in Section 4 hereof).

(c) Non-Cash Distributions. Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

3. Liquidation Rights.

(a) Liquidation Preference.

(i) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series CC Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series BB Preferred Stock, Series BB-1 Preferred Stock, Series AA Preferred Stock, Series AA-1 Preferred Stock, Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Common Stock, by reason of their ownership of such stock, an amount per share for each share of Series CC Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series CC Preferred Stock and (ii) all dividends accrued but unpaid on such share of Series CC Preferred Stock, if any. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to the holders of the Series CC Preferred Stock to the extent permitted by Delaware law governing distributions to stockholders are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(i), then all of assets of the Corporation available for distribution to stockholders pursuant to Delaware law governing distributions to stockholders shall be distributed with equal priority and pro rata among the holders of the Series CC Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(i).

(ii) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and following the payment in full to the holders of Series CC Preferred Stock of the amounts required by Section 3(a)(i), the holders of the Series BB Preferred Stock and Series BB-1 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series AA Preferred Stock, Series AA-1 Preferred Stock, Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Common Stock, by reason of their ownership of such stock, an amount per share for each share of Series BB Preferred Stock or Series BB-1 Preferred Stock held by them, as the case may be, equal to

the sum of (i) the Liquidation Preference specified for such share of Series BB Preferred Stock or Series BB-1 Preferred Stock, as applicable, and (ii) all dividends accrued but unpaid on such share of Series BB Preferred Stock or Series BB-1 Preferred Stock, as applicable, if any. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to the holders of the Series BB Preferred Stock and Series BB-1 Preferred Stock to the extent permitted by Delaware law governing distributions to stockholders are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(ii), then all of assets of the Corporation available for distribution to stockholders pursuant to Delaware law governing distributions to stockholders shall be distributed with equal priority and pro rata among the holders of the Series BB Preferred Stock and Series BB-1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(ii).

(iii) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and following the payment in full to the holders of Series CC Preferred Stock of the amounts required by Section 3(a)(i) and the payment in full to the holders of Series BB Preferred Stock and Series BB-1 Preferred Stock of the amounts required Section 3(a)(ii), the holders of the Series AA Preferred Stock and Series AA-1 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Common Stock, by reason of their ownership of such stock, an amount per share for each share of Series AA Preferred Stock or Series AA-1 Preferred Stock held by them, as the case may be, equal to the sum of (i) the Liquidation Preference specified for such share of Series AA Preferred Stock or Series AA-1 Preferred Stock, as applicable, and (ii) all dividends accrued but unpaid on such share of Series AA Preferred Stock or Series AA-1 Preferred Stock, as applicable, if any. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to the holders of the Series AA Preferred Stock and Series AA-1 Preferred Stock to the extent permitted by Delaware law governing distributions to stockholders are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(iii), then all of assets of the Corporation available for distribution to stockholders pursuant to Delaware law governing distributions to stockholders shall be distributed with equal priority and pro rata among the holders of the Series AA Preferred Stock and Series AA-1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(iii).

(iv) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and following the payment in full to the holders of Series CC Preferred Stock the amounts required by Section 3(a)(i), the payment in full to the holders of Series BB Preferred Stock and Series BB-1 Preferred Stock of the amounts required by Section 3(a)(ii) and the payment in full to the holders of Series AA Preferred Stock and Series AA-1 Preferred Stock of the amounts required by Section 3(a)(iii), the holders of Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their

ownership of such stock, an amount per share for each share of Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock or Series D-1 Preferred Stock, as applicable, held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock or Series D-1 Preferred Stock, as applicable, and (ii) all dividends accrued but unpaid on such share of Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock or Series D-1 Preferred Stock, as applicable, including, the Accrued Dividends, if any. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock to the extent permitted by Delaware law governing distributions to stockholders are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(iv), then all of assets of the Corporation available for distribution to stockholders pursuant to Delaware law governing distributions to stockholders shall be distributed with equal priority and pro rata among the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock and Series D-1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(iv).

(b) Remaining Assets. After the payment or setting aside for payment to the holders of Preferred Stock of the full amounts specified in Section 3(a) above, the entire remaining assets of the Corporation legally available for distribution shall be distributed pro rata to holders of the Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them.

(c) Reorganization. For purposes of this Section 3 and Section 2(a) hereof, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (a) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), as a result of shares in the Corporation held by such holders prior to such transaction, at least fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions; (b) a sale, lease, exclusive license or other conveyance of all or substantially all of the assets (including substantially all of the intellectual property assets) of the Corporation; or (c) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(d) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or

winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined in good faith by a majority of the Board of Directors then in office (including two of the Preferred Directors (defined below)), except that any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national exchange system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this subsection 3(d), "**trading day**" shall mean any day which the exchange or system on which the securities to be distributed, are traded is open and "**closing prices**" or "**closing bid prices**" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or the Nasdaq Stock Market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times,

(e) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a liquidation, dissolution or winding-up of the Corporation, each such holder of shares of a series of Preferred Stock (other than shares of Series CC Preferred Stock) shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series into shares of Common Stock (and an equivalent number of shares of Series CC Preferred Stock with respect to conversions of shares of Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock, Series AA-1 Preferred Stock or Series BB-1 Preferred Stock, as provided in Section 4(a)) immediately prior to the liquidation, dissolution or winding-up of the Corporation if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder in respect of such series of Preferred Stock and the equivalent number of shares of Series CC Preferred Stock if such holder did not convert such series of Preferred Stock and such equivalent number of shares of Series CC Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this

paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of Preferred Stock, other than shares of Series CC 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 the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series; provided that in connection with any conversion of a share of Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock, Series AA-1 Preferred Stock or Series BB-1 Preferred Stock pursuant to this Section 4(a) (or any deemed conversion of any such share of Preferred Stock pursuant to Section 3(e)), one share of Series CC Preferred Stock held by such stockholder shall also be converted for no additional shares of Common Stock or any other consideration. The number of shares of Common Stock into which each share of Preferred Stock of a series, other than shares of Series CC Preferred Stock, may be converted is hereinafter referred to as the "**Conversion Rate**" for each such series. Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "**Securities Act**"), covering the offer and sale of the Corporation's Common Stock, provided that the offering price per share is not less than $18.00 (as adjusted for Recapitalizations) and the aggregate gross proceeds to the Corporation are not less than $30,000,000 (a "**Qualified IPO**"), or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of at least fifty percent (50%) of the Series BB Preferred Stock and Series BB-1 Preferred Stock then outstanding (voting together as a single class and not as a separate series on an as if converted to Common Stock basis), or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an "**Automatic Conversion Event**"). Upon on Automatic Conversion Event, each share of Series CC Preferred Stock then outstanding shall be automatically cancelled without any further action on the part of the Company or such holder or the receipt of, or payment by the Company of, any consideration therefor.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares

of Common Stock, and to receive certificates therefor, he shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock (and, in the case of a conversion of any shares of Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock, Series AA-1 Preferred Stock or Series BB-1 Preferred Stock, the certificate or certificates representing the equivalent number of shares of Series CC Preferred Stock required to be converted pursuant to Section 4(a)) or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any accrued and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this paragraph 4(d), "**Additional Shares of Common**" shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of:

(1) shares of Common Stock and options, warrants or other rights to purchase Common Stock issued to employees, officers or directors of, or consultant or advisors to the Corporation or any subsidiary pursuant to restricted stock purchase agreements, stock option plans, warrant agreements or similar arrangements approved by the Corporation's Board of Directors not to exceed 4,109,366 (as adjusted for Recapitalizations) shares or options, warrants or other rights to purchase Common Stock net of any stock repurchases or expired or terminated options pursuant to the terms of any option plan, restricted stock purchase agreement or similar arrangement or such greater amount approved by a majority of Directors then in office (including one of the Series B Directors (as defined below));

(2) shares of Common Stock issued upon the exercise or conversion of Options or Convertible Securities outstanding as of the date of the filing of this Amended and Restated Certificate of Incorporation or upon the exercise or conversion of Options or Convertible Securities counted against the limits set forth in sub-paragraph 4(d)(i)(1) above;

(3) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to paragraph 4(e), 4(f) or 4(g) hereof;

(4) shares of Common Stock issued in a registered public offering under the Securities Act pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;

(5) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by a majority of the Board of Directors then in office (including one of the Series B Directors (defined below));

(6) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by a majority of the Board of Directors then in office (including one of the Series B Directors (defined below));

(7) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by a majority of the Board of Directors then in office (including one of the Series B Directors (defined below));

(8) shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services

pursuant to transactions approved by a majority of the Board of Directors then in office (including one of the Series B Directors (defined below)); and

(9) shares of Series BB Preferred Stock issued pursuant to the Purchase Agreement (as defined below).

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of any series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price for the Series BB Preferred Stock in effect on the date of, and immediately prior to such issue.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the date of the filing of this Amended and Restated Certificate of Incorporation shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(e), 4(f) and 4(g) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each Series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii)) without consideration or for a consideration per share less than the Conversion Price for the Series D Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price for each affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) 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 issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued 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 issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than $0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which,

together with such amount and any other amounts so carried forward, equal $0.01 or more in the aggregate. For the purposes of this Subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 4(d)(iii) shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock,

the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above, if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2), provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of this corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalently as may be practicable.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at

its expense shalt promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(j) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of at least fifty percent (50%) of the outstanding shares of such series either before or after the issuance causing the adjustment.

(k) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to Section 3(c);

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock at least 10 days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of at least fifty percent (50%) of the Preferred Stock, voting together as a single class.

In the event the notice requirements of this section are not complied with or waived, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as

such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in this section.

(l) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the 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 purpose.

(m) Special Mandatory Conversion.

(i) In the event:

(1) this Corporation consummates, in a transaction or a series of related transactions, a financing pursuant to which any holders of Preferred Stock are entitled to exercise their right of first refusal set forth in Section 4 of that certain Third Amended and Restated Investors' Rights Agreement, dated on or about March 9, 2012, by and among this Corporation and the Investors (as defined therein), as amended from time to time (such right to be referred to as the "**Right of First Refusal**" and such agreement to be referred to as the "**Rights Agreement**");

(2) the Board determines (with interested directors able to vote for purposes of this provision and with all of the Series BB Directors voting in favor) that it is in the best interests of this Corporation for the Major Holders of this Corporation to participate in such financing (in which case such financing will be deemed a "**Mandatory Offering**") and determines the aggregate dollar amount to be invested by all such Major Holders of Preferred Stock (the "**Aggregate Investment Amount**"), which amount may be more than or less than such Major Holders' right to participate in the financing pursuant to the Right of First Refusal;

(3) this Corporation delivers a notice ("**Notice**") to the Major Holders (1) stating this Corporation's bona fide intention to consummate such financing, (2) stating the number of securities to be offered, (3) stating the price and terms upon which it proposes to offer such securities, (4) identifying the Pro Rata Share (as defined below) of each Major Holder of the Aggregate Investment Amount, and (5) offering each Major Holder the right to purchase such Major Holder's Pro Rata Share of the Aggregate Investment Amount within the time periods set forth in the Notice; and

(4) a Major Holder and/or any Section 4(m) Affiliate(s) (as defined below) (a "**Non-Participating Holder**") does not acquire at least its Pro Rata Share of the Aggregate Investment Amount (whether or not such Aggregate Investment Amount is more than or less than the aggregate dollar amount actually received by the Corporation from the Major Holders in connection with the Mandatory Offering, as may be the case, for example, if

certain Major Holders do not participate in the Mandatory Offering) within the time periods set forth in the Notice; then that percentage of each Non-Participating Holder's shares of each series of Preferred Stock equal to the percentage of such Non-Participating Holder's Pro Rata Share of the Aggregate Investment Amount not acquired by such Non-Participating Holder shall automatically and without further action on the part of such holder be converted, effective immediately prior to the consummation of the Mandatory Offering (the "**Mandatory Offering Date**"), into shares of Common Stock of this Corporation at the Conversion Price then in effect for such series of Preferred Stock (as adjusted for Recapitalizations). For purposes of this Section 4(m), each Major Holder's "**Pro Rata Share**" of the Aggregate Investment Amount shall be that number of securities (i) equal to the product of (A) the total number of securities to be sold in the Mandatory Offering multiplied by (B) the quotient of (x) the total number of shares of Common Stock owned by such Major Holder (assuming full conversion of all Preferred Stock and exercise of all outstanding convertible securities, rights, options and warrants, directly or indirectly, into Common Stock held by said holder), divided by (y) the total number of shares of Common Stock owned by all Major Holders (assuming full conversion of all Preferred Stock and exercise of all outstanding convertible securities, rights, options and warrants), or (ii) such lesser number as determined by the Board, including all of the Series B Directors. For the purposes of determining whether a Major Holder has purchased its Pro Rata Share, (x) the aggregate amount of the face of all such securities purchased in the Mandatory Offering by such Major Holder and all Section 4(m) Affiliates of such Major Holder will be aggregated, and (y) the Pro Rata Share of such Major Holder and all Section 4(m) Affiliates of such Major Holder will be aggregated. Solely for purposes of this Section 4(m), the term "**Section 4(m) Affiliate**" shall mean, with respect to any person or entity, a person or entity that, directly or indirectly through one or more intermediaries, Controls (as defined below), is Controlled by or is under common Control with the first person or entity. Solely for purposes of this Section 4(m), "**Control**" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(5) The holder of any shares of Preferred Stock converted pursuant to this Section 4(m) shall deliver to this Corporation during regular business hours at the office of any transfer agent of this Corporation for the Preferred Stock, or at such other place as may be designated by this Corporation, the certificate or certificates for the shares so converted, duly endorsed or assigned in blank or to this Corporation. As promptly as practicable thereafter, this Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Common Stock to be issued and such holder shall be deemed to have become a stockholder of record of Common Stock on the Mandatory Offering Date, unless the transfer books of this Corporation are closed on that date, in which event such holder shall be deemed to have become a stockholder of record of Common Stock on the next succeeding date on which the transfer books are open. Upon conversion pursuant to this Section 4(m), the shares of Preferred Stock so converted shall be canceled and shall not be subject to reissuance.

(ii) Notwithstanding any of the foregoing, no shares of Preferred Stock of this Corporation shall be converted into shares of Common Stock of this Corporation in connection with any Mandatory Offering if the price per share of the securities

issued in such Mandatory Offering is equal to or greater than the then current Original Issue Price for the Series C Preferred Stock.

5. Voting.

(a) Restricted Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together as a single class on all matters and not as separate classes.

(b) No Class or Series Voting. Other than as provided herein or required by law, there shall be no class or series voting.

(c) Preferred Stock. Each holder of Preferred Stock, shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder, other than shares of Series CC Preferred Stock, could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote, other than matters requiring a class vote of the Common Stock. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded. Notwithstanding anything herein to the contrary, holders of shares of Series CC Preferred Stock shall not be entitled to a vote in respect of such shares of Series CC Preferred Stock on any matter, and shall have not voting rights or powers except on matters requiring a series vote of the Series CC Preferred Stock.

(d) Election of Directors. For so long as there are at least 1,000 shares of the Series A Preferred Stock outstanding, the holders of the outstanding shares of Series A Preferred Stock, voting as a separate series, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (the "**Series A Director**"). For so long as there are at least 1,000 shares of the Series B Preferred Stock and/or Series B-1 Preferred Stock outstanding, the holders of the outstanding shares of Series B Preferred Stock and Series B-1 Preferred Stock, voting together as a separate series on an as-converted to Common Stock basis, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (the "**Series B Director**"). For so long as there are at least 1,000,000 shares of the Series BB Preferred Stock and/or the Series BB-1 Preferred Stock outstanding, the holders of the outstanding shares of Series BB Preferred Stock and Series BB-1 Preferred Stock, voting together as a separate series on an as-converted to Common Stock basis, shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (the "**Series BB Directors**," together with the Series A Director and the Series B Director, the "**Preferred Directors**") For so long as the Series A Preferred Stock, the Series B Preferred Stock or the Series B-1 Preferred Stock is entitled to elect directors pursuant to the provisions of this Section 5(e), the holders of the outstanding shares of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or

pursuant to each consent of the Corporation's stockholders for the election of directors (the "**Common Directors**"). The holders of the outstanding shares of Common Stock and Preferred Stock, voting together as if a single class and on an as converted to Common Stock basis, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (the "**Independent Director**"). The holders of the outstanding shares of Common Stock and Preferred Stock, voting together as if a single class and on an as converted to Common Stock basis, shall be entitled to elect the remainder of the members of the Corporation's Board of Directors. After such time as the Series A Preferred Stock, the Series B Preferred Stock or the Series B-1 Preferred Stock are no longer permitted to name the Series A Director and the Series B Directors, respectively, the Preferred Stock and the Common Stock shall vote together (on an as if converted basis) with respect to the election of all directors.

Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Amended and Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of this corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

(e) Director Voting. On any matter presented to the directors of the Corporation for their action or consideration at any meeting of the directors of the Corporation (or by written consent of directors in lieu of meeting), (a) each of the Series BB Directors shall be entitled to cast three (3) votes and (b) each other director shall be entitled to cast one vote.

(f) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the stock of the Corporation (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation), irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

(g) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

6. Redemption.

(a) At any time after March 9, 2017, and at the election of the holders of at least fifty percent (50%) of the then outstanding shares of the Series BB Preferred Stock and Series BB-1 Preferred Stock, together with respect to both such series of Preferred Stock, Series AA Preferred Stock and Series AA-1 Preferred Stock, together with respect to both such series of Preferred Stock, or the Junior Preferred Stock, as applicable, in each case, voting together as a single class on an as converted to Common Stock basis, this Corporation shall redeem, unless prohibited by Delaware law governing distributions to shareholders, all (but not less than all) outstanding shares of the Series BB Preferred Stock and Series BB-1 Preferred Stock, the Series AA Preferred Stock and Series AA-1 Preferred Stock or the Junior Preferred Stock, respectively, which have not been converted into Common Stock pursuant to Section 4 hereof (the "**Redemption Date**") in three (3) equal annual installments. The Corporation shall redeem the shares of the applicable series of Preferred Stock by paying in cash an amount per share equal to the Original Issue Price for each such series of Preferred Stock, plus an amount equal to all unpaid dividends including the Accrued Dividends thereon, whether or not declared or earned (the "**Redemption Price**"). The number of shares of such series of Preferred Stock that the Company shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of the applicable series of Preferred Stock outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). If on any Redemption Date Delaware law governing distributions to stockholders prevents the Corporation from redeeming all shares of the applicable series of Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law. Upon the redemption of any and each share of Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock, Series AA-1 Preferred Stock or Series BB-1 Preferred Stock, one share of Series CC Preferred Stock held by the holder of such share of Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock, Series AA-1 Preferred Stock or Series BB-1 Preferred Stock, as applicable, shall be cancelled automatically without any consideration being paid to the holder thereof and without further action required on the part of the Corporation or such stockholder.

(b) At least fifteen (15), but no more than thirty (30) days prior to the Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the applicable series of Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the holder's certificate or certificates - representing the shares to be redeemed (the "**Redemption Notice**"). Except as provided herein, on or after the Redemption Date each holder of Preferred Stock to be redeemed shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be

cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of the applicable series of Preferred Stock designated for redemption in the Redemption Notice as holders of the applicable series of Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to the shares designated for redemption on such date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If Delaware law governing distributions to stockholders prevents the Corporation from redeeming the total number of shares of the applicable series of Preferred Stock to be redeemed on such date, the Corporation shall ratably redeem the maximum number of shares that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law. The shares of the applicable series of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein.

(d) On or prior to the Redemption Date, the Corporation shall deposit the Redemption Price of all shares of the applicable series of Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust corporation having aggregate capital and surplus in excess of $100,000,000, as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered a share certificate to the Corporation pursuant to Section 6(c) above. As of the Redemption Date, the deposit shall constitute full payment of the shares to their holders, and from and after the Redemption Date the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust corporation payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this Section 6(d) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4 hereof prior to the applicable Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this Section 6(d) remaining unclaimed at the expiration of two (2) years following such Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

7. Amendments and Changes. As long as 2,000,000 shares of the Preferred Stock shall be issued and outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of at least fifty (50%) of the outstanding shares of the Preferred Stock, other than shares of the Series CC Preferred Stock:

(a) amend, alter or repeal any provision of the Certificate of Incorporation or bylaws of the Corporation (including pursuant to a merger) if such action would

alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Preferred Stock or any series thereof;

(b) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Common Stock or Preferred Stock or any series thereof;

(c) authorize or create (by reclassification, merger or otherwise) any new class or series of shares having rights, preferences or privileges with respect to dividends, redemption or payments upon liquidation senior to or on a parity with any series of Preferred Stock or having voting rights other than those granted to the Preferred Stock generally;

(d) authorize a merger, acquisition or sale of substantially all of the assets of the Corporation or any of its subsidiaries (other than a merger exclusively to effect a change of domicile of the Corporation);

(e) file a petition under the federal bankruptcy laws or any state insolvency law;

(f) increase or decrease the size of the Board of Directors;

(g) encumber or grant a security interest in all or substantially all of the assets of the Corporation in connection with an indebtedness of the Corporation;

(h) acquire a material amount of assets through a merger or purchase of all or substantially all of the assets or capital stock of another entity;

(i) declare or pay any Distribution with respect to the Preferred Stock (other than as set forth in Section 6 hereof) or Common Stock of the Corporation;

(j) increase the number of shares authorized for issuance under any existing stock or option plan or create any new stock or option plan;

(k) change the principal line of business of the Corporation;

(l) amend this Section 7.

8. Reissuance of Preferred Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 4, redeemed pursuant to Section 6 or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by this Corporation.

9. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation so provide.

ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation.

ARTICLE IX

Unless otherwise set forth herein, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE X

1. The Corporation shall indemnify, subject to the requirements of subsection 4 of this Article, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

2. The Corporation shall indemnify, subject to the requirements of subsection 4 of this Article, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against

expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

3. To the extent that a director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1) and (2) of this Article, or in defense of any claim, issue or matter therein, the Corporation shall indemnify him or her against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

4. Any indemnification under subsections (1) and (2) of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsections (1) and (2) of this Article. Such determination shall be made with respect to a person who is a director or officer at the time of such determination (a) by the Board of Directors by a majority vote of directors who were not parties to such action, suit or proceeding even though less than a quorum, or (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (c) if there are no such directors or if such disinterested directors so direct, by independent legal counsel in a written opinion, or (d) by the stockholders. Neither the failure of the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) to have made a determination prior to the commencement of such action that such indemnification or reimbursement or advancement of expenses is proper in the circumstances nor an actual determination by the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) that such person is not entitled to such indemnification or reimbursement or advancement of expenses shall constitute a defense to the action or create a presumption that such person is not so entitled. Such person shall also be indemnified for any expenses incurred in connection with successfully establishing his or her right to such indemnification or reimbursement or advancement of expenses, in whole or in part, in any such proceeding.

5. Expenses (including attorneys' fees) incurred by a director or officer in defending a civil or criminal action, suit or proceeding may 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 or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

6. The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article shall not limit the Corporation from providing any other indemnification or advancement of expenses permitted by law nor shall they be deemed exclusive or any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

7. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article.

8. The provisions of this Article shall be a contract between the Corporation, on the one hand, and each director and officer who serves in such capacity at any time while this Article is in effect and any other person entitled to indemnification hereunder, on the other hand, pursuant to which the Corporation and each such director, officer, or other person intend to be, and shall be, legally bound. No repeal or modification of this Article shall affect any rights or obligations with respect to any state of facts then or therefore existing or thereafter arising or any proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of acts.

9. For the purposes of this Article, references to "**the Corporation**" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence has continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article with respect to the resulting or surviving corporations as he or she would have with respect to such constituent corporation if its separate existence had continued.

10. For purposes of this Article, references to "**other enterprises**" shall include employee benefit plans; references to "**fines**" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "**serving at the request of the Corporation**" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to any employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the Corporation**" as referred to in this Article.

11. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such a person.

12. Any director or officer of the Corporation serving in any capacity of (a) another corporation of which a majority of the shares entitled to vote in the election of its directors is held, directly or indirectly, by the Corporation or (b) any administrator of employee benefit plan of the Corporation or any corporation referred to in clause (a) shall be deemed to be doing so at the request of the Corporation.

13. Any person entitled to be indemnified or to reimbursement or advancement of expenses as a matter of right pursuant to this Article may elect to have the right to indemnification or reimbursement or advancement of expenses interpreted on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the applicable proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time of such indemnification or reimbursement or advancement of expenses is sought. Such election shall be made, by a notice in writing to the Corporation, at the time indemnification or reimbursement or advancement of expenses is sought; provided, however, that if no such notice is given, the right to indemnification or reimbursement or advancement of expenses shall be determined by the law in effect at the time indemnification or reimbursement or advancement of expenses is sought.

14. The personal liability of Directors of the Corporation to the Corporation or its stockholders for monetary damages shall be eliminated to the fullest extent permitted under Section 102(b)(7) of the General Corporation Law of the State of Delaware.

15. Neither any amendment nor repeal of this ARTICLE X, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of 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 the Corporation.

STANDARIZD FUND ACCOUNTING REPORT for Acartha Group LLC, MIC VII LLC,
Acartha Technology Partners LP, and Gryphon Investments III
Claire M. Schenk Receivership; Civil Court Docket No. 16
Reporting Period 4/1/2014 to 6/30/2014

EXHIBIT A-6

FUND ACCOUNTING (See Instructions):

		US Bank Acartha Technology Partners	US Bank MIC VII	Parkside Tervela Acquisition III	Parkside Acartha Group Money Market	Parkside Acartha Technology Partners Money Market	Parkside MIC VII Money Market	Parkside Integrien Acquisition Money Market (Closed)	East West Bank Acartha Technology Partners	PNC Bank MIC VII	Subtotal	Grand Total
Line 1	Beginning Balance (As of 4/01/2014):	$49,864.96	$72,812.18	$3,741.10	302,738.12	166,633.45	135,464.73	20.89	$0.00	$2,031.74	$733,307.17	$733,307.17
	Increases in Fund Balance:										0.00	0.00
Line 2	Business Income										0.00	0.00
Line 3	Cash and Securities										0.00	0.00
Line 4	Interest/Dividend Income	14.90	21.78	0.44	119.27	103.11	83.88		1,282.19		1,625.57	1,625.57
Line 5	Business Asset Liquidation				20.89				3,758,436.75		3,758,457.64	3,758,457.64
Line 6	Personal Asset Liquidation										0.00	0.00
Line 7	Third-Party Litigation Income										0.00	0.00
Line 8	Miscellaneous - Other										0.00	0.00
	Total Funds Available (Lines 1 – 8):	$49,879.86	$72,833.96	3,741.54	302,878.28	166,736.56	135,548.61	20.89	3,759,718.94	2,031.74	4,493,390.38	4,493,390.38
	Decreases in Fund Balance:										0.00	0.00
Line 9	Disbursements to Investors										0.00	0.00
Line 10	Disbursements for Receivership Operations							20.89			20.89	20.89
Line 10a	*Disbursements to Receiver or Other Professionals*				124,245.18	250.00					124,495.18	124,495.18
Line 10b	*Business Asset Expenses*				30.00	30.00					60.00	60.00
Line 10c	*Personal Asset Expenses*										0.00	0.00
Line 10d	*Investment Expenses*										0.00	0.00
Line 10e	*Third-Party Litigation Expenses*										0.00	0.00
	1. Attorney Fees										0.00	0.00
	2. Litigation Expenses										0.00	0.00
	Total Third-Party Litigation Expenses										0.00	0.00
Line 10f	*Tax Administrator Fees and Bonds*										0.00	0.00
Line 10g	*Federal and State Tax Payments*			500.00	2,900.00	2,300.00	1,750.00				7,450.00	7,450.00
	Total Disbursements for Receivership Operations										0.00	0.00
Line 11	Disbursements for Distribution Expenses Paid by the Fund:										0.00	0.00
Line 11a	*Distribution Plan Development Expenses:*										0.00	0.00
	1. Fees:										0.00	0.00
	Fund Administrator………………………………………….										0.00	0.00
	Independent Distribution Consultant (IDC)……………………………………………………….										0.00	0.00
	Distribution Agent…………………………………………..										0.00	0.00
	Consultants……………………………………………….										0.00	0.00
	Legal Advisers……………………………………………										0.00	0.00
	Tax Advisers………………………………………………										0.00	0.00
	2. Administrative Expenses										0.00	0.00
	3. Miscellaneous										0.00	0.00
	Total Plan Development Expenses										0.00	0.00
Line 11b	*Distribution Plan Implementation Expenses:*										0.00	0.00
	1. Fees:										0.00	0.00
	Fund Administrator…………………………………………										0.00	0.00
	IDC…………………………………………………………										0.00	0.00
	Distribution Agent………………………………………..										0.00	0.00
	Consultants………………………………………………										0.00	0.00
	Legal Advisers……………………………………………										0.00	0.00
	Tax Advisers………………………………………………										0.00	0.00
	2. Administrative Expenses										0.00	0.00
	3. Investor Identification:										0.00	0.00
	Notice/Publishing Approved Plan…………………………										0.00	0.00
	Claimant Identification…………………………………										0.00	0.00
	Claims Processing…………………………………………										0.00	0.00
	Web Site Maintenance/Call Center……………………										0.00	0.00
	4. Fund Administrator Bond										0.00	0.00
	5. Miscellaneous										0.00	0.00
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses										0.00	0.00
	Total Plan Implementation Expenses										0.00	0.00
	Total Disbursements for Distribution Expenses Paid by the Fund										0.00	0.00
Line 12	Disbursements to Court/Other:										0.00	0.00
Line 12a	*Investment Expenses/Court Registry Investment System (CRIS) Fees*										0.00	0.00
Line 12b	*Federal Tax Payments*										0.00	0.00
	Total Disbursements to Court/Other:										0.00	0.00
	Total Funds Disbursed (Lines 9 – 11):	0.00	0.00	500.00	127,175.18	2,580.00	1,750.00	20.89	0.00	0.00	132,026.07 0	132,026.07
											0.00	0.00
Line 13	Ending Balance (As of 6/30/2014):	49,879.86	72,833.96	3,241.54	175,703.10	164,156.56	133,798.61	0.00	3,759,718.94	2,031.74	4,361,364.31	4,361,364.31
											0.00	0.00
Line 14	Ending Balance of Fund – Net Assets:										0.00	0.00
Line 14a	*Cash & Cash Equivalents*										0.00	0.00
Line 14b	*Investments*										0.00	0.00
Line 14c	*Other Assets or Uncleared Funds*										0.00	0.00
	Total Ending Balance of Fund – Net Assets										0.00	0.00

OTHER SUPPLEMENTAL INFORMATION:

		Subtotal	Grand Total
	Report of Items NOT To Be Paid by the Fund:		

STANDARIZD FUND ACCOUNTING REPORT for Acartha Group LLC, MIC VII LLC,
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Claire M. Schenk Receivership; Civil Court Docket No. 16
Reporting Period 4/1/2014 to 6/30/2014

Line	Description		
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:		
Line 15a	*Plan Development Expenses Not Paid by the Fund:*		
	1. Fees:		
	Fund Administrator…………………….……………….		
	IDC……………………………………….………………		
	Distribution Agent……………………..…………..….		
	Consultants…………………………………………….		
	Legal Advisers………………………………………….		
	Tax Advisers…………………………………………….		
	2. Administrative Expenses		
	3. Miscellaneous		
	Total Plan Development Expenses Not Paid by the Fund		
Line 15b	*Plan Implementation Expenses Not Paid by the Fund:*		
	1. Fees:		
	Fund Administrator……………………………….…….		
	IDC……………………………………......……………		
	Distribution Agent…………………………………….		
	Consultants……………………………..………………		
	Legal Advisers…………………………...…………….		
	Tax Advisers…………………………...………………		
	2. Administrative Expenses		
	3. Investor Identification:		
	Notice/Publishing Approved Plan……………..…………		
	Claimant Identification…………………………..…….		
	Claims Processing………………………………………		
	Web Site Maintenance/Call Center…………….…….		
	4. Fund Administrator Bond		
	5. Miscellaneous		
	6. FAIR Reporting Expenses		
	Total Plan Implementation Expenses Not Paid by the Fund		
Line 15c	*Tax Administrator Fees & Bonds Not Paid by the Fund*		
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund		
Line 16	Disbursements to Court/Other Not Paid by the Fund:		
Line 16a	*Investment Expenses/CRIS Fees*		
Line 16b	*Federal Tax Payments*		
	Total Disbursements to Court/Other Not Paid by the Fund:		
Line 17	DC & State Tax Payments		
Line 18	No. of Claims:		
Line 18a	*# of Claims Received This Reporting Period………………………………………………………*		
Line 18b	*# of Claims Received Since Inception of Fund…………………………………………………*		
Line 19	No. of Claimants/Investors:		
Line 19a	*# of Claimants/Investors Paid This Reporting Period……………………………………………*		
Line 19b	*# of Claimants/Investors Paid Since Inception of Fund…………………………………………*		

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BURTON DOUGLAS MORRISS,
ACARTHA GROUP, LLC,
MIC VII, LLC,
ACARTHA TECHNOLOGY PARTNERS, LP, and
GRYPHON INVESTMENTS III, LLC,

Defendants, and

MORRISS HOLDINGS, LLC,

Relief Defendant.

Case No. 4:12-CV-00080-CEJ

ORDER

Upon the Receiver's Motion for Entry of an Order Approving and Confirming the Eleventh Interim Status Report of Receiver, filed by Claire M. Schenk, the court-appointed receiver (the "Receiver") for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC in this action; and

Having fully considered the Motion and the Eleventh Interim Status Report and being duly advised as to the merits,

THE COURT DOES HEREBY ORDER THAT

1. The Receiver's Motion is granted in its entirety; and

2. The Eleventh Interim Status Report of Receiver for the period May 23, 2014 through August 12, 2014, and every act and transaction reported therein, are hereby approved and confirmed.

SO ORDERED this ______ day of __________ 2014

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THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE