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HUGHES Telematics, Inc.  
Form 424B3  
February 08, 2011

**Filed Pursuant to Rule 424(b)(3)**

**File No. 333-164930**

SUPPLEMENT NO. 7 TO PROSPECTUS DATED APRIL 16, 2010

THE DATE OF THIS SUPPLEMENT IS FEBRUARY 8, 2011

On February 8, 2011, HUGHES Telematics, Inc. filed the attached Current Report on Form 8-K with the Securities and Exchange Commission.

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): February 8, 2011 (February 7, 2011)

**HUGHES Telematics, Inc.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction

of Incorporation)

**001-33860**  
(Commission

File Number)

**26-0443717**  
(IRS Employer

Identification Number)

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2002 Summit Boulevard, Suite 1800

Atlanta, Georgia  
(Address of Principal Executive Offices)

30319  
(Zip Code)

Registrant's telephone number, including area code: (404) 573-5800

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement**

On February 7, 2011, HUGHES Telematics, Inc. (the Company) completed a private placement of 1,428,572 shares of its common stock, par value \$0.0001, to a group of accredited investors who are not affiliated with the Company (the Purchasers) at a per share price of \$3.50, pursuant to the terms of a Stock Purchase Agreement, dated February 7, 2011, by and among the Company and each of the Purchasers (the Stock Purchase Agreement). The aggregate purchase price for the common stock sold in the private placement was approximately \$5.0 million. The Company intends to use the net proceeds from the private placement for general corporate purposes. In connection with the private placement, the Company entered into an amendment to its Amended and Restated Credit Agreement dated as of March 31, 2008 with Morgan Stanley Senior Funding, Inc. as administrative agent, Morgan Stanley & Co. Incorporated, as collateral agent, and the lenders from time to time party thereto (the First Lien Credit Agreement) providing for the waiver of the requirement to use 25% of the net cash proceeds from the private placement for the repayment of senior secured term indebtedness.

The sale of the common stock in the private placement was not registered under the Securities Act of 1933 (the Securities Act), and the shares may not be sold in the United States absent a registration statement or an applicable exemption from registration requirements. The shares were offered and sold pursuant to the exemption from registration afforded by Rule 506 under the Securities Act and/or Section 4(2) of the Securities Act.

Concurrent with the private placement, the Company entered into an incremental loan commitment agreement with the Purchasers pursuant to which the Purchasers made loans in the aggregate principal amount of approximately \$5.0 million under the terms of the credit agreement with PLASE HT, LLC, as administrative agent, collateral agent and original lender (the Second Lien Credit Agreement). The loans under the Second Lien Credit Agreement bear interest at 9.0% per annum, payable-in-kind, and are guaranteed by all of the Company's existing and future domestic subsidiaries. The loans are secured by a second priority lien on substantially all of the Company's tangible and intangible assets, including the equity interests of the Company's subsidiaries. The liens granted in connection with the Second Lien Credit Agreement are expressly subject and subordinated to the liens securing the Company's obligations under the First Lien Credit Agreement. The Second Lien Credit Agreement was previously filed as Exhibit 99.2 to the Company's Current Report on Form 8-K filed on December 22, 2009. In addition, the Company entered into an amendment to the Second Lien Credit Agreement (the Amendment) pursuant to which, among other things, the Second Lien Credit Agreement was amended to provide that, in the event of certain defaults under the Second Lien Credit Agreement, notice from either the majority of all lenders or a majority of the incremental loan lenders is required for the Administrative Agent to enforce the lenders' claims against the Company.

In connection with the issuance of the loans under the Second Lien Credit Agreement, the Company issued warrants (the Warrants) to purchase an aggregate of 1,000,000 shares of the Company's common stock at an exercise price of \$5.99 per share, subject to certain customary anti-dilution provisions.

In connection with the private placement and the issuance of the Warrants, the Company entered into a Registration Rights Agreement, dated February 7, 2011 (the Registration Rights Agreement) with the Purchasers requiring that, among other things, the Company register the resale of the shares of common stock sold in the private placement and the shares of common stock issuable upon exercise of the Warrants. If the Company does not meet certain deadlines with respect to making a registration statement covering such resale effective, then cash penalties of 1% of the purchase price per month of up to twelve months may apply.

The foregoing is a summary of the terms of the Stock Purchase Agreement, the Amendment, the Warrants and the Registration Rights Agreement and does not purport to be complete and is qualified in its entirety by reference to the full text of the Stock Purchase Agreement, the Amendment, the form of the Warrants and the Registration Rights Agreement, copies of which are attached hereto and are incorporated by reference herein.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The disclosure regarding the Company's issuance of loans under the Second Lien Credit Agreement under Item 1.01 of this current report is also responsive to this item 2.03 and is incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities**

The disclosure regarding the Company's issuance and sale of shares of common stock and the issuance of the Warrants under Item 1.01 of this current report is also responsive to this item 3.02 and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

<b>Exhibit Number</b>	<b>Description</b>
99.1	Stock Purchase Agreement, dated February 7, 2011, by and among HUGHES Telematics, Inc. and the purchasers set forth therein.
99.2	Third Amendment to the Credit Agreement, by and among HUGHES Telematics, Inc., the lenders set forth therein and PLASE HT, LLC as administrative agent and collateral agent.
99.3	Form of Warrants.
99.4	Registration Rights Agreement, dated February 7, 2011, by and among HUGHES Telematics, Inc. and the Investors set forth therein.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

HUGHES TELEMATICS, INC.

Dated: February 8, 2011

By: /s/ CRAIG KAUFMANN

Name: Craig Kaufmann

Title: Senior Vice President Finance and Treasurer

HUGHES TELEMATICS, INC.

STOCK PURCHASE AGREEMENT

Dated as of February 7, 2011

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STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT, dated as of February 7, 2011, by and among HUGHES TELEMATICS, INC., a Delaware corporation (the Company ), and the entities and individuals designated on Schedule 1 hereto (each of which is herein referred to as a Purchaser, and together, the Purchasers ).

WITNESSETH

WHEREAS, the Company desires to issue and to sell to each Purchaser and each Purchaser desires to purchase from the Company, the number of Common Shares (as defined below) set forth opposite such Purchaser's name on Schedule 1 hereto, all in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants herein contained, the parties hereto hereby agree as follows:

1. Definitions. Except as otherwise expressly provided, all accounting terms used in this Agreement, whether or not defined in this Section 1, shall be construed in accordance with GAAP.

Action means any action, suit, proceeding, governmental inquiry or investigation of any kind involving the Company.

Actual Damages has the meaning assigned to it in Section 10.1 hereof.

Affiliate means, with respect to any specified Person, (a) any other Person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person, (b) any Person who is an executive officer, director, general partner, manager, or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an executive officer, general partner, manager or trustee, or with respect to which the specified Person serves in a similar capacity and (c) any Person who shares a common investment adviser. The term control (including the terms controlling, controlled by and under common control with ) as used with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

Agreement means this Stock Purchase Agreement, as the same may be amended in accordance with the terms hereof.

Approvals means actions, approvals, consents, waivers, exemptions, Orders, authorizations, registrations, declarations, filings and recordings.

Business shall mean any corporation, limited liability company, partnership or other business entity (or the adjectival form thereof, where appropriate) or the equivalent of the foregoing in any foreign jurisdiction.

Business Day means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same has been amended and may hereafter be amended from time to time, 42 U.S.C. § 9601 et seq.

Certificate of Incorporation means the Amended and Restated Certificate of Incorporation of the Company, as amended and in effect on the date hereof.

Closing has the meaning assigned to it in Section 4 hereof.

Closing Date has the meaning assigned to it in Section 4 hereof.

Code shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

Common Shares has the meaning assigned to it in Section 2 hereof.

Common Stock has the meaning assigned to it in Section 2 hereof.

Company has the meaning assigned to it in the introductory paragraph.

Company Board means the board of directors of the Company.

Company Disclosure Statement means the Company Disclosure Statement dated as of the date hereof and delivered by the Company. Any matter disclosed on any section of the Company Disclosure Statement shall be deemed to be disclosed with respect to any other section of the Company Disclosure Statement and with respect to any representation, warranty or covenant in this Agreement or the other Transaction Documents, to which the applicability of such matter is reasonably apparent based on the information contained in the Company Disclosure Statement.

Contingent Obligation shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ( primary obligations ) of any other Person (the primary obligor ) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

Credit Facility means the Amended and Restated Credit Agreement, dated as of April 9, 2008, by and among the Company, Morgan Stanley Senior Funding, Inc., as administrative agent, Morgan Stanley & Co. Incorporated, as collateral agent, and the lenders named therein and party thereto from time to time, as amended, and references herein to the Credit Facility shall be deemed to include the ancillary agreements and documentation entered into in connection therewith.

Environmental Claims shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law (hereafter, Claims ), including, without limitation, (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief in connection with alleged injury or threat of injury to health, safety or the environment due to the presence of Hazardous Materials.

Environmental Law shall mean any Federal, state, foreign or local statute, law, rule, regulation, ordinance, code, guideline, policy and rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, employee health and safety or Hazardous Materials, including, without limitation, CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986,

42 U.S.C. § 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

Equity Interests of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interest in (however designated) equity of such Person, including any common stock, preferred stock, any limited or general partnership interest and any limited liability company membership interest, but excluding any debt security convertible or exchangeable into any such interest prior to conversion or exchange.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

ERISA Affiliate shall mean each person (as defined in Section 3(9) of ERISA) which together with the Company and/or any of its Subsidiaries would be deemed to be a single employer (a) within the meaning of Section 414(b), (c), (m) or (o) of the Code or (b) as a result of the Company and/or any Subsidiary of the Company being or having been a general partner of such person.

Exchange Act means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

Foreign Pension Plan shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by the Company or any one or more of its Subsidiaries primarily for the benefit of employees of the Company or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

Fair Market Value shall mean, with respect to any asset (including any Equity Interests of any Person), the price at which a willing buyer, not an Affiliate of the seller, and a willing seller who does not have to sell, would agree to purchase and sell such asset, as determined in good faith by the board of directors or other governing body or, pursuant to a specific delegation of authority by such board of directors or governing body, a designated senior executive officer, of the Company, or the Subsidiary of the Company selling such asset.

Foreign Subsidiary shall mean, as to any Person, any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

GAAP means United States generally accepted accounting principles consistently applied.

Governmental Authority shall mean the government of the United States, any other nation or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

Hazardous Materials shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of hazardous substances, hazardous waste, hazardous materials, extremely hazardous substances, restricted hazardous waste, toxic substances, toxic pollutants, contaminants, or pollutants, or words of similar import under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to, or Release of which is prohibited, limited or regulated by any Governmental Authority.

Incremental Loan Commitment Agreement means the Incremental Loan Commitment Agreement, dated as of February 7, 2011, by and among the Company and the lenders therein.

Indebtedness for purposes of this Agreement shall mean Indebtedness for purposes of the Credit Facility.

Indemnified Party has the meaning assigned to it in Section 10.2(a) hereof.

Intellectual Property shall mean and include all of the following:

(i) copyrights, including any United States or foreign copyright now or hereafter owned by the Company or any of its Subsidiaries, including any registrations of any copyrights in the United States Copyright Office or any foreign equivalent office, as well as any application for a copyright registration now or hereafter made with the United States Copyright Office or any foreign equivalent office by the Company or any of its Subsidiaries;

(ii) domain names, including all internet domain names and associated URL addresses in or to which the Company or any of its Subsidiaries now or hereafter have any right, title or interest; trademarks and service marks and all goodwill connected with the use thereof and symbolized thereby, including all right, title and interest in and to any trademarks, service marks and trade names now held or hereafter acquired by the Company or any of its Subsidiaries, including any registration or application for registration of any trademarks and service marks now held or hereafter acquired by the Company or any of its Subsidiaries, which are registered or filed in the United States Patent and Trademark Office or the equivalent thereof in any state of the United States or any equivalent foreign office or agency, as well as any unregistered trademarks and service marks used by the Company or any of its Subsidiaries and any trade dress including logos, designs, fictitious business names and other business identifiers used by the Company or any of its Subsidiaries;

(iii) patents, including any patent in or to which the Company or any of its Subsidiaries now or hereafter have any right, title or interest therein, and any divisions, continuations (including, but not limited to, continuations-in-parts) and improvements thereof, as well as any application for a patent now or hereafter made by the Company or any of its Subsidiaries; and

(iv) trade secrets, including any secretly held proprietary existing engineering or other data, information, production procedures and other secretly held proprietary know-how relating to the design manufacture, assembly, installation, use, operation, marketing, sale and/or servicing of any products or business of the Company or any of its Subsidiaries worldwide whether written or not.

Knowledge or knowledge means, (a) with respect to any Person other than the Company, the actual knowledge of such Person (including the actual knowledge of the officers and directors of such Person (or Persons having similar authority) if such Person is an entity), and (b) with respect to the Company, means the actual knowledge of any of its executive officers and shall include knowledge of such facts or other matters as a prudent person, in the position of such named individuals or any one of them, could be expected to discover or otherwise become aware of in the course of conducting a reasonable investigation concerning the existence of such fact or matter.

Leaseholds of any Person shall mean all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

Law and Laws means all laws, principles of common law, statutes, constitutions, treaties, rules, regulations, ordinances, codes, rulings, orders, licenses and determinations of all Governmental Authorities.

Lien shall mean any mortgage, pledge, hypothecation, assignment for security, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC or any other similar recording or notice statute, and any lease having substantially the same effect as any of the foregoing).

Margin Stock shall have the meaning provided in Regulation U of the Board of Governors of the Federal Reserve System (as from time to time in effect and any successor to all or a portion thereof).

Material Adverse Effect shall mean (a) a material adverse effect on the business, operations, property, assets, liabilities, condition (financial or otherwise) or prospects of the Company and its Subsidiaries, taken as a whole, or (b) a material adverse effect on the ability of the Company to perform its obligations to the Purchasers under the Transaction Documents, provided, that, it is agreed and understood that the net economic effect of any event or circumstance shall be taken into account in determining whether or not a Material Adverse Effect has occurred.



Material Contracts shall mean any and all oral or written supply agreements, requirements contracts, customer agreements, franchise agreements, license agreements, distribution agreements, joint venture agreements, asset purchase agreements, stock purchase agreements, merger agreements, agency or advertising agreements, leases of real or personal property, credit agreements, loan agreements, security agreements, pledge agreements, mortgages, trust deeds, trust indentures, stock purchaser agreements, consulting agreements, management agreements, employment agreements, severance agreements, collective bargaining agreements, employee benefit plans or arrangements, tax sharing agreements, indemnification agreements (including, without limitation, as may be entered into with suppliers) or other contracts, agreements, arrangements, understandings and commitments which if terminated is reasonably likely to cause a Material Adverse Effect. Without limiting the foregoing, any contract of the Company that was filed, or is required to be filed, as an exhibit to the Company's SEC Reports pursuant to Item 601 of Regulation S-K shall be deemed a Material Contract for purposes of this Agreement.

Multiemployer Plan shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is an obligation to contribute of) the Company, any of its Subsidiaries and/or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which the Company, any of its Subsidiaries and/or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

Order means any order, writ, injunction, decree, judgment, award, determination, stipulation, award, direction or demand by a Governmental Authority.

Organizational Documents means, with respect to any Person, its certificate or articles of incorporation, its by-laws, its memorandum and articles of association, its limited liability company agreement or operating agreement, its certificate of formation, its partnership or limited partnership agreement, its trust indenture or agreement or other documentation governing the organization or formation of such Person, but not any shareholder, registration rights, subscription or other contract to which such Person may become a party after its formation or organization.

PBGC shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

Permitted Liens means Liens permitted to be incurred under the Credit Facility.

Person means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, incorporated organization, association, corporation, institution, public benefit corporation, Governmental Authority or other entity.

Plan shall mean any pension plan as defined in Section 3(2) of ERISA, other than a Multiemployer Plan, which is maintained or contributed to by (or to which there is an obligation to contribute of) the Company, any of its Subsidiaries or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on

which the Company, any of its Subsidiaries or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

Purchase Consideration has the meaning assigned to it in Section 3 hereof.

Purchaser has the meaning assigned to it in the introductory paragraph of this Agreement.

Purchaser Group has the meaning assigned to it in Section 10.1 hereof.

Purchasers Representative shall mean Zesiger Capital Group, LLC or such other representative or representatives as may be designated by one or more of the Purchasers from time to time.

Real Property of any Person shall mean all the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

Registration Rights Agreement means the Registration Rights Agreement, dated as of the date hereof, by and among the Company and the Purchasers, as attached hereto as Exhibit A.

Regulation U shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

Release shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, into or upon any land or water or air, or otherwise entering into the environment.

Reportable Event shall mean an event described in Section 4043(c) of ERISA with respect to a Plan that is subject to Title IV of ERISA other than those events as to which the 30-day notice period is waived under subsection .22, .23, .25, .27 or .28 of PBGC Regulation Section 4043.

Representative means, with respect to any Person that is an entity, such officer, director, manager, general partner, agent or employee of such Person.

Returns shall have the meaning provided in Section 6.10 hereof.

Rule 144 means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

SEC shall mean the United States Securities and Exchange Commission.

SEC Reports shall have the meaning provided in Section 6.23 hereof.

Securities shall mean the Common Shares, the Warrants and the Warrant Shares.

Securities Act means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

Subsidiary shall mean, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person or (b) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% Equity Interest at the time. Unless otherwise qualified, all references to a Subsidiary or to Subsidiaries in this Agreement shall refer to a Subsidiary or Subsidiaries of the Company.

taxes or tax means all federal, national, state, province, local and foreign taxes, charges, duties, fees, levies or other assessments, including without limitation income, excise, property, sales, use, gross receipts, recording, insurance, value added, profits, license, withholding, payroll, employment, capital stock, customs duties, net worth, windfall profits, capital gains, transfer, registration, estimated, stamp, social security, environmental, occupation, franchise or other taxes of any kind whatsoever, imposed by any Governmental Authority, and all interest, additions to tax, penalties and other similar amounts imposed thereon.

tax return means, with respect to any Person, all federal, national, state, province, local and foreign tax returns, reports, declarations, statements and other documentation, including any schedule or attachment thereto, required to be filed by or on behalf of such Person (or any predecessor) or any consolidated, combined, affiliated or unitary group of which such Person is or has been a member (but only with respect to taxable periods during which such Person is a member thereof), including information returns required to be provided to any payee or other Person.

Transactions means the transactions contemplated by the Transaction Documents.

Transaction Documents means this Agreement and the Registration Rights Agreement.

UCC shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

Unfunded Current Liability of any Plan subject to Title IV of ERISA shall mean the amount, if any, by which the value of the accumulated plan benefits under such Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the Fair Market Value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

Warrants has the meaning set forth in the Incremental Loan Commitment Agreement.

Warrant Shares means the shares of Common Stock issuable upon exercise of the Warrants.

2. Authorization of Common Shares. The Company has authorized the issuance and sale of 1,428,572 shares (the Common Shares ) of its common stock, par value \$0.0001 per share ( Common Stock ).

3. Sale and Purchase of the Common Shares. Upon the terms and subject to the conditions herein contained, the Company agrees to sell to each Purchaser, and each Purchaser agrees to purchase from the Company, severally and not jointly, at the Closing the number of Common Shares for the consideration as set forth opposite such Purchaser's name on Schedule 1 hereto (the Purchase Consideration ).

4. Closing. The closing of the purchase and sale of the Common Shares (the Closing ) shall occur at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036-6522 (or remotely via the exchange of documents and signatures) on a date to be agreed upon by the Company and the Purchasers (the Closing Date ), which shall be no later than the Business Day on which all of the applicable conditions set forth in Section 7 hereof (other than those conditions that by their nature are to be satisfied by actions to be taken at the Closing, but subject to the satisfaction or waiver of such conditions) are satisfied or waived. At the Closing, the Company shall issue to each Purchaser one or more certificates evidencing the number of Common Shares purchased by such Purchaser, and such Common Shares shall be registered in such Purchaser's name or any nominee name provided by each Purchaser, and upon receipt thereof each Purchaser shall promptly deliver the Purchase Consideration to the Company.

5. Representations and Warranties of the Purchaser. Each Purchaser represents and warrants to the Company, severally and not jointly with respect to such Purchaser only, as follows:

5.1 Authority. Such Purchaser has the requisite corporate or other similar power and authority to execute and deliver each Transaction Document delivered or to be delivered by it and to perform all of its obligations under the Transaction Documents. The execution and delivery of each Transaction Document to which such Purchaser is a party has been duly and validly authorized by all necessary corporate or other similar action on the part of such Purchaser, and no further corporate or other similar proceedings on the part of such

Purchaser are necessary to authorize each Transaction Document to which such Purchaser is a party, or to consummate the Transaction.

5.2 Binding Obligation. This Agreement and each other Transaction Document delivered or to be delivered by such Purchaser has been duly authorized, executed and delivered by such Purchaser and assuming the valid execution and delivery by the other parties thereto constitutes the legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors' rights in general and by general principles of equity (regardless of whether enforcement is sought in equity or at law).

5.3 Investment Representations and Warranties. Such Purchaser understands that the Securities have not been, and will not upon issuance be, registered under the Securities Act, and that the Warrants and the certificates evidencing the Securities shall bear a legend to that effect. Such Purchaser understands that the Securities may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exception is required by law, and that the Company is not required to register the Securities.

5.4 Acquisition for Own Account. Such Purchaser, or the Purchasers' Representative on behalf of such Purchaser, is acquiring the Securities for its own account or for one or more separate accounts maintained by it for the benefit of one or more accredited investors (as defined below) for investment purposes only and not with a view toward distribution thereof in violation of the Securities Act; provided that the disposition of such Purchaser's property shall at all times be within such Purchasers' control or the control of the Purchasers' Representative. Such Purchaser, and the Purchasers' Representative on behalf of such Purchaser, will not sell, transfer or otherwise dispose of the Securities or any interest therein except in a transaction exempt from or not subject to the registration requirements of the Securities Act.

5.5 Ability to Protect Its Own Interests and Bear Economic Risks. By reason of the business and financial experience of its management, such Purchaser has the capacity to protect its own interests in connection with the Transaction. Such Purchaser is able to bear the economic risk of an investment in the Securities, and has an adequate income independent of any income produced from an investment in the Securities and has sufficient net worth to sustain a loss of all of its investment in the Securities without economic hardship if such a loss should occur.

5.6 Accredited Investor. Such Purchaser is an accredited investor within the meaning of Rule 501(a) of Regulation D promulgated under the Securities Act.

5.7 No General Solicitation. Such Purchaser did not become aware of an opportunity to invest in the Securities through any form of general solicitation or general advertising (within the meaning of Rule 506 of Regulation D of the Securities Act) or any other filings made by the Company with the SEC.

5.8 Access to Information. Such Purchaser has received physical delivery of such documents, records and information which such Purchaser has requested, and has had an opportunity to ask questions of, and receive answers from, the Company's officers, employees, agents, accountants, and representatives concerning the Company's business, operations, financial condition, assets, liabilities, and all other matters it has deemed relevant to its investment in the Securities.

5.9 No Brokers. Other than the Purchasers' Representative, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of such Purchaser who is or will be entitled to any fee, commission or payment from such Purchaser in connection with the negotiation, preparation, execution or delivery of this Agreement or any Transaction Document or the consummation of the Transaction.

5.10 Purchasers' Representative. Such Purchaser acknowledges that the Purchasers' Representative has final power and authority to execute this Agreement and any other documents ancillary to the Transactions on behalf of such Purchaser.

5.A Representations and Warranties of the Purchasers' Representative. The Purchasers' Representative represents and warrants to Company as follows: (a) the Purchasers' Representative contacted not more than approximately 10 potential investors to assess if they had any indication of interest in purchasing Securities and we have not made any offer or sale of any Securities to any other person; (b) immediately prior to making any offer of Securities, the Purchasers' Representative had reasonable grounds to believe, and did reasonably believe, that each offeree was an accredited investor within the meaning of Rule 501(a) of Regulation D promulgated under the Securities Act and (c) the Purchasers' Representative has not offered or sold any Securities by any form of general solicitation or general advertising (within the meaning of Rule 502(c) under the Securities Act), including: (1) any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; (2) any website posting or widely distributed e-mail; or (3) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

6. Representations and Warranties of the Company. The Company represents and warrants to each Purchaser as follows:

6.1 Company Status. The Company and each of its Subsidiaries (a) is a duly organized and validly existing Business in good standing (or, in the case of any Foreign Subsidiary, the foreign equivalent of "good standing" to the extent that such concept exists in such Foreign Subsidiary's jurisdiction of organization) under the laws of the jurisdiction of its organization, (b) has the requisite Business power and authority to own its property and assets and to transact the business in which it is engaged and (c) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to be so qualified or authorized which, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No certifications, permits or agreements by, from or with any Governmental Authority are required for operation of the business of the Company and its Subsidiaries that are not in place, except for such certifications,

permits or agreements, the absence of which would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is in violation of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents.

6.2 Power and Authority. The Company has the Business power and authority to execute, deliver and perform the terms and provisions of each of the Transaction Documents and has taken all necessary Business action to authorize the execution, delivery and performance by it of such Transaction Documents. The Company has duly executed and delivered each of the Transaction Documents, and the Transaction Documents constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

6.3 No Violation. Neither the execution, delivery or performance by the Company of the Transaction Documents, nor compliance by it with the terms and provisions thereof, (a) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or Governmental Authority or the rules and regulations of any self-regulatory organization to which the Company or its securities are subject, except for any such contravention that would not reasonably be expected to have a Material Adverse Effect, (b) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of the Company or any of its Subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which the Company or any of its Subsidiaries is a party or by which it or any its property or assets is bound or to which it may be subject except for any such conflict that would not reasonably be expected to have a Material Adverse Effect, (c) will violate any provision of any Organizational Document, as applicable, of the Company or any of its Subsidiaries or (d) will be subject to any limitation on right or approval from any Governmental Authority.

6.4 Approvals. No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for those that have otherwise been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date), or exemption by, any Governmental Authority is required to be obtained or made by, or on behalf of, the Company to authorize, or is required to be obtained or made by, or on behalf of, the Company in connection with, (i) the execution, delivery and performance of any Transaction Document, or (ii) the legality, validity, binding effect or enforceability of any such Transaction Document except where failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect.

6.5 Financial Statements; Financial Condition. The audited consolidated balance sheet of the Company and its consolidated Subsidiaries at December 31, 2009 and the related audited consolidated statements of operations and cash flows and changes in shareholders' equity of the Company and its consolidated Subsidiaries for the fiscal year of the

Company ended on such date and the unaudited condensed consolidated balance sheet of the Company and its consolidated Subsidiaries at September 30, 2010 and the related unaudited condensed consolidated statements of operations and cash flows of the Company and its consolidated Subsidiaries for the nine months ended on such date, in each case furnished to the Purchasers prior to the Closing Date, present fairly in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries at the date of said financial statements and the results for the respective periods covered thereby. All such financial statements have been prepared in accordance with GAAP consistently applied except to the extent provided in the notes to said financial statements. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing.

6.6 No Material Adverse Effect. Except as set forth on Schedule 6.6 of the Company Disclosure Statement, since September 30, 2010, (i) nothing has occurred that has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (ii) except as disclosed in the SEC Reports, the Company has not incurred any material liabilities (contingent or otherwise) other than (A) trade payables, accrued expenses and other liabilities incurred in the ordinary course of business and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or required to be disclosed in filings made with the SEC and (iii) the Company has not altered materially its method of accounting or the manner in which it keeps its accounting books and records.

6.7 Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Company, threatened (a) with respect to the Transaction or any Transaction Document or (b) that has had, or, if adversely determined, would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the Company's knowledge there is not pending or contemplated, any investigation by the SEC involving the Company or any current or former director or officer of the Company.

6.8 True and Complete Disclosure. All factual information (taken as a whole) furnished by or, with the Company's express authorization on behalf of the Company in writing to any Purchasers is, and all other such factual information (taken as a whole) furnished by or, with the Company's express authorization on behalf of the Company in writing to any Purchasers was, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided, it being understood and agreed that for purposes of this Section 6.8, such factual information shall not include any projections or any pro forma financial information or other forward-looking statements.

6.9 Use of Proceeds; Margin Regulations. All proceeds of the Transaction shall be used to finance the general corporate purposes of the Company and its Subsidiaries and to pay the fees and expenses incurred in connection with the Transaction. No part of the



proceeds of the Transactions will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. The use of proceeds from the Transaction will not violate or be inconsistent with the provisions of Regulation T, U or X.

6.10 Tax Returns and Payments. Except as would, individually or in the aggregate, not reasonably be expected to have a Material Adverse Effect, each of the Company and each of its Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all Federal, state, foreign and local returns, statements, forms and reports for taxes (the Returns ) required to be filed by, or with respect to the income, properties or operations of, the Company and/or any of its Subsidiaries; the Returns accurately reflect all liability for taxes of the Company and its Subsidiaries, as applicable, for the periods covered thereby; except as set forth on Schedule 6.10 of the Company Disclosure Statement, each of the Company and each of its Subsidiaries has paid all taxes and assessments payable by it which have become due, other than those that are being contested in good faith and adequately disclosed and for which adequate reserves have been established in accordance with GAAP; there is no action, suit, proceeding, investigation, audit or claim now pending or threatened (in writing) by any authority regarding any taxes relating to the Company or any of its Subsidiaries; as of the Closing Date, neither the Company nor any of its Subsidiaries has entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of taxes of the Company or any of its Subsidiaries, or is aware of any circumstances that would cause the taxable years or other taxable periods of the Company or any of its Subsidiaries not to be subject to the normally applicable statute of limitations; and neither the Company nor any of its Subsidiaries has incurred, nor will any of them incur, any tax liability in connection with the Transaction (it being understood that the representation contained in this sentence does not cover any future tax liabilities of the Company or any of its Subsidiaries arising as a result of the operation of their businesses in the ordinary course of business) or any tax liability resulting from indemnification under the Transaction Documents.

6.11 Compliance with ERISA.

(a) Schedule 6.11 of the Company Disclosure Statement sets forth each Plan as of the Closing Date. Each Plan (and each related trust, insurance contract or fund) is in substantial compliance with its terms and with all applicable laws, including without limitation ERISA and the Code; each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a determination letter from the Internal Revenue Service to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all tax law changes prior to the Economic Growth and Tax Relief Reconciliation Act of 2001 or is comprised of a master or prototype plan that has received a favorable opinion letter from the Internal Revenue Service; no Reportable Event has occurred; no Multiemployer Plan is insolvent or in reorganization; no Plan has an Unfunded Current Liability; no Plan which is subject to Section 412 of the Code or Section 302 of ERISA has an accumulated funding deficiency, within the meaning of such sections of the Code or ERISA, or has applied for or received a waiver of an accumulated funding deficiency or an extension of any amortization period, within the meaning of Section 412 of the Code or Section 303 or 304 of ERISA; all contributions required to be made with respect to a Plan and Multiemployer Plan each have been timely made; neither the Company, any of its Subsidiaries nor any ERISA Affiliate has incurred

any material liability (including any indirect, contingent or secondary liability) to or on account of a Plan pursuant to Section 409, 502(i), 502(l), 4062, 4063, 4064 or 4069 of ERISA or Section 401(a)(29), 4971 or 4975 of the Code, or to or on account of a Multiemployer Plan pursuant to Section 515, 4201, 4204 or 4212 of ERISA or expects to incur any such liability under any of the foregoing sections with respect to any Plan or Multiemployer Plan; no condition exists which presents a risk to the Company, any of its Subsidiaries or any ERISA Affiliate of incurring a liability to or on account of a Plan or Multiemployer Plan pursuant to the foregoing provisions of ERISA and the Code; no proceedings have been instituted to terminate or appoint a trustee to administer any Plan which is subject to Title IV of ERISA; no action, suit, proceeding, hearing, audit or investigation with respect to the administration, operation or the investment of assets of any Plan (other than routine claims and appeals for benefits) is pending, expected or to the Company's knowledge, threatened; each group health plan (as defined in Section 607(1) of ERISA or Section 4980B(g)(2) of the Code) which covers or has covered employees or former employees of the Company, any of its Subsidiaries, or any ERISA Affiliate has at all times been operated in compliance with the provisions of Part 6 of subtitle B of Title I of ERISA and Section 4980B of the Code; no lien imposed under the Code or ERISA on the assets of the Company, any of its Subsidiaries or any ERISA Affiliate exists or is likely to arise on account of any Plan or Multiemployer Plan, and the Company and its Subsidiaries may cease contributions to or terminate any Plan maintained by any of them without incurring any liability (other than ordinary administrative termination costs that are immaterial in nature).

(b) Each Foreign Pension Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities. All contributions required to be made with respect to a Foreign Pension Plan have been timely made. Neither the Company nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Pension Plan, determined as of the end of the Company's most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Foreign Pension Plan allocable to such benefit liabilities.

6.12 Properties. On and as of the Closing Date, neither the Company nor any of its Subsidiaries owns any Real Property. All Real Property leased by the Company or any of its Subsidiaries as of the Closing Date, and the nature of the interest therein, is set forth in Schedule 6.12 of the Company Disclosure Statement. Each of the Company and its Subsidiaries has a valid and defensible leasehold interest in the Real Property leased by it free and clear of all Liens other than Permitted Liens. The Company and its Subsidiaries have good and marketable title to all tangible personal property owned by them which is material to the business of the Company and its Subsidiaries, taken as a whole, in each case free and clear of all Liens other than Permitted Liens.

6.13 Capitalization. On and as of the Closing Date, the authorized and issued capital stock of the Company consists of shares of common stock and preferred stock as is set forth in Schedule 6.13 of the Company Disclosure Statement. Except as set forth in Schedule 6.13 of the Company Disclosure Statement, all such outstanding shares have been duly and validly issued, are fully paid and non-assessable and have been issued free of preemptive rights.

As of the Closing Date except as set forth on Schedule 6.13 of the Company Disclosure Statement, (i) the Company does not have outstanding any capital stock or other securities convertible into or exchangeable for its capital stock or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock or any stock appreciation or similar rights and (ii) after giving effect to the Transactions, the Company will not be subject to any obligation (contingent or otherwise) to repurchase, acquire or retire (x) any of its Equity Interests, or (y) any securities convertible into or exchangeable for any of its Equity Interests. The Common Shares and the Warrant Shares have been duly and validly reserved for issuance and, when issued and delivered against payment therefore as provided herein, will be duly authorized, validly issued, fully paid and non-assessable and not subject to further assessment or charge by the Company and will be subject to no Liens created by or through the Company in respect of the issuance thereof. There are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities. The Company has not adopted any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation or the laws of the State of Delaware which is or could become applicable to any Purchaser as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Purchaser's ownership of the Securities.

6.14 Subsidiaries. On and as of the Closing Date, the Company has no Subsidiaries other than those Subsidiaries listed on Schedule 6.14 of the Company Disclosure Statement. Schedule 6.14 of the Company Disclosure Statement sets forth, as of the Closing Date, the percentage ownership (direct and indirect) of the Company in each class of capital stock or other Equity Interests of each of its Subsidiaries and also identifies the direct owner thereof. All outstanding shares of Equity Interests of each Subsidiary of the Company have been duly and validly issued, are fully paid and non-assessable and have been issued free of preemptive rights. No Subsidiary of the Company has outstanding any securities convertible into or exchangeable for its Equity Interests or outstanding any right to subscribe for or to purchase, or any options or warrants for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of or any calls, commitments or claims of any character relating to, its Equity Interests or any appreciation or similar rights. On the Closing Date, the Equity Interests of each Subsidiary are owned directly or indirectly by the Company, as disclosed on Schedule 6.14 of the Company Disclosure Statement.

6.15 Compliance with Statutes, etc. The Company and each of its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property (including, without limitation, applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such non-compliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.16 Investment Company Act. Neither the Company nor any of its Subsidiaries are an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

6.17 Environmental Matters.

(a) The Company and each of its Subsidiaries are in compliance with all applicable Environmental Laws and the requirements of any permits issued under such Environmental Laws. There are no pending or, to the knowledge of the Company, threatened (in writing) Environmental Claims against the Company or any of its Subsidiaries or any Real Property owned, leased or operated by the Company or any of its Subsidiaries (including any such claim arising out of the ownership, lease or operation by the Company or any of its Subsidiaries of any Real Property formerly owned, leased or operated by the Company or any of its Subsidiaries but no longer owned, leased or operated by the Company or any of its Subsidiaries). There are no facts, circumstances, conditions or occurrences with respect to the business or operations of the Company or any of its Subsidiaries, or any Real Property owned, leased or operated by the Company or any of its Subsidiaries (including any Real Property formerly owned, leased or operated by the Company or any of its Subsidiaries but no longer owned, leased or operated by the Company or any of its Subsidiaries) or, to the knowledge of the Company, any property adjoining or adjacent to any such Real Property that would be reasonably expected (i) to form the basis of an Environmental Claim against the Company or any of its Subsidiaries or any Real Property owned, leased or operated by the Company or any of its Subsidiaries or (ii) to cause any Real Property owned, leased or operated by the Company or any of its Subsidiaries to be subject to any restrictions on the ownership, lease, occupancy or transferability of such Real Property by the Company or any of its Subsidiaries under any applicable Environmental Law.

(b) Hazardous Materials have not at any time been generated, used, treated or stored on, or transported to or from, or Released on or from, any Real Property owned, leased or operated by the Company or any of its Subsidiaries or, to the knowledge of the Company, any property adjoining or adjacent to any Real Property, where such generation, use, treatment, storage, transportation or Release has violated or would be reasonably expected to violate any applicable Environmental Law or give rise to an Environmental Claim.

(c) Notwithstanding anything to the contrary in this Section 6.17, the representations and warranties made in this Section 6.17 shall be untrue only if the effect of any or all conditions, violations, claims, restrictions, failures and noncompliance of the types described above would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.18 Employment and Labor Relations. Neither the Company nor any of its Subsidiaries are engaged in any unfair labor practice that would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Company or any of its Subsidiaries or, to the knowledge of the Company, threatened against any of them, before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is so pending against the Company or any of its Subsidiaries or, to the knowledge of the Company, threatened against any of them, (b) no strike, labor dispute, slowdown or stoppage

pending against the Company or any of its Subsidiaries or, to the knowledge of the Company, threatened (in writing) against the Company or any of its Subsidiaries, (c) no union representation question exists with respect to the employees of the Company or any of its Subsidiaries, (d) no equal employment opportunity charges or other claims of employment discrimination are pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries, and (e) no wage and hour department investigation has been made of the Company or any of its Subsidiaries, except (with respect to any matter specified in clauses (a) (e) above, either individually or in the aggregate) such as would not reasonably be expected to have a Material Adverse Effect.

6.19 Intellectual Property, etc.

(a) Schedule 6.19(a) of the Company Disclosure Statement identifies all of the (i) internet web sites, internet domain names and URLs, (ii) trademark registrations and applications, (iii) material copyright registrations, and (iv) patents, and pending patent applications owned by the Company or any of its Subsidiaries on and as of the Closing Date. On and as of the Closing Date, all of the patents and patent applications included in Schedule 6.19(a) of the Company Disclosure Statement and registrations and applications for registration of any other Intellectual Property included in Schedule 6.19(a) of the Company Disclosure Statement are recorded in the name of the Company or a Subsidiary and, except as would not reasonably be expected to have a Material Adverse Effect, all such registrations are in full force and effect, valid and enforceable and all maintenance and renewal fees relating thereto have been duly and timely paid. The Company and each of its Subsidiaries owns or has the right to use all the patents, trademarks, permits, domain names, service marks, trade names, copyrights, licenses, franchises, inventions, trade secrets, proprietary information and know-how of any type, whether or not written (including, but not limited to, rights in computer programs and databases) and formulas necessary for the present conduct of its business, without any known conflict with the rights of others, except where such conflict or the failure to own or have the right to use, as the case may be, would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(b) Except with respect to the required consents set forth in Schedule 6.19(b) of the Company Disclosure Statement, the Company and its Subsidiaries own (and after giving effect to the Transactions, will continue to own) all right, title and interest in and to, or have the right to use (and after giving effect to the Transactions, will continue to have the right to use) pursuant to a valid and enforceable written agreement, all Intellectual Property necessary to carry on the Business of the Company and its Subsidiaries as now conducted, free and clear of all Liens (except Permitted Liens), except where the failure to have any such right, title or interest would not reasonably be expected to have a Material Adverse Effect.

(c) Except as disclosed in Schedule 6.19(c) of the Company Disclosure Statement, on and as of the Closing Date, to the knowledge of the Company, no Person has challenged in writing the validity, enforceability, use or ownership of any of the Intellectual Property used or held for use in the business of the Company or any of its Subsidiaries rights to any of such Intellectual Property, except where such challenge would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(d) To the knowledge of the Company, neither the use of any Intellectual Property used or held for use in the business of the Company or any of its Subsidiaries, nor the conduct of the business carried on by the Company or any of its Subsidiaries, infringes, misappropriates or otherwise violates the intellectual property rights of any other Person in any manner that is material to the Company or any of its Subsidiaries, except where the infringement, misappropriation or other violation would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(e) To the knowledge of the Company, no Person is infringing, misappropriating or otherwise violating the Company's or any of its Subsidiaries' rights to any Intellectual Property other than such infringements, misappropriation or violations which would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(f) The Company and each of its Subsidiaries have taken commercially reasonable measures to protect its material confidential Intellectual Property.

6.20 Indebtedness. The financial statements described in Section 6.5 hereof and/or Schedule 6.20 of the Company Disclosure Statement set forth a list of all Indebtedness (including Contingent Obligations) of the Company and its Subsidiaries as of the Closing Date of a principal amount in excess of \$500,000 and which is to remain outstanding after giving effect to the Transactions in each case showing the aggregate principal amount thereof.

6.21 Insurance. Schedule 6.21 of the Company Disclosure Statement sets forth a listing of all material insurance maintained by the Company and its Subsidiaries as of the Closing Date, with the amounts insured (and any deductibles) set forth therein. The Company and each of the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes to be prudent and customary in the businesses and locations in which the Company and the Subsidiaries are engaged. Neither the Company nor any of its Subsidiaries has received any notice of cancellation of any such insurance, nor, to the Company's knowledge, will it or any Subsidiary be unable to renew their respective existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

6.22 Material Contracts. Schedule 6.22 of the Company Disclosure Statement sets forth a true and complete list, as of the Closing Date, of all Material Contracts of the Company and its Subsidiaries. The Company and its Subsidiaries have furnished or made available to the Purchasers or their representatives true and complete copies of such Material Contracts, with all amendments, modifications and supplements thereto to the Closing Date. As of the Closing Date, each of such Material Contracts is valid, subsisting and in full force and effect. Neither the Company nor any of its Subsidiaries is in breach or violation of any of the terms, conditions or provisions of any of such Material Contracts, except for such breaches and violations thereof as in the aggregate do not and would not reasonably be expected to have a Material Adverse Effect, and to the knowledge of the Company no third party to any of such Material Contracts is in breach or violation of any of the terms, conditions or provisions thereof, except for such breaches and violations thereof as in the aggregate do not and would not reasonably be expected to have a Material Adverse Effect.

6.23 SEC Reports. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the twelve months preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the SEC Reports ), on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective filing dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. There are no outstanding comments from the SEC with respect to any SEC Reports.

6.24 Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company (or any Subsidiary) and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its Exchange Act filings and is not so disclosed and would have or reasonably be expected to have a Material Adverse Effect.

6.25 Transactions With Affiliates and Employees. Except as set forth in Schedule 6.25 of the Company Disclosure Statement or the SEC Reports and other than the grant of stock options or other equity awards that are not individually or in the aggregate material in amount, none of the officers or directors of the Company and, to the Company's knowledge, none of the employees of the Company, is presently a party to any transaction with the Company or to a presently contemplated transaction (other than for services as employees, officers and directors) that would be required to be disclosed pursuant to Item 404 of Regulation S-K promulgated under the Securities Act.

6.26 Internal Accounting Controls. The Company maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and such internal control over financial reporting is effective.

6.27 Sarbanes-Oxley: Disclosure Controls. The Company is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002 which are applicable to it. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act), and such disclosure controls and procedures are effective.

6.28 Certain Fees. Except as set forth in Schedule 6.28 of the Company Disclosure Statement, no person or entity will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company or a Purchaser for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company.

6.29 Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 5 hereof, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers hereunder. Other than Stonegate Securities, Inc. and the Purchasers' Representative, the Company did not utilize any broker, finder, seller or similar Person to solicit or arrange for the sale of the Securities.

6.30 No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 5 hereof, none of the Company, its Subsidiaries nor, to the Company's knowledge, any of its Affiliates or any Person acting on its behalf has, directly or indirectly, at any time within the past six months, made any offers or sales of any Company security or solicited any offers to buy any security under circumstances that would eliminate the availability of the exemption from registration under Regulation D under the Securities Act in connection with the offer and sale by the Company of the Securities as contemplated hereby.

6.31 No General Solicitation or General Advertising. Neither the Company nor any person acting on its behalf has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act) in connection with any offer or sale of the Shares.

6.32 Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each Purchaser is acting solely in the capacity of arm's length purchaser with respect to the Transaction Documents and the Transactions and that no Purchaser is (i) an officer or director of the Company, (ii) an affiliate of the Company (as defined in Rule 144) or (iii) to the knowledge of the Company, a beneficial owner of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the Transactions.

6.33 Foreign Corrupt Practices Act. Neither the Company, nor any of its Subsidiaries, nor, to the knowledge of the Company, any director, officer, agent, employee or other Person acting on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

6.34 Acknowledgement Regarding Purchasers' Trading Activity. The Company understands and acknowledges (i) that none of the Purchasers have been asked by the Company or its Subsidiaries to agree, nor has any Purchaser agreed with the Company or its Subsidiaries, to desist from purchasing or selling, long and/or short, securities of the Company, or derivative securities based on securities issued by the Company or to hold the Common



Shares or the Warrant Shares for any specified term; and (ii) that any Purchaser, and counterparties in derivative transactions to which any such Purchaser is a party, directly or indirectly, presently may have a short position in the Common Stock. The Company further understands and acknowledges that (a) one or more Purchasers may engage in hedging and/or trading activities at various times during the period that the Common Shares or Warrant Shares are outstanding and (b) such hedging and/or trading activities, if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement or any of the documents executed in connection herewith.

7. Deliveries; Closing Conditions; Deliverables.

7.1 Obligations on the Closing Date. On the Closing Date, the Company shall deliver to each Purchaser:

(a) A certificate dated as of the Closing Date, executed by its Secretary, certifying (A) copies of the Certificate of Incorporation and the Company's By-laws, (B) all resolutions of the Company Board and its stockholders related to the Transaction Documents and the Transaction, (C) certificates, as of the most recent practicable dates as to the corporate good standing of the Company and each Subsidiary issued by the Secretary of State of such entity's jurisdiction of organization, as applicable, and as to the due qualification of the Company and each Subsidiary as a foreign corporation or other entity issued by the Secretary of State of each jurisdiction where material business is conducted by such entity; provided that such certificates as to due qualification as a foreign corporation or other entity unavailable on the Closing Date may be delivered within five (5) Business Days following the Closing Date; and (D) the incumbency, authority and specimen signature of each officer of the Company executing this Agreement or any other Transaction Document on behalf of the Company;

(b) The Registration Rights Agreement, which shall be executed by the Company and in full force and effect;

(c) An opinion of counsel, which shall be in the form of Exhibit B hereto;

(d) A certificate, signed by the Company's Senior Vice President Finance, certifying that the conditions specified in Sections 7.2(a)(i) and 7.2(a)(ii) hereof have been fulfilled; and

(e) One or more stock certificates, evidencing the Common Shares subscribed for by Purchaser hereunder, registered in the name of such Purchaser or in such other name as shall be designated by such Purchaser.

7.2 Condition to Purchaser's and the Company's Obligations. (a) The obligation of each Purchaser to consummate the Transaction on the Closing Date is subject to the satisfaction or waiver by such Purchaser of the following:

(i) Each of the representations and warranties set forth in Section 6 hereof that is qualified by materiality, Material Adverse Effect or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties

that is not so qualified shall be true and correct in all material respects, in each case both as of the date hereof and as of the Closing Date as if made on the Closing Date (except to the extent expressly made solely as of the date hereof, in which case as of such date).

(ii) The Company shall have complied in all material respects with all agreements, obligations and conditions contained herein required to be complied with by the Company prior to or at such Closing.

(iii) Simultaneous purchase by each Purchaser of the Common Shares, such that the aggregate gross Purchase Consideration received by the Company on the Closing Date shall be no less than \$5 million;

(iv) All Approvals, if any, which are required to be taken, given, obtained, filed or recorded, as the case may be, by or from or with (i) any Governmental Authority, (ii) any trustee or holder of any indebtedness, obligation or securities of the Company or (iii) any other Person, in connection with the legal and valid execution and delivery by the Company of this Agreement, any other Transaction Document and the consummation of the transactions contemplated hereby and thereby (including the issuance of the Securities), including, without limitation, those Approvals referenced in Section 6.4 of the Company Disclosure Statement, shall have been duly taken, given, obtained, filed or recorded, as the case may be, and all such Approvals shall be final, subsisting and in full force and effect on the Closing Date, and shall not be subject to any further proceedings or appeals or any conditions subsequent. The terms, provisions and conditions of all such Approvals shall be reasonably satisfactory to such Purchaser. Certified copies or other appropriate evidence of all such Approvals, in form, scope and substance satisfactory to such Purchaser shall have been delivered to such Purchaser.

(v) No provision of any applicable Law shall prohibit the acquisition or issuance of the Securities. Without limiting the generality of the foregoing, the sale and issuance of the Securities shall not be required to be registered under the Securities Act or under any applicable State securities law. Further, no Action shall be threatened or shall be pending in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated by this Agreement or any Transaction Document and no Order with respect thereto shall be in effect.

(vi) There shall have been no Material Adverse Effect from and after the date hereof until the Closing.

(b) The obligation of the Company to consummate the Transaction on the Closing Date is subject to the satisfaction or waiver by the Company of the following:

(i) The Company shall have received \$5 million of Incremental Loans pursuant to and as defined under that certain Second Lien Credit Agreement, dated as of December 17, 2009, by and between the Company, the lenders from time to time party thereto, and Plase HT, LLC as Administrative Agent and Collateral Agent.

**7.3 Conduct Pending Closing.** During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to its terms and the Closing, the Company shall, and shall cause each of its Subsidiaries to (i) conduct its business in the ordinary course of business, (ii) maintain its corporate existence, preserve intact its business organization and, except in the ordinary course of business, its assets, (iii) keep

available the services of its present executive officers, (iv) maintain in effect the Material Contracts (subject to the expiration of any such Contract pursuant to its terms), and (v) preserve present material business relationships with suppliers, customers, licensees and other Persons.

7.4 Notice of Certain Events. The Company shall promptly notify the Purchasers Representative (or such other designee as each Purchaser shall designate from time to time) of any event, condition, fact, circumstance, occurrence, transaction or other item of which the Company becomes aware after the date hereof and prior to the Closing that would constitute a material violation or breach of this Agreement (or a material breach of any representation or warranty contained herein) or, if the same were to continue to exist as of the Closing Date, would result in any of the conditions set forth in Section 7 hereof not to be satisfied.

8. Post-Closing Covenants of the Company. The Company agrees that, following the Closing, it will do the following:

8.1 Use of Proceeds. The Company shall use the proceeds of this offering for general corporate purposes.

8.2 Securities Laws Disclosure: Publicity. On or before 9:00 a.m., New York City time, on the second Business Day immediately following the execution of this Agreement, the Company will file a Current Report on Form 8-K with the SEC describing the terms of the Transaction Documents (and including as exhibits to such Current Report on Form 8-K this Agreement and the Registration Rights Agreement). Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser or any Affiliate or investment adviser of any Purchaser, or include the name of any Purchaser or any Affiliate or investment adviser of any Purchaser in any press release or filing with the SEC or any regulatory agency or trading market, without the prior written consent of such Purchaser, except (i) as required by federal securities law in connection with (A) any registration statement contemplated by the Registration Rights Agreement and (B) the filing of final Transaction Documents with the SEC and (ii) to the extent such disclosure is required by law, at the request of the staff of the SEC, in which case the Company shall provide the Purchasers Representative (or such other designee as each Purchaser shall designate from time to time) with prior written notice of such disclosure permitted under this subclause (ii).

8.3 Form D and Blue Sky. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Purchasers at the Closing pursuant to this Agreement under applicable securities or Blue Sky laws of the states of the United States (or to obtain an exemption from such qualification). The Company shall make all filings and reports relating to the offer and sale of the Shares required under applicable securities or Blue Sky laws of the states of the United States following the Closing Date.

8.4 No Integration. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the

Securities Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities to the Purchasers.

8.5 Pledge of Securities. Subject to applicable laws, the Company acknowledges and agrees that the Securities may be pledged by an Investor (as defined in the Registration Rights Agreement) in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. Such a pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Investor effecting such a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document.

9. Restrictive Legends. The certificates evidencing the Securities shall be stamped or otherwise imprinted with a legend in substantially the following form and none of the Securities shall be sold or otherwise transferred except in accordance therewith. The Securities will bear the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND WITHOUT A VIEW TO DISTRIBUTION AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE ACT), OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD OR TRANSFERRED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SALE OR TRANSFER IS EFFECTIVE UNDER THE ACT, OR (II) THE TRANSACTION IS EXEMPT FROM REGISTRATION UNDER THE ACT AND, IF THE CORPORATION REQUESTS, AN OPINION SATISFACTORY TO THE CORPORATION TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL. IN ADDITION, ANY SUCH TRANSFER OR OTHER DISPOSITION IS SUBJECT TO THE CONDITIONS CONTAINED IN A PURCHASE AGREEMENT, DATED FEBRUARY 7, 2011. A COPY OF SUCH CONDITIONS WILL BE PROVIDED TO THE HOLDER HEREOF UPON REQUEST.

The Company shall use commercially reasonable efforts to remove the restrictive legend set forth above and shall issue a certificate without such restrictive legend or any other restrictive legend to the holder of the applicable Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at the Depository Trust Company ( DTC ), if (i) such Securities are registered for resale under the Securities Act, (ii) such Securities are sold or transferred pursuant to Rule 144, or (iii) such Securities are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such securities and without volume or manner-of-sale restrictions. Following the earlier of (i) the effective date of a registration statement covering the resale of Securities or (ii) Rule 144 becoming available for the resale of the Securities, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to the Securities and without volume or manner-of-sale restrictions, the Company shall use commercially reasonable efforts to instruct its transfer agent

to remove the legend from the Securities and to cause its counsel to issue any legend removal opinion required by the transfer agent. Any fees (with respect to the transfer agent or Company counsel) associated with the issuance of such opinion or the removal of such legend shall be borne by the Company. If a legend is no longer required pursuant to the foregoing, the Company will no later than three (3) Business Days following the delivery by a Purchaser to the Company or the transfer agent (with notice to the Company) of a legended certificate or instrument representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer) and any required Rule 144 representation letter, deliver or cause to be delivered to such Purchaser a certificate or instrument (as the case may be) representing such Securities that is free from all restrictive legends. The Company may not make any notation on its records or give instructions to the transfer agent that enlarge the restrictions on transfer set forth in this Section 9. Certificates for the Securities free from all restrictive legends may be transmitted by the transfer agent to the Purchasers by crediting the account of the Purchaser's prime broker with DTC as directed by such Purchaser.

10. Indemnification.

10.1 Indemnification by the Company. In addition to the indemnity provided in the Registration Rights Agreement, the Company shall indemnify, defend and hold harmless each of the Purchasers, their respective Affiliates, the Purchasers' Representative, the respective Representatives of the Purchasers and their Affiliates and the successors and assigns of each of the foregoing (collectively, the Purchaser Group) from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, but not limited to, interest, penalties and reasonable attorneys' fees and expenses (collectively, Actual Damages), asserted against, imposed upon or incurred by the Purchaser Group or any member thereof, directly or indirectly, by reason of or resulting from the breach of any representation, warranty, covenant or agreement of the Company contained in any Transaction Document, any schedule thereto or in any other agreement or certificate delivered by or on behalf of the Company pursuant to any Transaction Document or in connection with the transactions contemplated thereby, regardless of whether such Actual Damages arise as a result of the negligence, strict liability or any other liability imposed under any theory of law or equity, or violation of any law by, the Company or any of its Affiliates, or their respective officers, employees, agents or consultants. If and to the extent that such indemnification is unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of such Actual Damages which shall be permissible under applicable Law. Such contribution shall be determined upon taking into account the relative benefits and relative fault of the parties hereto.

10.2 Notice and Defense of Claims. The parties' obligations and liabilities hereunder with respect to claims resulting from the assertion of liability by the Purchaser Group (or any member thereof) or third parties shall be subject to the following terms and conditions:

(a) Notice. The party seeking indemnification hereunder (each, an Indemnified Party) shall give prompt written notice to the Company of any claim or event known to it which does or may give rise to a claim by the Indemnified Party against the Company for which the Indemnified Party believes it is entitled to indemnification pursuant to this Section 10, stating the nature and basis of said claims or events

and the amounts thereof, to the extent known, and in the case of any Action brought by any third party, a copy of any claim, process or legal pleadings with respect thereto promptly after any such documents are received by the Indemnified Party; provided, that the failure to provide timely notice shall not affect the Company's indemnification obligations hereunder except to the extent the Company shall have been materially prejudiced thereby. Such notice shall be given in accordance with Section 11.2 hereof.

(b) Third Party Claims or Actions.

(i) In the event any Action is made or brought by any third party against an Indemnified Party, with respect to which the Company may have liability for Actual Damages under this Section 10, the Company shall, at its own expense, be entitled to participate in and, to the extent that it shall wish, to assume the defense, with independent counsel reasonably satisfactory to the Indemnified Party.

(ii) If the Company elects to assume control of such defense or settlement, it shall conduct such defense or settlement in a manner reasonably satisfactory to and effective to protect, the Indemnified Party; and such party and its counsel will keep the Indemnified Party reasonably advised as to its conduct of such defense or settlement, and no compromise or settlement shall be agreed or made without the written consent of the Indemnified Party, which consent shall not be reasonably withheld. In any case, the Indemnified Party shall have the right to employ its own counsel and such counsel may participate in such Action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless (A) the employment of counsel by the Indemnified Party has been authorized in writing by the Company, (B) the Company shall not in fact have employed counsel reasonably satisfactory to the Indemnified Party to assume the defense of such Action within five days after the Company has notice thereof, (C) the Company fails to conduct such defense or settlement in a reasonable manner, (D) the defense of the Indemnified Party by the Company would be inappropriate due to actual or potential conflicts of interest between such Indemnified Party and any other party represented by such counsel in such Action, or (E) the actual or potential defendants in, or targets of, any such Action include both the Indemnified Party and the Company, and the Indemnified Party reasonably determines that there may be legal defenses available to such Indemnified Party which are different from or in addition to those available to the Company. If any clause (A) through (E) of the preceding sentence shall be applicable, then the Indemnified Party shall have the right to employ one separate counsel (and any required local counsel) to direct or participate in the defense of such Action on behalf of the Indemnified Party and may contest, pay, settle or compromise any such claim on such terms and conditions as the Indemnified Party may determine (subject to the consent of the Company which shall not be unreasonably withheld), and the reasonable fees and disbursements of such one counsel (and local counsel) shall constitute Actual Damages hereunder.

(iii) Each party shall keep each of the other parties hereto reasonably informed of such Action at all stages thereof whether or not such party is represented by its own counsel.

10.3 Payments. The indemnification required by this Section 10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Actual Damages are incurred.

10.4 No Exclusive Remedy. For the avoidance of doubt, the provisions of this Section 10 shall not be any Purchaser's exclusive remedy against the Company for any demand, claim, action or cause of action, assessment, loss, damage, liability, cost or expense.

11. Miscellaneous.

11.1 Miscellaneous; Waivers and Amendments. Upon the approval of each Purchaser, the Company may amend or modify in any manner any term or provision of this Agreement or the rights and obligations hereunder of the Purchasers and the Company; provided that upon the approval of each Purchaser, as to such Purchaser, the obligations of the Company and the rights of such Purchaser under this Agreement may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely). No consideration shall be offered or paid to any Purchaser to amend or consent to a waiver or modification of any provision of any Transaction Document unless the same consideration is also offered to all Purchasers who then hold Securities (or are then entitled to purchase Securities under this Agreement).

11.2 Notices. All notices, requests, consents and other communications required or permitted hereunder shall be in writing and shall be (i) hand delivered, (ii) mailed postage prepaid by registered or certified mail, (iii) sent by nationally recognized courier service, or (iv) transmitted by confirmed facsimile or other electronic transmission; provided that such facsimile or other electronic transmission be followed by notice via another method permitted hereby.

(a) If to a Purchaser, to the following address (or the address of such other designee as each Purchaser shall designate from time to time):

Zesiger Capital Group LLC

460 Park Avenue, 22<sup>nd</sup> Floor

New York, NY 10022

Attention: Mary Estabil

Facsimile No.: (212) 508-6399

with a copy to (which shall not constitute notice):

Foley & Lardner LLP

111 Huntington Avenue

Boston, MA 02199

Attention: Ronald S. Eppen

Facsimile No.: (617) 342-4001

or

(b) If to the Company, addressed to the attention of its Chief Financial Officer at the most recent address listed on the cover page of its most recent filing with the SEC, with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, NY 10036-6522

Attention: Gregory A. Fernicola, Esq.

Facsimile No.: (212) 735-2000

or at such other address as the Company, the Purchasers' Representative or any Purchaser may specify by written notice to each other, and each such notice, request, consent and other communication shall for all purposes of the Agreement be treated as being effective or having been given when delivered if delivered personally, if sent by mail, at the earlier of its receipt or seventy-two (72) hours after the same has been deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and postage prepaid as aforesaid, on the next Business Day if sent by overnight courier service or upon receipt of facsimile or other electronic confirmation if transmitted during regular business hours of the recipient and, if not, on the next Business Day.

11.3 No Implied Waivers. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

11.4 Successors and Assigns. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective parties hereto, the successors and assigns of each Purchaser and the successors of the Company, whether so expressed or not. The Company may not assign any of its rights or obligations hereunder without the prior written consent of the Purchasers. A Purchaser may assign some or all of its rights hereunder without the consent of the Company, in which event such assignee shall be deemed to be a Purchaser hereunder with respect to such assigned rights. Except as expressly set forth herein, this Agreement shall not inure to the benefit of, or be enforceable by, any other Person.

11.5 Headings. The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any provision of this Agreement.

11.6 Governing Law. The internal Laws, and not the Laws of conflicts (other than Section 5-1401 of the General Obligations Law of the State of New York), of New York shall govern the enforceability and validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties.

11.7 Fees and Expenses. The Company shall pay the reasonable legal fees and expenses of Foley & Lardner LLP, counsel to certain Purchasers, incurred by such Purchasers in



connection with the transactions contemplated by the Transaction Documents which shall not exceed \$25,000, which amount shall be paid directly by the Company at the Closing or paid by the Company upon termination of this Agreement so long as such termination did not occur as a result of a material breach by such Purchasers of any of their obligations hereunder (as the case may be). Except as set forth above or elsewhere in the Transaction Documents, the Parties hereto shall be responsible for the payment of all expenses incurred by them in connection with the preparation and negotiation of the Transaction Documents and the consummation of the Transactions.

11.8 Specific Performance. The parties hereto agree that if any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

11.9 Exclusive Jurisdiction. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transaction may be brought in any federal or state court located in the County and State of New York, and each of the parties hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 11.2 hereof shall be deemed effective service of process on such party.

11.10 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.11 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts (including by facsimile or portable document format) and by different parties hereto in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument. This Agreement shall become effective when each party hereto shall have received counterparts hereof signed by all of the other parties hereto.

11.12 Entire Agreement. This Agreement and the other Transaction Documents contain the entire agreement among the parties hereto with respect to the subject matter hereof and supersede and replace all other prior agreements, written or oral, among the parties hereto with respect to the subject matter hereof.

11.13 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or

unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the Transaction be consummated as originally contemplated to the fullest extent possible.

11.14 Independent Nature of Purchasers. The obligations of each Purchaser under the Transaction Documents are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under any Transaction Document. The decision of each Purchaser to purchase Securities pursuant to the Transaction Documents has been made by such Purchaser independently of any other Purchaser and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company or any Subsidiary which may have been made or given by any other Purchaser or by any agent or employee of any other Purchaser, and no Purchaser and any of its agents or employees shall have any liability to any other Purchaser (or any other Person) relating to or arising from any such information, materials, statement or opinions. Nothing contained herein or in any Transaction Document, and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser acknowledges that no other Purchaser (other than the Purchasers' Representative) has acted as agent for such Purchaser in connection with making its investment hereunder and that no Purchaser (other than the Purchasers' Representative) will be acting as agent of such Purchaser in connection with monitoring its investment in the Securities or enforcing its rights under the Transaction Documents. Each Purchaser shall be responsible only for its own representations, warranties, agreements and covenants hereunder. Except as otherwise provided in the Transaction Documents, each Purchaser shall be entitled to independently protect and enforce its rights arising out of the Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

11.15 Taxes and Filings. The Company shall pay all original issuance, transfer, stamp and other similar taxes payable in respect of the issuance of the Securities; provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of any Securities in a name other than that of a Purchaser, and the Company shall have no obligation to make any such issuance or delivery unless and until the Person requesting such issue has paid to the Company the amount of any such tax, or has established to the reasonable satisfaction of the Company that such tax has been or will be paid. The Company shall make all appropriate filings required to be made under the laws of Delaware and any other jurisdiction with respect to the transactions contemplated by this Agreement.

11.16 Survival. Except as otherwise set forth herein, all agreements, covenants, representations and warranties of the Company herein or of (or on behalf of) the Company in any

certificates or other instruments delivered pursuant to this Agreement shall: (i) be deemed to be material and to have been relied upon by the Purchasers, notwithstanding any investigation heretofore or hereafter made by the Purchasers or on behalf of any one or more Purchasers, and (ii) not be limited or otherwise affected by any disposition of any Securities and survive the Closing; provided, however, that the representations and warranties of the Company shall expire 12 months following the Closing Date after which date, none of such representations and warranties shall survive; provided further, however, that the representations and warranties in Sections 6.1 (Company Status), 6.2 (Power and Authority), 6.3 (No Violation), 6.4 (Approvals) and 6.13 (Capitalization) shall survive indefinitely.

11.17 Remedies Cumulative, etc. No remedy herein conferred upon the Purchasers is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No course of dealing between the Company and the Purchasers or any subsequent holder of Securities and no delay or failure in exercising any rights hereunder in respect thereof shall operate as a waiver of or otherwise prejudice any of the rights or the rights of the Purchasers or holders of Securities. In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each Purchaser and each subsequent holder of Securities shall be entitled to specific performance of the agreements and obligations of the Company hereunder and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

11.18 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the parties hereto, their permitted successors and assigns, except as expressly provided in this Agreement.

11.19 Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company as described in Section 8.2 hereof, such Purchaser will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Nothing in this Agreement shall effect any existing confidentiality agreement.

11.20 Termination. This Agreement may be terminated and the sale and purchase of the Securities abandoned at any time prior to the Closing by either the Company or the Purchasers' Representative upon written notice to the other, if the Closing has not been consummated on or prior to 5:00 p.m., New York City time, on the thirtieth day following the date of this Agreement; provided, however, that the right to terminate this Agreement under this Section 11.20 shall not be available to any Person whose failure to comply with its obligations under this Agreement has been the cause of or resulted in the failure of the Closing to occur on or before such time. Nothing in this Section 11.20 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents. In the event of a termination pursuant to this Section, the Company shall promptly notify all non-terminating Purchasers. Upon a termination in accordance with this Section, the Company and the terminating Purchaser(s) shall not have any further obligation or liability (including arising

from such termination) to the other, and no Purchaser will have any liability to any other Purchaser under the Transaction Documents as a result therefrom.

[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HUGHES TELEMATICS, INC.

By: /s/ CRAIG KAUFMANN

Name: Craig Kaufmann

Title: Senior Vice President Finance and Treasurer

**THE PURCHASERS:**

THE ENTITIES AND INDIVIDUALS

DESIGNATED ON SCHEDULE 1 HERETO

By: Zesiger Capital Group LLC,  
Attorney-in-Fact

By: /s/ ROBERT WINTERS  
Name: Robert K. Winters  
Title: Managing Director

Address: 460 Park Avenue, 22<sup>nd</sup> Floor  
New York, NY 10022  
Attention: Mary Estabil  
Facsimile No.: (212) 508-6399

**THIRD AMENDMENT TO SECOND LIEN CREDIT AGREEMENT**

**THIRD AMENDMENT** (this Amendment ), dated as of February 7, 2011, to the Second Lien Credit Agreement, dated as of December 17, 2009 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the Credit Agreement ), among HUGHES TELEMATICS, INC., a Delaware corporation ( Borrower ), the lenders party thereto ( the Lenders ), PLASE HT, LLC, as administrative agent for the Lenders (in such capacity, the Administrative Agent ) and as collateral agent. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Credit Agreement.

**RECITALS**

- A. Borrower, the Administrative Agent, the Lenders and other parties thereto are party to the Credit Agreement.
- B. Borrower has requested that certain amendments be made to the Credit Agreement as set forth herein.
- C. The Lenders signatory hereto are willing to consent to the amendments to the Credit Agreement contained herein, on the terms and subject to the conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Amendments to Credit Agreement. As of the Third Amendment Effective Date (as defined below) and subject to the satisfaction of the conditions set forth in Section 2 hereof:

(a) Section 1.01 of the Credit Agreement is hereby amended by adding the following defined term in the appropriate alphabetical order:

Required Incremental Lenders shall mean, at any time, Incremental Loan Lenders the sum of whose outstanding Incremental Loans at such time represents at least a majority of the sum of all outstanding Incremental Loans of all the Incremental Loan Lenders.

(b) Section 4.02 of the Credit Agreement is hereby amended by deleting the word "or" at the end of clause (vi) in the parenthetical of clause (c) and replacing it with a comma, and adding the following at the end of such clause (vii):

or (viii) the issuance and sale of common stock pursuant to the Stock Purchase Agreement, dated on or about February 7, 2011, by and among the Borrower and each of the purchasers named therein .

(c) Section 9 of the Credit Agreement is hereby amended by adding the following parenthetical after the words "Required Lenders" in the final paragraph thereof:

(or, in the case of the any event described in Sections 9.01 or 9.05, upon the written request of either the Required Lenders or the Required Incremental Lenders) .

(d) Section 10.07 of the Credit Agreement is hereby amended by adding the words Required Incremental Lenders, after the words Required Lenders, .

(e) Section 11.12 of the Credit Agreement is hereby amended as follows:

(i) adding the words or in the definition of Incremental Loan Lenders after the words in the definition of Required Lenders in clause (a)(iii) thereof; and

(ii) deleting the word or immediately prior to clause (3) of the second proviso and replacing it with a comma and adding the following immediately after such clause (3):

or (4) ,without the consent of the Required Lenders or the Required Incremental Lenders, as applicable, amend, modify or waiver any provision of the last paragraph of Section 9 relating to the rights of the Required Lenders or the Required Incremental Lenders, as applicable .

2. Effectiveness of this Amendment. This Amendment shall become effective on and as of the date hereof (the Third Amendment Effective Date ) provided that all of the following conditions precedent have been satisfied:

(a) Amendment. The Administrative Agent shall have received this Amendment duly executed and delivered by Borrower and each of the Lenders;

(b) Costs and Expenses. The Borrower shall have paid all expenses required to be paid under Section 6 of this Amendment for which invoices have been presented (including the reasonable fees and expenses of legal counsel), in connection with this Amendment (or Borrower shall have made arrangements for the payment thereof satisfactory to the Administrative Agent);

(c) First Lien Credit Agreement Amendment. The Administrative Agent shall have received a copy of a fully executed amendment and consent substantially similar in scope and substance to Section 1(b) of this Amendment with respect to the Amended and Restated Credit Agreement dated as of April 9, 2007, among Borrower, Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent and the other Lenders a party thereto; and

(d) No Default. No Default or Event of Default shall have occurred and be continuing or will result from the execution, delivery or effectiveness of this Amendment.

3. Representations and Warranties. Borrower represents and warrants as follows:

(a) The Borrower is a duly organized and validly existing Business in good standing under the laws of the jurisdiction of its organization, (b) has the requisite Business power and authority to own its property and assets and to transact the business in which it is engaged and (c) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to be so qualified or authorized which, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No certifications by any Governmental Authority are required for operation of the business of the Borrower that are not in place, except for such certifications or agreements, the absence of which would not reasonably be expected to have a Material Adverse Effect.



(b) The Borrower has the Business power and authority to execute, deliver and perform the terms and provisions of the Amendment to which it is party and has taken all necessary Business action to authorize the execution, delivery and performance by it of the Amendment. The Borrower has duly executed and delivered the Amendment to which it is party, and such Amendment constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

(c) Neither the execution, delivery by the Borrower of the Amendment or the performance by the Borrower of the Credit Agreement (as amended by the Amendment), nor compliance by it with the terms and provisions thereof, (a) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or Governmental Authority, except for any such contravention that would not reasonably be expected to have a Material Adverse Effect, (b) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of the Borrower or any of its Restricted Subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which the Borrower or any of its Restricted Subsidiaries is a party or by which it or any its property or assets is bound or to which it may be subject except for any such conflict that would not reasonably be expected to have a Material Adverse Effect, (c) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of the Borrower or any of its Subsidiaries or (d) will be subject to any limitation on right or approval from any Governmental Authority.

(d) No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for those that have otherwise been obtained or made on or prior to the Third Amendment Effective Date and which remain in full force and effect on the Third Amendment Effective Date), or exemption by, any Governmental Authority is required to be obtained or made by, or on behalf of, the Borrower to authorize, or is required to be obtained or made by, or on behalf of, the Borrower in connection with, (i) the execution, delivery and performance of this Amendment, or (ii) the legality, validity, binding effect or enforceability of the Amendment except where failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect.

(e) No event has occurred and is continuing or will result from the execution and delivery of this Amendment that would constitute a Default or an Event of Default.

4. Applicable Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

5. WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

6. Expenses. Without limiting Borrower's obligations under Section 11.01 of the Credit Agreement, Borrower hereby agrees to reimburse the Administrative Agent for reasonable and documented out-of-pocket expenses, including the reasonable fees and disbursements of counsel, incurred

in connection with this Amendment. The provisions of Section 11.05 of the Credit Agreement is hereby incorporated by reference herein as if fully set forth and in full force and effect as if written in full herein.

7. Counterparts. This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Administrative Agent. Delivery of an executed counterpart hereof by facsimile or electronic transmission shall be as effective as delivery of any original executed counterpart hereof.

8. Reference to and Effect on the Credit Documents.

(a) Upon and after the effectiveness of this Amendment, each reference in the Credit Agreement to this Agreement, hereunder, hereof or words of like import referring to the Credit Agreement, and each reference in the other Credit Documents to the Credit Agreement, thereof or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified and amended hereby.

(b) Except as specifically amended above and as provided for in Section 11 below, the Credit Agreement and all other Credit Documents, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed and shall constitute the legal, valid, binding and enforceable obligations of Borrower to the Administrative Agent and the Lenders, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Agent or any other Lender under any of the Credit Documents, nor constitute a waiver of any provision of any of the Credit Documents.

(d) To the extent that any terms and conditions in any of the Credit Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified or amended hereby.

9. Integration. This Amendment, together with the other Credit Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

10. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[signature pages follow]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

**HUGHES TELEMATICS INC.,**  
a Delaware corporation

By: /s/ CRAIG KAUFMANN  
Name: Craig Kaufmann  
Title: Senior Vice President Finance and Treasurer

**PLASE HT, LLC**  
as Lender

By: /s/ ANDREW AFRICK  
Name: Andrew Africk  
Title: Manager

**Accepted, Acknowledged and Agreed:**

**PLASE HT, LLC,**  
as Administrative Agent

By: /s/ ANDREW AFRICK  
Name: Andrew Africk  
Title: Manager

**PLASE HT, LLC,**  
as Collateral Agent

By: /s/ ANDREW AFRICK  
Name: Andrew Africk  
Title: Manager

NEITHER THIS WARRANT NOR THE SHARES OBTAINABLE UPON ITS EXERCISE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT ), OR ANY STATE SECURITIES LAWS (COLLECTIVELY, THE ACTS ), AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED OR UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A OF THE SECURITIES ACT.

NUMBER \_\_\_\_ -

THIS WARRANT WILL BE VOID IF NOT  
EXERCISED PRIOR TO 5:00 P.M. NEW YORK

WARRANTS

CITY TIME, DECEMBER 17, 2014  
HUGHES TELEMATICS, INC.

WARRANT

THIS CERTIFIES THAT, for value received [ ] is the registered holder of a Warrant expiring December 17, 2014 (the Warrant ) to purchase [ ] ([ ]) fully paid and non-assessable share of Common Stock, par value \$.0001 per share ( Shares ), of HUGHES Telematics, Inc., a Delaware corporation (the Company ) evidenced by this Warrant Certificate. The Warrant entitles the holder thereof to purchase from the Company, commencing on the date hereof, such number of Shares of the Company at the price of \$5.99 per share, upon surrender of this Warrant Certificate and payment of the Exercise Price at the office of the Company, but only subject to the conditions set forth herein.

1. Terms and Exercise of Warrants.

(a) Exercise Price. This Warrant shall, when signed by the Company, entitle the registered holder thereof, subject to the provisions of this Warrant, to purchase from the Company the number of shares of Common Stock stated herein, at the price of \$5.99 per whole share, subject to the adjustments provided in Section 2 hereof and in the last sentence of this Section 1(a). The term Exercise Price refers to the price per share at which Common Stock may be purchased at the time the Warrant is exercised.

(b) Duration of Warrant. This Warrant may be exercised only during the period ( Exercise Period ) commencing on the date hereof and terminating at 5:00 p.m., New York City time on December 17, 2014 (the Expiration Date ). If this Warrant is not exercised on or before the Expiration Date, it shall become void, and all rights hereunder shall cease at the close of business on the Expiration Date.

(c) Payment. Subject to the provisions hereof, this Warrant may be exercised by the registered holder by surrendering it, at the office of the Company, with the notice of exercise, as set forth as Annex A to this Warrant, duly executed, and by paying in full the Exercise Price for each full share of Common Stock as to which the Warrant is exercised and any and all applicable taxes due in connection with the exercise of the Warrant, as follows:

(i) in cash, good certified check or good bank draft payable to the order of the Company (or as otherwise agreed to by the Company);

(ii) in shares of Common Stock with an aggregate Fair Market Value equal to the Exercise Price, provided such shares of Common Stock must be free of any lien, encumbrance or contractual restriction on transfer at the time of delivery. Fair Market Value shall mean the volume weighted average sale prices of the Common Stock on the OTC Bulletin Board or primary stock exchange on which the Common Stock is then listed for the twenty most recent trading days on which sales have occurred ending on the third trading day prior to the relevant date of determination, provided that if the stock is not then quoted on the OTC Bulletin Board or any stock exchange, Fair Market Value shall be determined by a majority of the disinterested members of the board of directors of the Company; or

(iii) in the form of notes payable or other indebtedness issued by the Company, which shall be cancelled, in a principal amount, plus accrued and unpaid interest thereon to and including the date of exercise, equal to the Exercise Price.

(d) Net Exercise. If during the Exercise Period the Fair Market Value of one share of the Common Stock is greater than the Exercise Price (at the date of calculation as set forth below), in lieu of exercising this Warrant by payment of cash, Common Stock or indebtedness as set forth in Section 1(c), the holder may, at its election, effect a net exercise of this Warrant, in which event, if so effected, the holder shall, by surrender of this Warrant at the

principal office of the Company, together with the properly endorsed notice of exercise, as set forth as Annex A to this Warrant, receive the number of shares of Common Stock computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

A

Where:

X = the number of shares of Common Stock to be issued to the holder;

Y = the number of shares of Common Stock with respect to which this Warrant is being exercised;

A = the Fair Market Value (as defined below) of one share of the Company's Common Stock (at the date of such calculation); and

B = the Exercise Price (as adjusted to the date of such calculation).

(e) Issuance of Certificates. As soon as practicable after the exercise of this Warrant and the clearance of the funds in payment of the Exercise Price, the Company shall issue to the registered holder of the Warrant a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled, registered in such name or names as may be directed by him, her or it, and if such Warrant shall not have been exercised in full, a new countersigned Warrant for the number of shares as to which the Warrant shall not have been exercised.

(f) Valid Issuance. All shares of Common Stock issued upon the proper exercise of a Warrant in conformity with this Agreement shall be validly issued, fully paid and nonassessable.

(g) Date of Issuance. Each person in whose name any such certificate for shares of Common Stock is issued shall for all purposes be deemed to have become the holder of record of such shares on the date on which the Warrant was surrendered and payment of the Exercise Price was made, irrespective of the date of delivery of such certificate, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

2. Adjustments.

(a) Stock Dividends - Split-Ups. If after the date hereof, and subject to the provisions of Section 2(g) below, the number of outstanding shares of Common Stock is increased by a stock dividend payable in shares of Common Stock, or by a split-up of shares of Common Stock, or other similar event, then, on the effective date of such stock dividend, split-up or similar event, the number of shares of Common Stock issuable on exercise of this Warrant shall be increased in proportion to such increase in outstanding shares of Common Stock.



(b) Aggregation of Shares. If after the date hereof, and subject to the provisions of Section 2(g), the number of outstanding shares of Common Stock is decreased by a consolidation, combination, reverse stock split or reclassification of shares of Common Stock or other similar event, then, on the effective date of such consolidation, combination, reverse stock split, reclassification or similar event, the number of shares of Common Stock issuable on exercise of the Warrant shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

(c) Adjustments in Exercise Price. Whenever the number of shares of Common Stock purchasable upon the exercise of the Warrant is adjusted, as provided in Section 2(a) or 2(b) above, the Exercise Price shall be adjusted (to the nearest cent) by multiplying such Exercise Price immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of shares of Common Stock purchasable upon the exercise of this Warrant immediately prior to such adjustment, and (y) the denominator of which shall be the number of shares of Common Stock so purchasable immediately thereafter.

(d) Replacement of Securities upon Reorganization, etc. In case of any reclassification or reorganization of the outstanding shares of Common Stock (other than a change covered by Section 2(a) or 2(b) hereof or that solely affects the par value of such shares of Common Stock), or in the case of any merger or consolidation of the Company with or into another corporation (other than a consolidation or merger in which the Company is the continuing corporation and that does not result in any reclassification or reorganization of the outstanding shares of Common Stock), or in the case of any sale or conveyance to another corporation or entity of the assets or other property of the Company as an entirety or substantially as an entirety in connection with which the Company is dissolved, the Warrant holder shall thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock of the Company immediately theretofore purchasable and receivable upon the exercise of the rights represented hereby, the kind and amount of shares of stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the Warrant holder would have received if such Warrant holder had exercised this Warrant immediately prior to such event; and if any reclassification also results in a change in shares of Common Stock covered by Section 2(a) or 2(b), then such adjustment shall be made pursuant to Sections 2(a), 2(b), 2(c) and this Section 2(d). The provisions of this Section 2(d) shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers.

(e) Upon Issuance of Common Stock. If the Company shall, at any time or from time to time on or before the Expiration Date, issue any shares of Common Stock, options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities (in each case, other than an issuance of Excluded Securities (as defined below)) in any transaction approved by a majority of the disinterested members of the board of directors of the Company without consideration or for consideration per share less than the Fair Market Value, then the Exercise Price shall forthwith be lowered (but not increased) to a price equal to the price obtained by multiplying:

(X) the Exercise Price in effect immediately prior to the issuance of such Common Stock, options, rights or securities, by

(Y) a fraction of which (x) the numerator shall be the sum of (A) the number of shares of Common Stock outstanding on a fully diluted basis immediately prior to such issuance and (B) the number of additional shares of Common Stock which the aggregate consideration for the number of shares of Common Stock so offered would purchase at the Fair Market Value and (y) the denominator shall be the number of shares of Common Stock outstanding on a fully diluted basis immediately after such issuance.

Excluded Securities shall mean (t) securities issued pursuant to the exercise of this Warrant; (u) securities issued in respect of a dividend, split-up of shares or other distribution resulting in an adjustment under Section 2(a), 2(b) or 2(c); (v) securities issued in Excluded Transactions (as defined below); (w) securities issued to Apollo Global Management LLC or any affiliate thereof (including, without limitation, Communications Investors LLC); (x) securities issued to employees, consultants or advisers of the Company and/or any its subsidiaries in exchange for services rendered to the Company or any of its subsidiaries (and any additional securities issued upon exchange, conversion or exercise of such securities); (y) securities issued pursuant to the terms of outstanding securities or rights in existence as of the original issuance date of this Warrant; or (z) securities issued to business partners, suppliers, vendors, customers or other parties with which the Company has a strategic or commercial relationship, provided the principal purpose of such issuance is other than to provide cash financing to the Company or any of its subsidiaries. Excluded Transactions means the issuance and sale of securities in a transaction in which any of the entities listed on Schedule I hereto, any of their respective affiliates or entities for which they act as advisor or investment manager, or any other entity participating with any the foregoing, is a participant (whether or not other entities are additional participants in such transaction) in one or more transactions consummated prior to March 31, 2010, involving net proceeds to the Company of up to \$15 million in the aggregate.

For the purposes of any adjustment of the Exercise Price pursuant to this Section 2(e), the following provisions shall be applicable:

(i) in the case of the issuance of Common Stock for cash in a public offering or private placement, the consideration shall be deemed to be the amount of cash paid therefor before deducting therefrom any discounts, commissions or placement fees payable by the Company to any underwriter or placement agent in connection with the issuance and sale thereof;

(ii) in the case of the issuance of Common Stock for consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by a majority of the disinterested members of the Company's board of directors;

(iii) in the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or

exchangeable for Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities (except for options to acquire or rights to subscribe for, or securities convertible into or exchangeable for, Excluded Securities);

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of any such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration, if any, received by the Company upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities, options, or rights were issued and for a consideration equal to the consideration received by the Company for any such securities and related options or rights, plus the additional consideration, if any, to be received by the Company upon the conversion or exchange of such securities or the exercise of any related options or rights;

(3) upon any change in the number of shares or exercise price of Common Stock deliverable upon exercise of any such options or rights or conversions of or exchanges for such securities (excluding any such change resulting from the anti-dilution provisions of any other securities of the Company in connection with a transaction or event that also results in an adjustment under this Section 2(e)), the Exercise Price shall forthwith be readjusted to such Exercise Price as would have been obtained had the adjustment made upon the issuance of such options, rights or securities not converted prior to such change or options or rights related to such securities not converted prior to such change been made upon the basis of such change; and

(4) no further adjustment of the Exercise Price adjusted upon the issuance of any such options, rights, convertible securities or exchangeable securities shall be made as a result of the actual issuance of Common Stock on the exercise of any such rights or options or any conversion or exchange of any such securities.

(f) Notices of Changes in Warrant. Upon every adjustment of the Exercise Price or the number of shares issuable upon exercise of the Warrant, the Company shall give written notice thereof to the Warrant holder, at the last address set forth for such holder in the warrant register, which notice shall state the Exercise Price resulting from such adjustment and the increase or decrease, if any, in the number of shares purchasable at such price upon the exercise of a Warrant, setting forth in reasonable detail the method of calculation and the facts

upon which such calculation is based. Upon the occurrence of any event specified in Sections 2(a), 2(b), 2(c), (2(d) or 2(e), then, in any such event, the Company shall give written notice to the Warrant holder, at the last address set forth for such holder in the warrant register, of the record date or the effective date of the event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such event.

(g) No Fractional Shares. Notwithstanding any provision contained in this Warrant Agreement to the contrary, the Company shall not issue fractional shares upon exercise of the Warrant. If, by reason of any adjustment made pursuant to this Section 2(g), the holder of a Warrant would be entitled, upon the exercise of the Warrant, to receive a fractional interest in a share, the Company shall, upon such exercise, round up or down to the nearest whole number the number of the shares of Common Stock to be issued to the Warrant holder.

(h) Dividends. If the Company, at any time while the Warrant is outstanding and unexpired, shall pay a dividend in cash or securities to the holders of the Common Stock (or shares of the Company's capital stock into which the Warrant is convertible), then upon the exercise of the Warrant, the registered holder shall be entitled to a proportionate share of any such dividend as if the shares of Common Stock purchased upon exercise hereof by such registered holder had been purchased and outstanding on the record date fixed for the determination of the holders of the Common Stock entitled to receive such dividend.

3. Transfers.

(a) The holder of this Warrant understands that the Company may, as a condition to the transfer of this Warrant or the underlying shares of Common Stock require that the request for transfer be accompanied by an opinion of counsel reasonably satisfactory to the Company, to the effect that the proposed transfer does not result in a violation of the Securities Act, unless such transfer is covered by an effective registration statement or by Rule 144 or Rule 144A under the Securities Act; provided, however, that no transfer by any holder to any of its affiliates shall require an opinion of counsel; provided, further, that such affiliate in each case agrees to be subject to the restrictions in this Section 3(a). Each certificate evidencing the shares of common stock issued upon exercise of this Warrant, or transfer of such shares (other than a transfer registered under the Securities Act or any subsequent transfer of shares so registered) shall be stamped or imprinted with a legend in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND WITHOUT A VIEW TO DISTRIBUTION AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE ACT), OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD OR TRANSFERRED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SALE OR TRANSFER IS EFFECTIVE UNDER THE ACT, OR (II) THE TRANSACTION IS EXEMPT FROM REGISTRATION UNDER THE ACT AND, IF THE CORPORATION REQUESTS, AN OPINION SATISFACTORY TO THE CORPORATION TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL. IN ADDITION, ANY SUCH TRANSFER OR OTHER DISPOSITION IS SUBJECT TO THE CONDITIONS CONTAINED IN A PURCHASE

AGREEMENT, DATED FEBRUARY 7, 2011. A COPY OF SUCH CONDITIONS WILL BE PROVIDED TO THE HOLDER HEREOF UPON REQUEST.

The foregoing legends shall be removed by the Company (i) upon any sale of the Warrant or the shares in accordance with Rule 144 (or any successor provision thereof) or pursuant to an effective registration statement or (ii) upon receipt by the Company from the holder of such certifications as it may reasonably request to enable it to determine that such legend is no longer required in order to satisfy the requirements of the Securities Act.

(b) Registration of Transfer. The Company shall register the transfer, from time to time, of this Warrant upon the Warrant Register, upon surrender of the Warrant for transfer, properly endorsed with signatures properly guaranteed and accompanied by appropriate instructions for transfer in the form of Annex B hereto. Upon any such transfer, one or more new Warrants representing a right to purchase an equal aggregate number of shares of Common Stock shall be issued and the old Warrant shall be cancelled.

(c) Procedure for Surrender. This Warrant may be surrendered to the Company, together with a written request for exchange or transfer, and there-upon the Company shall issue in exchange therefor one or more new Warrants as requested by the registered holder of the Warrant so surrendered, representing the right to purchase an equal aggregate number of shares of Common Stock; provided, however, that the Company may require an opinion of counsel stating that such transfer may be made and indicating whether the new Warrant or warrants must also bear a restrictive legend.

(d) Fractional Warrants. The Company shall not be required to effect any registration of transfer or exchange which will result in the issuance of a warrant certificate for a fraction of a warrant.

(e) Service Charges. No service charge shall be made for any exchange or registration of transfer of the Warrant.

4. Other.

(a) No Rights as Stockholder. Except as expressly set forth herein, this Warrant does not entitle the registered holder hereof to any of the rights of a stockholder of the Company, including, without limitation, the right to receive dividends, or other distributions, exercise any preemptive rights to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter.

(b) Lost, Stolen, Mutilated, or Destroyed Warrant. If this Warrant is lost, stolen, mutilated, or destroyed, the Company may on such terms as to indemnity or otherwise as they may in their discretion impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination, tenor, and date as the Warrant so lost, stolen, mutilated, or destroyed. Any such new Warrant shall constitute a substitute contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated, or destroyed Warrant shall be at any time enforceable by anyone.

(c) Reservation of Common Stock. The Company shall at all times reserve and keep available a number of its authorized but unissued shares of Common Stock that will be sufficient to permit the exercise in full of this Warrant.

(d) Payment of Taxes. The Company will from time to time promptly pay all taxes and charges that may be imposed upon the Company in respect of the issuance or delivery of shares of Common Stock upon the exercise of the Warrant, but the Company shall not be obligated to pay any transfer taxes in respect of the Warrant or such shares.

(e) Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company shall bind and inure to the benefit of their respective successors and assigns.

(a) Notices. Any notice, statement or demand authorized by this Warrant to be given or made by the holder of the Warrant to or on the Company shall be sufficiently given when so delivered if by hand or overnight delivery or if sent by certified mail or private courier service within five days after deposit of such notice, postage prepaid, addressed (until another instruction is provided in writing by the Company) to the attention of its Chief Financial Officer at the most recent address listed on the cover page of its most recent filing with the Securities and Exchange Commission, with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, NY 10036-6522

Attention: Gregory A. Fernicola, Esq.

Facsimile No.: (212) 735-2000

Any notice, statement or demand authorized by this Warrant to be given or made by the holder of the Warrant or by the Company shall be sufficiently given when so delivered if by hand or overnight delivery or if sent by certified mail or private courier service within five days after deposit of such notice, postage prepaid, addressed (until another address is provided to the holder of the Warrant in writing by the Company), to the registered holder at the last address set forth for such holder in the warrant register.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed as of February 7, 2011.

HUGHES TELEMATICS, INC.

By:

Name: Craig Kaufmann

Title: Senior Vice President Finance and Treasurer

[Signature Page to Warrant]

HUGHES TELEMATICS, INC.

REGISTRATION RIGHTS AGREEMENT

Dated as of February 7, 2011



THIS REGISTRATION RIGHTS AGREEMENT, dated as of February 7, 2011, by and among HUGHES TELEMATICS, INC., a Delaware corporation (the Company), and the entities and individuals designated on Schedule 1 hereto (each of which is herein referred to as an Investor, and together, the Investors).

In consideration of the mutual covenants and agreements herein contained and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1 Definitions. The following capitalized terms used herein have the following meanings:

Agreement means this Registration Rights Agreement, as amended, restated, supplemented or otherwise modified from time to time.

Allowable Blackout Period has the meaning set forth in Section 3.5 hereof.

Blackout Period has the meaning set forth in Section 3.5 hereof.

Board means the board of directors of the Company.

Business Day means any day that is not a Saturday or Sunday or a day on which banks are required or permitted to be closed in the State of New York.

Closing Date has the meaning set forth in the Purchase Agreement.

Commission means the Securities and Exchange Commission, or any other federal agency then administering the Securities Act or the Exchange Act.

Common Shares means the shares of Common Stock (i) purchased by the Investors pursuant to the Purchase Agreement and (ii) issued to the Investors upon exercise of the Warrants held by the Investors as Incremental Loan Lenders.

Common Stock means the common stock, par value \$0.0001 per share, of the Company and any other capital stock of any class or series of the Company and any shares of capital stock issuable upon the conversion, exercise or exchange of securities of the Company convertible into, or exercisable or exchangeable for, any such common stock or other capital stock of the Company.

Company has the meaning assigned to it in the introductory paragraph of this Agreement.

Contractual Securities means collectively, (i) securities of the Company which are subject to an Existing Contract and (ii) Registrable Securities.

Contractual Securityholder means all Persons that hold Contractual Securities.

Delay Period has the meaning set forth in Section 3.1 hereof.

Effectiveness Deadline means, with respect to the initial Registration Statement, the earlier of (i) the three month anniversary of the Closing Date (or the 150<sup>th</sup> calendar day following the Closing Date in the event that such registration statement is subject to review by the Commission) and (ii) the fourth Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be reviewed or will not be subject to further review.

Effectiveness Period has the meaning set forth in Section 3.3 hereof.

Event has the meaning set forth in Section 2.3 hereof.

Event Date has the meaning set forth in Section 2.3 hereof.

Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

Existing Contract means any contract to which the Company is a party and in effect as of the date hereof, under which the Company may be required to register securities on the Registration Statement.

Filing Deadline has the meaning set forth in Section 2.1 hereof.

Governmental Authority means any federal, state, local or foreign government, executive official thereof, governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign.

Indemnified Party has the meaning set forth in Section 4.3 hereof.

Indemnifying Party has the meaning set forth in Section 4.3 hereof.

Incremental Loan Commitment Agreement means the Incremental Loan Commitment Agreement, dated as of February 7, 2011, by and among the Company and the lenders therein.

Incremental Loan Lenders has the meaning set forth in the Incremental Loan Commitment Agreement.

Investors has the meaning assigned to it in the introductory paragraph of this Agreement.

Investors Representative means Zesiger Capital Group, LLC or such other representative or representatives as may be designated by one or more of the Investors from time to time.

Notices has the meaning set forth in Section 7.2 hereof.

Person means an individual, a partnership (general or limited), a corporation, a limited liability company, an association, a joint stock company, Governmental Authority, a business or other trust, a joint venture, any other business entity or an unincorporated organization.

Purchase Agreement means that certain Stock Purchase Agreement, dated as of February 7, 2011, by and among the Company and the Investors.

Register, Registered and Registration mean a registration effected by preparing and filing a registration statement or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

Registrable Securities means all Common Shares, including any shares of Common Stock issued or issuable in respect of a stock split, distribution, anti-dilution adjustment or otherwise. Such securities shall cease to be Registrable Securities upon the earlier of the dates that: (a) the Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been Transferred in accordance with such Registration Statement; (b) such securities shall have been otherwise Transferred, new certificates for them not bearing a legend restricting further Transfer shall have been delivered by the Company and subsequent public distribution of them shall not require Registration under the Securities Act; (c) such securities shall have ceased to be outstanding; or (d) the Registrable Securities are saleable under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 (including under Rule 144(c)(1) and Rule 144(i)(2)) and not subject to the volume restriction therein; *provided, however*, that if any shares of Common Stock cease to be Registrable Securities by virtue of clause (d) above and Rule 144 subsequently becomes unavailable to permit the resale thereof, such shares shall once again be considered Registrable Securities.

Registrable Securityholders means, for so long as any such Person holds Registrable Securities, collectively, (i) the Investors and (ii) any Person who or which has acquired Registrable Securities.

Registrable Securityholders Indemnified Party has the meaning set forth in Section 4.1.

Registration Statement has the meaning set forth in Section 2.1 hereof; *provided*, that such meaning shall include any such registration statement that has previously become effective under the Securities Act and relates to the resale of the Registrable Securities.

Required Holders means the holders of at least a majority of the Registrable Securities.

Rule 144 means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission as a replacement thereto having substantially the same effect as such rule.

Rule 415 means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission as a replacement thereto having substantially the same effect as such rule.

SEC Guidance means (i) any publicly-available written or oral guidance, comments, requirements or requests of the Commission staff and (ii) the Securities Act.

Securities Act means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

Suspension Notice has the meaning set forth in Section 3.5 hereof.

Transfer means to (a) directly or indirectly offer, sell, contract to sell, exchange, pledge or otherwise dispose of any Common Stock or other equity securities of the Company, (b) enter into any transaction which is designed to, or would reasonably be expected to, result in the disposition, whether by actual disposition or effective economic disposition due to cash settlement or otherwise, of Common Stock or other equity securities of the Company (including the filing or participation in the filing of a Registration Statement with the Commission), or (c) establish or increase a put equivalent position or liquidate or decrease a call equivalent position relating to Common Stock or other equity securities of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

Transferred and Transferee each have a correlative meaning.

Warrants has the meaning set forth in the Incremental Loan Commitment Agreement.

## ARTICLE II

### SHELF REGISTRATION RIGHTS

Section 2.1 Shelf Registration. The Company will, subject to Sections 3.1 and 3.13 hereof, cause a registration statement on Form S-1 or Form S-3 relating to the resale of the Registrable Securities by the Registrable Securityholders on a continuous basis pursuant to Rule 415 under the Securities Act (the Registration Statement ), to be filed with the Commission as promptly as possible following the date hereof and in any event no later than sixty (60) days following the date hereof (the Filing Deadline ). Notwithstanding the registration obligations

set forth in this Agreement, in the event the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly (i) inform each of the Registrable Securityholders thereof and use its commercially reasonable efforts to file amendments to the initial Registration Statement as required by the Commission and/or (ii) withdraw the initial Registration Statement and file a new Registration Statement, in either case covering the maximum number of Registrable Securities permitted to be registered by the Commission, on such form available to the Company to register for resale the Registrable Securities as a secondary offering; provided, however, that prior to filing such amendment or new Registration Statement, the Company shall be obligated to use its commercially reasonable efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09. In the event the Company amends the initial Registration Statement or files a new Registration Statement, as the case may be, under clauses (i) or (ii) above, the Company will use its commercially reasonable efforts to file with the Commission, as promptly as allowed by the Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on such form available to the Company to register for resale those Registrable Securities that were not registered for resale on the initial Registration Statement, as amended, or the new Registration Statement. No Registrable Securityholder shall be named as an underwriter in any Registration Statement without such Registrable Securityholder's prior written consent.

Section 2.2 The Company will use its commercially reasonable best efforts to cause each Registration Statement to become effective as soon as practicable after the date of such filing and in any event no later than the Effectiveness Deadline. The Company shall, by 9:30 a.m. New York City time on the first Business Day after the effective date of such Registration Statement, file a final prospectus with the Commission, as required by Rule 424(b) under the Securities Act.

Section 2.3 If: (i) a Registration Statement covering all of the Registrable Securities is not declared effective by the Commission (or otherwise does not become effective) for any reason on or prior to the Effectiveness Deadline, (ii) after its effective date, (A) such Registration Statement ceases for any reason (including without limitation by reason of a stop order, or the Company's failure to update the Registration Statement), to remain continuously effective as to all Registrable Securities for which it is required to be effective or (B) the Holders are not permitted to utilize the Prospectus therein to resell such Registrable Securities, in the case of (A) and (B) (other than during an Allowable Blackout Period (as defined in Section 3.5 of this Agreement)), (iii) a Blackout Period (as defined in Section 3.5 of this Agreement) exceeds the length or number, in each case individually or in the aggregate, of an Allowable Blackout Period, or (iv) after the date six months following the Closing Date, and only in the event a Registration Statement is not available to sell all Registrable Securities, the Company fails to file with the Commission any required reports under Section 13 or 15(d) of the Exchange Act such that it is not in compliance with Rule 144(c)(1) or Rule 144(i)(2) as a result of which the Registrable Securityholders who are not affiliates are unable to sell Registrable Securities without restriction under Rule 144 (or any successor thereto) (any such failure or breach in clauses (i) through (iv) above being referred to as an Event, and, for purposes of clauses (ii) or (iv), the date on which

such Event occurs, for purposes of clause (i), the 30<sup>th</sup> calendar day after such Event, and for purposes of clause (iii) the date on which such Allowable Blackout Period is exceeded, being referred to as an Event Date ), then in addition to any other rights the Registrable Securityholders may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as liquidated damages and not as a penalty, equal to 1.0% of the aggregate purchase price paid by such Registrable Securityholder pursuant to the Purchase Agreement for any Registrable Securities held by such Registrable Securityholder on the Event Date. The parties agree that notwithstanding anything to the contrary herein, no liquidated damages shall be payable (i) if as of the relevant Event Date, the Registrable Securities may be sold by non-affiliates without volume or manner of sale restrictions under Rule 144 and the Company was in compliance with the current public information requirements under Rule 144 (including under Rule 144(c)(1) and Rule 144(i)(2)), as determined by counsel to the Company (which may be in-house counsel) pursuant to a written opinion letter to such effect, addressed and reasonably acceptable to the Company's transfer agent and (ii) with respect to any period after the expiration of the Effectiveness Period (it being understood that this sentence shall not relieve the Company of any liquidated damages accruing prior to the expiration of the Effectiveness Period), and in no event shall the aggregate amount of liquidated damages payable to a Registrable Securityholder exceed, in the aggregate, twelve percent (12%) of the aggregate purchase price paid by such Registrable Securityholder pursuant to the Purchase Agreement. If the Company fails to pay any liquidated damages pursuant to this Section 2.3 in full within five (5) Business Days after the date payable, the Company will pay interest thereon at a rate of 1.0% per month (or such lesser maximum amount that is permitted to be paid by applicable law) to the Registrable Securityholder, accruing daily from the date such liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The liquidated damages pursuant to the terms hereof shall apply on a daily pro-rata basis for any portion of a month prior to the cure of an Event, except in the case of the first Event Date. The Effectiveness Deadline for a Registration Statement shall be extended without default or liquidated damages hereunder in the event that the Company's failure to obtain the effectiveness of the Registration Statement on a timely basis results from the failure of a Registrable Securityholder to timely provide the Company with information requested by the Company and necessary to complete the Registration Statement in accordance with the requirements of the Securities Act (in which case the Effectiveness Deadline would be extended with respect to Registrable Securities held by such Registrable Securityholder).

### ARTICLE III

#### REGISTRATION PROCEDURES

Section 3.1 Filings: Information. In no way limiting Section 2.3, the Company may postpone the filing of the Registration Statement if, based on the good faith judgment of the Board, such postponement is necessary in order to avoid premature disclosure of a matter the Board has determined would not be in the best interest of the Company to be disclosed at such time. The Company shall provide written notice to the Investors' Representative (or such other

designee as each Investor shall designate from time to time) of any postponement of the filing of the Registration Statement pursuant to this Section 3.1. The Company may defer the filing of the Registration Statement pursuant to this Section 3.1 only once and for not more than 30 consecutive days. The period during which filing is so postponed hereunder is referred to as a Delay Period.

Section 3.2 Copies. The Company shall, at least three (3) Business Days prior to filing the Registration Statement or prospectus, or any amendment or supplement thereto, furnish without charge to such Registrable Securityholder, and, if requested in writing by any Registrable Securityholder, such holders' legal counsel, copies of the Registration Statement as proposed to be filed, each amendment and supplement to the Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in the Registration Statement (including each preliminary prospectus) and, subject to prior receipt by the Company from a Registrable Securityholder of any confidentiality agreement as the Company may reasonably request, such other documents as any Registrable Securityholder or legal counsel for any Registrable Securityholder may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Registrable Securityholder. Each Registrable Securityholder shall have the opportunity to review and comment on the Registration Statement or prospectus, or any amendment or supplement thereto. The Company shall make available to the Registrable Securityholders each letter written by or on behalf of the Company to the Commission or the staff of the Commission (or other governmental agency or self-regulatory body or other body having jurisdiction, including any domestic or foreign securities exchange), and each item of correspondence from the Commission or the staff of the Commission (or other governmental agency or self-regulatory body or other body having jurisdiction, including any domestic or foreign securities exchange), in each case relating to the Registration Statement.

Section 3.3 Effectiveness Period. After the Registration Statement has become effective, and subject to any Blackout Periods, the Company shall use its reasonable best efforts to keep such Registration Statement effective until the earlier of (i) the date that all Registrable Securities covered by such Registration Statement may be sold by non-affiliates without volume or manner of sale restrictions under Rule 144, without the requirement for the Company to be in compliance with the current public information requirements under Rule 144 (including under Rule 144I(1) and Rule 144(i)(2)), as determined by counsel to the Company (which may be in-house counsel) pursuant to a written opinion letter to such effect, addressed and reasonably acceptable to the Company's transfer agent, or (ii) such time as all Registrable Securities covered by the Registration Statement have been publicly sold either pursuant to the Registration Statement in accordance with the plan of distribution set forth therein or pursuant to Rule 144 (the Effectiveness Period ). The Company shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements to the Registration Statement and the prospectus used in connection therewith as may be necessary to keep the Registration Statement effective and in compliance with the provisions of the Securities Act for the Effectiveness Period. Notwithstanding anything to the contrary set forth herein, the Effectiveness Period shall include any period during which any Registrable Securities cease to be saleable under Rule 144 by virtue of the Company's failure to be in compliance with the current public information required under Rule 144 (including under Rule 144I(1) and Rule 144(i)(2)) or

subject to any volume limitations on sale thereunder, and in the event the Company is not able to maintain the effectiveness of the Registration Statement following the occurrence of such failure or imposition of any volume limitation, the Company will use its reasonable best efforts to file with the Commission, as promptly as possible following such occurrence and in any event no later than sixty (60) days thereafter, a new Registration Statement covering all of the Registrable Securities, and shall otherwise comply with all of the provisions of this Agreement with respect to such new Registration Statement.

Section 3.4 Notification. After the filing of the Registration Statement and any amendment or supplement thereto, the Company shall immediately notify the Investors Representative (or such other designee as each Investor shall designate from time to time) of such filing, and shall further notify the Investors Representative (or such other designee as each Investor shall designate from time to time) immediately and confirm such advice in writing in all events within one (1) Business Day of the occurrence of any of the following: (i) when the Registration Statement becomes effective; (ii) when any post-effective amendment to the Registration Statement becomes effective; (iii) the issuance or threatened issuance by the Commission of any stop order (and the Company shall take all actions required to prevent the entry of such stop order or to remove it if entered); and (iv) any request by the Commission for (x) any amendment or supplement to the Registration Statement or any prospectus relating thereto or (y) a Suspension Notice. Within a reasonable time (but in no event more than five (5) Business Days) after a Registration Statement which covers Registrable Securities is ordered effective by the Commission, the Company shall deliver, or shall use reasonable efforts to cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the Commission in substantially the form attached hereto as Exhibit A, subject to modification as may be required by such transfer agent.

Section 3.5 Blackout Periods. Upon the happening of any event as a result of which (i) the prospectus included in the Registration Statement contains an untrue statement of a material fact or omits any material fact necessary to make the statements therein not misleading or (ii) the Company files a post-effective amendment to the Registration Statement, the Company shall promptly notify the Investors Representative (or such other designee as each Investor shall designate from time to time) (such notice, a Suspension Notice ) and the Investors Representative and each Registrable Securityholder will forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement for a reasonable length of time not to exceed 15 days (or not more than 60 days in the case of clause (ii) if the Commission has informed the Company that it intends to review the post-effective amendment) until the Investors Representative (or such other designee as each Investor shall designate from time to time) is advised in writing by the Company that the use of the prospectus may be resumed (or the post-effective amendment has been declared effective, as applicable) and is furnished with a supplemented or amended prospectus (a Blackout Period ); provided, however, that such postponement of sales of Registrable Securities by the Investors Representative or such Registrable Securityholder shall not exceed forty-five (45) days (or 60 days in the case of an event referenced in clause (ii) if the Commission has informed the Company that it intends to review the post-effective amendment) in the aggregate in any 12-month period. In any event, the



Company shall not be entitled to deliver more than a total of three (3) Suspension Notices in any 12-month period. A Blackout Period that does not violate any of the restrictions on Blackout Periods set forth herein is referred to in this Agreement as an Allowable Blackout Period. In no event shall any such notice under this Section 3.5 contain any information which would constitute material, non-public information regarding the Company or any of its subsidiaries.

Section 3.6 Securities Laws Compliance. The Company shall use its best efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or blue sky laws of such jurisdictions (domestic or foreign) as the Registrable Securityholders included in the Registration Statement may request and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other Governmental Authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable the Registrable Securityholders to consummate, and the Company shall not knowingly take any action that would otherwise restrict, the disposition of the Registrable Securities in such jurisdictions; *provided, however*, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph or subject itself to taxation in any such jurisdiction. The Company represents and warrants that no Registration Statement (including any amendments or supplements thereto and Prospectuses contained therein) shall contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading (except that the Company makes no representation or warranty with respect to information furnished to the Company by or on behalf of a Registrable Securityholder, any other security holder or any underwriters specifically for use therein).

Section 3.7 Records. The Company shall make available for inspection by the Registrable Securityholders and any attorney, accountant or other professional retained by any Registrable Securityholder, all financial and other records, pertinent corporate documents and properties of the Company as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information reasonably requested by any of them in connection with the Registration Statement, subject to prior receipt by the Company of any confidentiality agreements as the Company may reasonably request from the Registrable Securityholders and any attorney, accountant or other professional retained by any of the Registrable Securityholders, as applicable.

Section 3.8 Earnings Statement. The Company shall comply with all applicable rules and regulations of the Commission and the Securities Act, and make available to its stockholders, not later than March 31 of the calendar year following the effectiveness of the Registration Statement (provided that if the Registration Statement is declared effective prior to March 31, 2011, such obligation shall relate to March 31, 2011) an earnings statement covering a period of twelve (12) months, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

Section 3.9 Confidentiality. The Company will hold in confidence and will not make any disclosure of non-public information concerning any Registrable Securityholder unless

(i) disclosure of such information is reasonably necessary to comply with federal or state securities laws, rules, statutes or regulations, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in the Registration Statement or other public filing by the Company, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or Governmental Authority of competent jurisdiction or is otherwise required by applicable law or legal process, or (iv) such Registrable Securityholder consents to the form and content of any such disclosure.

**Section 3.10 Free Writing Prospectuses.** The Registrable Securityholders shall not, and shall not permit any officer, manager, broker or any other person acting on behalf of the Registrable Securityholders to use any free writing prospectus (as defined in Rule 405 under the Securities Act) in connection with the Registration Statement, without the prior written consent of the Company.

**Section 3.11 Obligation to Suspend Distribution.** Upon receipt of any Suspension Notice from the Company, the Investors Representative and each Registrable Securityholder shall immediately discontinue disposition of such Registrable Securities pursuant to the Registration Statement for a reasonable period of time as set forth in Section 3.5 until the Investors Representative (or such other designee as each Investor shall designate from time to time) receives notice that the supplemented or amended prospectus has been filed and, if so directed by the Company, the Investors Representative and each such holder will deliver to the Company all copies, other than permanent file copies then in such holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice.

**Section 3.12 Registration Expenses.** The Company shall bear all costs and expenses incurred in connection with the Registration Statement, and all expenses incurred in performing or complying with its other obligations under this Agreement, including, without limitation: (i) all registration, qualification and filing fees; (ii) fees and expenses of compliance with securities or blue sky laws (including fees and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities); (iii) printing expenses (including expenses of printing stock certificates and prospectuses); (iv) the Company's internal expenses (including, without limitation, all salaries and expenses of its officers and employees); (v) the fees and expenses incurred in connection with the listing of the Registrable Securities, if any; (vi) Financial Industry Regulatory Authority fees; (vii) the fees and expenses of any special experts retained by the Company in connection with such Registration; (viii) transfer agent's and registrar's fees, (ix) cost of distributing Prospectuses in preliminary and final form as well as any supplements, thereto, (x) messenger, word processing, duplicating, telephone and delivery expenses incurred by the Company, and (xi) Securities Act liability insurance, if the Company purchases such insurance. The Company shall have no obligation to pay any selling commissions attributable to the Registrable Securities being sold by the holders thereof, which selling commissions shall be borne by such holders.

**Section 3.13 Information.** Each of the Registrable Securityholders shall provide such information as may reasonably be requested (based on the advice of counsel) by the Company, in connection with the preparation of the Registration Statement, including amendments and supplements thereto. At least five (5) Business Days prior to the first

anticipated filing date of the Registration Statement, the Company shall notify each Registrable Securityholder of the information the Company requires from such holder if such holder elects to have any of its Registrable Securities included in the Registration Statement. The Company's obligations under Article II hereof to file the Registration Statement and use its commercially reasonable best efforts to have the Registration Statement declared effective and to maintain the effectiveness of the Registration Statement for the Effectiveness Period, with respect to each Registrable Securityholder, are conditioned on the receipt of such information and to the extent any Registrable Securityholder has failed to provide the Company with such information, the Company's obligations with respect to such Registrable Securityholder (but not with respect to any other Registrable Securityholder) will be suspended (but not otherwise diminished) until such requested information has been provided to the Company.

Section 3.14 Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time the Registration Statement covering such initial number of Registrable Securities, or increase thereof, is declared effective by the Commission. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor.

Section 3.15 Required Underwriter. If any Registrable Securityholder is required under applicable securities laws to be described in the Registration Statement as an underwriter and provided such Registrable Securityholder has not breached its representation in Section 5.4 of the Purchase Agreement, at the reasonable request of such Registrable Securityholder, the Company shall use its reasonable efforts to furnish to such Registrable Securityholder, on the date of the effectiveness of the Registration Statement and thereafter from time to time on such dates as such Registrable Securityholder may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering of securities such as the Common Shares, addressed to such Registrable Securityholder, and (ii) an opinion, dated such date, of counsel representing the Company, including in-house counsel to the Company (as to matters typically opined on by in-house counsel), for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering of securities such as the Common Shares, addressed to such Registrable Securityholder.

#### ARTICLE IV

#### INDEMNIFICATION AND CONTRIBUTION

Section 4.1 Indemnification by the Company. The Company agrees to indemnify and hold harmless to the fullest extent permitted by law each Registrable Securityholder, each of such Registrable Securityholder's respective officers, employees,

affiliates, directors, partners, members, attorneys and agents, and each person, if any, who controls a Registrable Securityholder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) (each, a Registrable Securityholder Indemnified Party ), from and against any expenses, losses, judgments, claims, damages, liabilities or actions, whether joint or several, arising out of or based upon any untrue statement or allegedly untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arising out of or based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation or alleged violation by the Company of the Securities Act, the Exchange Act or other applicable federal, state, blue sky or common law or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with the Registration Statement. The Company shall promptly reimburse the Registrable Securityholder Indemnified Party for any legal and any other expenses reasonably incurred by such Registrable Securityholder Indemnified Party in connection with investigating and defending any such expense, loss, judgment, claim, damage, liability or action; *provided, however*, that the Company will not be liable to any Registrable Securityholder Indemnified Party in any such case to the extent that any such expense, loss, judgment, claim, damage, liability or action arises out of or is based upon any untrue statement or allegedly untrue statement or omission or alleged omission made in the Registration Statement, any preliminary prospectus, final prospectus, or summary prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to the Company, in writing, by such Registrable Securityholder Indemnified Party expressly for use therein.

Section 4.2 Indemnification by the Registrable Securityholders. Each selling Registrable Securityholder hereby agrees to indemnify and hold harmless the Company, each of its directors and officers, and each other selling holder and each other person, if any, who controls another selling holder within the meaning of the Securities Act, against any losses, judgments, claims, damages, liabilities or actions, whether joint or several, insofar as such losses, judgments, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or allegedly untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission or the alleged omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading, if the statement or omission was made in reliance upon and in conformity with information furnished in writing to the Company by such selling holder expressly for use therein, and shall reimburse the Company, its directors and officers, and each other selling holder or controlling person for any legal or other expenses reasonably incurred by any of them in connection with investigation or defending any such loss, judgment, claim, damage, liability or action. Notwithstanding anything to the contrary contained herein, each selling holder's indemnification obligations hereunder shall be several and not joint and shall be limited to the amount of any net proceeds actually received by such selling holder upon the sale of the Registrable Securities pursuant to the Registration Statement giving rise to such indemnification obligation.

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**Section 4.3 Conduct of Indemnification Proceedings.** Promptly after receipt by any Person of any notice of any loss, judgment, claim, damage, liability or action in respect of which indemnity may be sought pursuant to Section 4.1 or 4.2, such Person (the Indemnified Party ) shall, if a claim in respect thereof is to be made against any other Person for indemnification hereunder, notify such other Person (the Indemnifying Party ) in writing of the loss, judgment, claim, damage, liability or action; *provided, however*, that the failure by the Indemnified Party to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which the Indemnifying Party may have to such Indemnified Party hereunder, except and solely to the extent the Indemnifying Party is actually prejudiced by such failure. If the Indemnified Party is seeking indemnification with respect to any claim or action brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in such claim or action, and, to the extent that it wishes, jointly with all other Indemnifying Parties, to assume control of the defense thereof with counsel satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume control of the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that in any action in which both the Indemnified Party and the Indemnifying Party are named as defendants, the Indemnified Party shall have the right to employ separate counsel (but no more than one such separate counsel) to represent the Indemnified Party and its controlling Persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Indemnified Party against the Indemnifying Party, with the fees and expenses of such counsel to be paid by such Indemnifying Party if, based upon the written opinion of counsel of such Indemnified Party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, consent to entry of judgment or effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such judgment or settlement includes an unconditional release of such Indemnified Party from all liability arising out of such claim or proceeding.

**Section 4.4 Contribution.**

(a) If the indemnification provided for in the foregoing Sections 4.1, 4.2 and 4.3 is unavailable to any Indemnified Party in respect of any loss, judgment, claim, damage, liability or action referred to herein, then the Company (including, for this purpose, any contribution made by or on behalf of any officer of the Company who signed the Registration Statement and any controlling person of the Company within the meaning of the Securities Act) and each Registrable Securityholder whose Registrable Securities are included in the Registration Statement (including, for this purpose, any contribution made by or on behalf of such Registrable Securityholder, shall contribute to the loss, judgment, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Company and the Registrable Securityholders in connection with the actions or omissions which resulted in such loss, judgment, claim, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of any Indemnified Party and any Indemnifying Party shall be

determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or such Registrable Securityholder and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(b) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were determined on a pro rata basis or by any other method of allocation which does not take account of the equitable considerations referred to in Section 4.4(a).

(c) The amount paid or payable by an Indemnified Party as a result of any loss, judgment, claim, damage, liability or action referred to in Section 4.4(a) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 4.4(c), no Registrable Securityholder shall be required to contribute, in the aggregate, any amount in excess of the dollar amount by which the net proceeds actually received by such holder from the sale of Registrable Securities that gave rise to such contribution obligation exceeds the amount of any damages that such Registrable Securityholder has otherwise been required to pay under Section 4.2 by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. This Section 4.4 is intended to supersede any right to contribution under the Securities Act, the Exchange Act or otherwise.

## ARTICLE V

### RULE 144 REPORTING

Section 5.1 Rule 144. The Company covenants that it shall file any reports required to be filed by it under the Securities Act and the Exchange Act and shall take such further action as the Registrable Securityholders may reasonably request, all to the extent required from time to time to enable such holders to sell Registrable Securities without Registration under the Securities Act within the limitation of the exemptions provided by Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission. The foregoing shall in no way reduce the rights of Registrable Securityholders hereunder. The Company agrees at its cost and expense to use its reasonable best efforts to: (i) make and keep available current public information about the Company in compliance with Rule 144I under the Securities Act; (ii) file with the Commission in a timely manner all reports and other documents the Company may be required to file under the Exchange Act; and (iii) furnish to each Registrable Securityholder, promptly upon request, a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act.

ARTICLE VI

TERMINATION; MERGERS AND RECAPITALIZATIONS

Section 6.1 Termination. This Agreement shall terminate with respect to any Registrable Securityholder (but not with respect to any other Registrable Securityholder) on the date on which such Registrable Securityholder no longer owns any Registrable Securities. This Agreement will terminate on the date on which there are no Registrable Securities outstanding. Notwithstanding the foregoing, (i) the provisions of Section 2.3 (with respect to any accrued obligation to pay liquidated damages thereunder, as well as any interest thereon) and Article IV shall survive any termination of this Agreement and (ii) to the extent any shares of Common Stock that have ceased to be Registrable Securities once again become Registrable Securities in accordance with the proviso at the end of the definition of Registrable Securities, then this Agreement shall be revived and once again effective.

Section 6.2 Mergers and Recapitalizations.

(a) The Company shall not, directly or indirectly, effect a change of control or reorganization event of the Company in which the Company shall not be the surviving entity unless the proposed surviving entity shall, prior to effecting a change of control or reorganization event of the Company, agree in writing to assume the obligations of the Company under this Agreement, and for that purpose references hereunder to Registrable Securities shall be deemed to be references to the securities that the Registrable Securityholders would be entitled to receive in exchange for Registrable Securities under the terms of any such effect a change of control or reorganization event of the Company; provided, however, that the provisions of this Section 6.2 shall not apply in the event of any merger, consolidation, or reorganization in which the Company is not the surviving corporation if all the Registrable Securityholders are entitled to receive in exchange for their Registrable Securities consideration consisting solely of (A) cash, (B) securities of the acquiring corporation that may be immediately sol