



## 402 Leading the Corporate Governance Revolution on a Shoe String Budget

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## Faculty Biographies

### Maureen R. Dry

Maureen R. Dry is a deputy general counsel of Vertis Communications in the world headquarters office in Baltimore. Vertis Communications partners with clients to solve the most complex, time-sensitive marketing challenges through consulting, creative, research, direct, media, technology, and production services. Her responsibilities include mergers and acquisitions, corporate compliance, securities, secured finance transactions, contract drafting and negotiation, and ERISA counseling.

Ms. Dry began her legal career by joining Vertis after completing law school the same year.

Ms. Dry has been on the board of directors for ACC's Baltimore Chapter, and previously served as president.

Ms. Dry received her bachelor's degree from the University of Virginia and attended law school at the University of Maryland School of Law.

### William T. Price

William T. Price is the general counsel and corporate secretary of USInternetworking, Inc., located in Annapolis, Maryland. Mr. Price is responsible for USi's legal affairs, serving as primary legal counsel to USi's senior leadership and board of directors. He is responsible for leading USi's legal and contracts teams and advises the company on transactional and compliance matters. In his role, Mr. Price has been a key contributor to USi's private and public financings, and merger and acquisition activities.

Prior to joining USi, Mr. Price represented corporate clients in transactional matters as well as advocated their interests in the state and federal courts of New York, Maryland, and the District of Columbia.

He holds a B.A. from St. Lawrence University and a J.D. from Syracuse University College of Law.

### Deanne M. Tully

Deanne M. Tully is general counsel and secretary for Tier Technologies, Inc., a publicly traded technology consulting firm providing electronic transaction processing and systems integration services for public sector clients. Tier has offices throughout the United States and is headquartered in Reston, Virginia. Ms. Tully works with a legal staff of five: three attorneys and two contracts specialists. Tier's legal team counsels on a wide range of topics involving contracts and complex licensing agreements, general corporate matters, human resources issues, litigation, and risk management. As corporate secretary, Ms. Tully concentrates on securities, corporate governance, and compliance issues.

Prior to Tier, Ms. Tully was senior counsel with Dillingham Construction in Pleasanton, California. Before that she was in private practice as a litigation attorney, trying cases involving business, construction, and government contract disputes.

Ms. Tully is a frequent speaker at continuing education programs on issues affecting in-house counsel and an active participant in ACC.

Ms. Tully received an A.B. with honors from the University of California at Berkeley. She received her J.D. from Hastings College of the Law in San Francisco where she was editor-in-chief of the *Hastings International and Comparative Law Review*.



## Agenda

- **9:00-9:05: Introductions**
- **9:05-9:30: Deanne will focus on cost effective ways of strengthening Corporate Governance to better deal with crises, such as anticipated or pending government investigations.**
- **9:30 - 9:55: Maureen will discuss the practices and methods she has used and developed to improve Corporate Governance with a focus on advice for the Corporate Secretary and the Board.**
- **9:55-10:20: Bill will focus on what the small law department can do now for relatively low cost to establish good internal Corporate Governance and better prepare Senior Management and the Company for public reporting requirements**
- **10:20-10:30: Q&A**



## Corporate Governance In A Crisis

### What You Must Have To Survive



### **What NOT To Do**

- Don't learn about good corporate governance practices in the middle of an investigation.
- Don't let the government, a regulatory agency or a plaintiff's lawyer establish or dictate what your corporate governance practices will be.

### **Four Steps To Take NOW**

- I. Foster and Communicate an Ethical Tone At the Top
- II. Implement The Absolutely Critical Policies
  - A. Whistleblower Policy and Hotline
  - B. Document Retention Policy
  - C. Code of Business Conduct/Code of Ethics
  - D. Antitrust Policy



### **Four Steps To Take NOW (cont.)**

- III. Establish A Process for an Investigation
  - A. Enumerate the Steps; Identify the Resources
  - B. Develop a Strong and Independent Audit Committee or Board Committee
  - C. Ensure the Ability to Immediately Terminate Any Wrongdoers
- IV. Develop a Meaningful Training Program



### **Anatomy of An Investigation**

(Or, How Your Company Can Survive if All Four Areas Have Been Addressed)



### **The Tone At The Top Is Clear**

- Must come from Board, CEO and Senior Management
- Communicated All the Time
- Part of the Corporate Culture
- Part of Performance Evaluations



### **Notice of A Problem**

- Subpoena
- Notice of Investigation/Inquiry
- Internal Complaint



## Whistleblower Policy

- Benchmarks for internal complaints
- Sample Policies
- Resources



## Elements of A Whistleblower Policy

SOX 301 *requires:*

- 1) A process for receiving and investigating complaints regarding “internal accounting controls or auditing matters” or “questionable accounting or auditing matters.”

Best Practices

- Policy broad enough to cover any problem, wrongdoing or complaint (not just arcane accounting issues)
- Don't use statutory language – use plain English to describe what the policy covers



### **Elements of Whistleblowers Policy (cont.)**

- 2) Provide for confidential, anonymous submission by employees

#### **Best Practices**

- Consider extending anonymity to third parties
- Subcontractors, vendors, etc.



### **Elements of Whistleblowers Policy (cont.)**

- 3) Best practice is to have an independent third party administer the Whistleblower Hotline or Alert Line. Include phone and web-based reporting capabilities.
- 4) Make sure the Whistleblower Policy and the existence of the Alert Line is widely disseminated
  - Internal net
  - External net
  - Posters, flyers
  - Periodic reminders





## **Record Retention**

- Samples
- Resources
- Absolutely Positively Critical to All Investigations



## **Record Retention (cont.)**

- Issue a Special Notice to Employees, Directors to retain ALL records
- Description of Subject Matter
- All – inclusive
  - Hard copies
  - E-mails
  - Electronic records
  - Back up tapes
  - Hard drives



### **Commence Investigation**

- Steps to follow re notice, disclosure, etc.
- Resources already identified, especially outside counsel
- Audit Committee (or other Board sub-committee) has already established
  - A process
  - Willingness to get involved and take active role
  - Prepared to take quick and decisive action



### **Investigative Process**

- Internal or External
- External: - existing corporate counsel; or
  - independent third party investigator
- Company representation
- Individual employee representation



### **Investigative Process (cont.)**

- Record collection and review
- Interviews
- Conclusions
- Ability to immediately any terminate wrong-doers at any level



### **Code of Business Conduct**

- Code of Business Conduct
- Code of Ethics (SOX)
- Samples
- Resources
- Dissemination



### **Antitrust Policy**

- To address anti-competitive conduct
- Potentially Problematic Agreements
- Soliciting Improper Information
- Trade Associations
- Relationships with Customers and Suppliers



### **Training**

- A paper program is not enough
- Design and implementation of an effective program
- Employees need to understand the policies and acknowledge the understood
- How to make the right decision



## Training (cont.)

### Compliance Program Needs Assessment

Type of Training

Web with self-test

Live with Internal or External Expert

Guide / Presentation

Conference Call with Moderator

Priority Level

Medium

High

	<u>Sr Mgmt</u>	<u>Mgmt</u>	<u>Employee</u>	<u>Sales</u>
HR Training	Live	Live	Guide	Guide
-CA Version	Live	Live	Guide	Guide
Business Code of Ethics	Live & Web	Web	Web	Web
Anti trust	Live	Guide	Guide	Live
Document Retention	Live	Live	Live	Live



## Training

- Methods
- Resources



## What is “Good” Corporate Governance?

- CEO selection and senior management accountability
  - “Tone at the top”
  - Knowledge of risks inherent in management’s decisions
- Operation of the business in a competent and ethical manner
- Audit Committee independence and authority
- Board member identification and nomination and independence from management

Source: “Principles of Corporate Governance 2005”  
A White Paper by The Business Roundtable, November 2005 and  
“Private Company Corporate Governance: Closing the Gap with Public Companies” by Glenn D. Key,  
an article in the Bloomberg Corporate Law Journal, Winter 2006



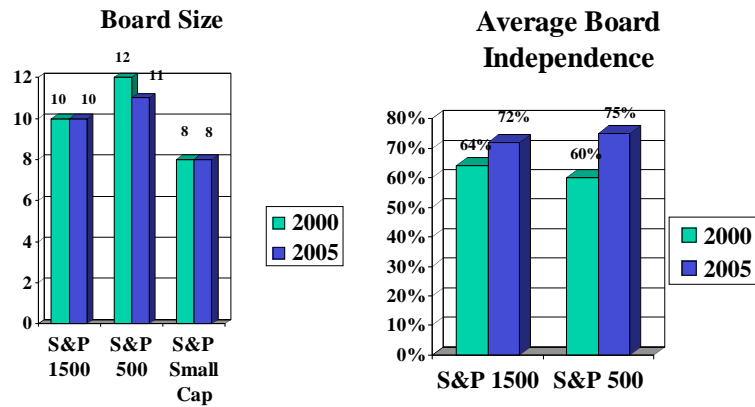
## CORPORATE GOVERNANCE FOR PRIVATE COMPANIES – THE PUSH FOR PUBLIC COMPANY COMPLIANCE

- Acquisition Exit Strategy
  - Private companies being acquired by public companies (facilitates integration)
- IPO Strategy
  - Preparation for IPO as a potential future strategy
- Private Equity Market
  - SOX standards incorporated into investment guidelines
- D&O Insurance
  - Underwriters seeking greater disclosure of financial transactions, reviewing Board and Audit Committee minutes and examining independence of Audit Committee
- Marketplace “Best Practices”

Source: “Private Company Corporate Governance: Closing the Gap with Public Companies” by Glenn D. Key,  
an article in the Bloomberg Corporate Law Journal, Winter 2006

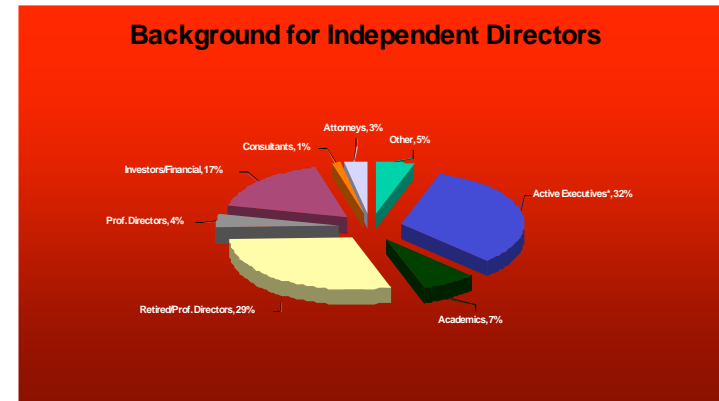


## Board Composition



Source: "The Latest Corporate Governance Trends: How Does Your Board Stack Up?" presentation by Deloitte Consulting, June 7, 2006

## Board Experience



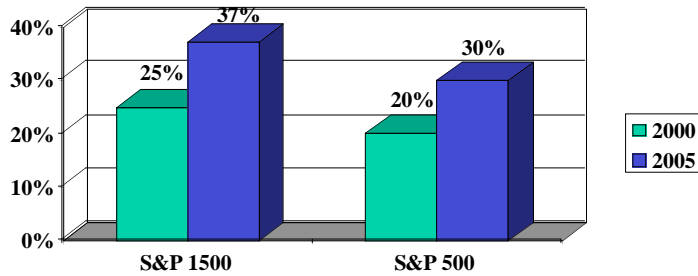
\*About 1/2 of active executives are CEOs

Source: "The Latest Corporate Governance Trends: How Does Your Board Stack Up?" presentation by Deloitte Consulting, June 7, 2006



## Board Leadership – Chair/CEO

Percentage of Companies with Separate Chair and CEO Functions



Source: "The Latest Corporate Governance Trends: How Does Your Board Stack Up?" presentation by Deloitte Consulting, June 7, 2006



## Board and Audit Committee Stats

Board Meeting Frequency	<ul style="list-style-type: none"> <li>7.8 meetings per year (2005)</li> <li>Standard has been 7 meetings per year since 1999</li> </ul>
Audit and Compensation Committees	<ul style="list-style-type: none"> <li>Average size is 4 members</li> <li>Audit Committee meets 9 times per year (vs. 4 in 2000)</li> <li>Compensation committee meets 5 times per year (6 times for large-cap companies)</li> </ul>
Director Compensation	<ul style="list-style-type: none"> <li>From 2000 to 2005, total director compensation increased from:                             <ul style="list-style-type: none"> <li>\$99,520 to \$143,807 for the S&amp;P 1500</li> <li>\$129,200 to \$179,901 for the S&amp;P 500</li> </ul> </li> </ul>
Board and Audit, Compensation and Nominating Committee Meeting Fees	<ul style="list-style-type: none"> <li>From 2000 to 2005, average board meeting fees increased from:                             <ul style="list-style-type: none"> <li>\$1,376 to \$1,740 for the S&amp;P 1500</li> <li>\$1,059 to \$1,856 for the S&amp;P 500</li> </ul> </li> <li>Average meeting fee for audit committees is \$1,400 with an average retainer of \$8,600</li> <li>Average compensation for compensation and nominating committees is \$1,300 with an average retainer of \$6,500</li> </ul>

Source: "The Latest Corporate Governance Trends: How Does Your Board Stack Up?" presentation by Deloitte Consulting, June 7, 2006





## Audit Committee Charter

- Composition of the Audit Committee
- Purposes of Audit Committee
- Meetings of the Audit Committee
- Duties and Powers of the Audit Committee
- Delegation to Subcommittee
- Resources and Authority of the Audit Committee
- Management of Other Services from Independent Auditors



## Corporate Toolkit

- Guide to assist legal, treasury, finance, accounting and executive management
- Aids departments in maintaining compliance efforts effecting capital structure, government standing to conduct business and regulatory standing to trade securities
- Outcomes:
  - Accurate, up-to-date and unified corporate records for all company entities
  - Framework for compliance of a limited liability company and corporation under laws and company agreements (e.g., credit agreement and other lending documents, investor agreements, stock and incentive agreements and other capital structure agreements)



## Corporate Toolkit - Sections

- Overview of Corporate and Capital Structure
- Reporting and Notice Requirements Under Financing Arrangements
- Disposition of Assets
- Acquisitions
- Other Compliance with Financing Arrangements – Operational Covenants and Limitations (e.g., Transactions with Affiliates, Limitations on Guarantees, Limitations on Liens)
- Mergers, Consolidation and Change Of Control



## Corporate Toolkit Sections (cont.)

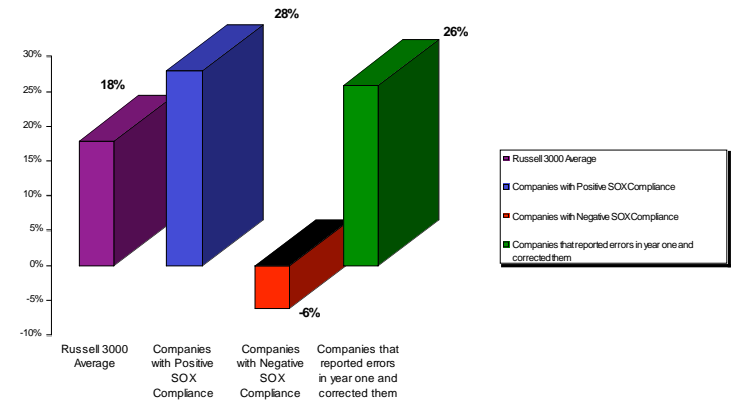
- Limited Liability Company and Corporations
  - Forming New Entities
  - Issues Unique to LLCs
    - Members and Member Interests
  - Issues for Corporations
    - Board of Directors
    - Stock
    - Shareholders
- Doing Business in Foreign Jurisdictions
- Tradenames
- Amendment and Restatement of Certificate of Formation or Certificate of Incorporation
- Minute Books
- Dissolution of a Limited Liability Company or Corporation



### Contents of a Minute Book

	LIMITED LIABILITY COMPANY	CORPORATION
1	A company fact sheet (on inside front cover)	Same
2	A table of contents	Same
3	A certified copy of the certificate of formation and all amendments and restatements thereto	A certified copy of the charter, the original certificate of incorporation and all amendments and restatements thereto
4	The operating agreement and all amendments and restatements thereto	The bylaws and all amendments and restatements thereto
5	Minutes of the meetings/consents of the sole member or members	Minutes of the meetings/consents of the board of directors
6	Minutes of the meetings/consents of managers, if applicable	Minutes of the meetings/consents of the stockholders
7	A membership interest ledger	A stock ledger
7a		Copies of stock certificates and other stock records (including stock powers and Lost Stock Affidavits)
8	Documentation related to registering to do business as a foreign company and cancellations thereof	Same

### Is There a Link Between Good Corporate Governance/SOX Improvements and Value Enhancement?



Source: Corporate Governance and Enterprise Value: Is There Really a Link? presentation by Dr. Reena Aggarwal, McDonough School of Business, Georgetown University and Robert Ruprecht, Deloitte Consulting, July 6, 2006



## Sox Box

High Cost	<p><b>What we need to do</b></p> <ul style="list-style-type: none"> <li>• Select/build internal control/self-assessment processes (for financial reporting, compliance of contracts and operational efficiencies)</li> <li>• Upgrade internal technologies to support documentation/monitoring of controls</li> <li>• Segregate accounting of subsidiaries</li> <li>• Hire internal auditor</li> <li>• Software inventory audit</li> </ul>	<p><b>What we will plan now to do later</b></p> <ul style="list-style-type: none"> <li>• Hire/Name Chief Compliance Officer</li> <li>• Name "Independent" directors</li> <li>• New ESOP to deal with option expensing</li> <li>• 404 Compliance</li> </ul>
	<p><b>What we can and will do now</b></p> <ul style="list-style-type: none"> <li>• Develop/document control objectives and activities</li> <li>• Understand/document existing controls, processes, risks</li> <li>• Identify other reportable conditions</li> <li>• Implement/refine policies (whistle-blower/doc retention/loan policies)</li> <li>• Conduct assessment of Company culture and create Code of Ethics</li> <li>• CEO sign-off on financials/tax returns</li> </ul>	<p><b>What we ought to do now</b></p> <ul style="list-style-type: none"> <li>• Form Audit Committee</li> <li>• CEO and SVP Finance certify financials to Audit Committee</li> <li>• CEO review/sign-off of PO's</li> <li>• Review BOD composition</li> <li>• Reg FD (if public debt)</li> </ul>
Low Cost	Good Business Practice	SOX



## SOX Summary: What Is Required?

Reporting: <i>Upgrade Disclosures</i>	Roles: <i>Strengthen Corporate Governance</i>	Conduct: <i>Expand Insider Accountability</i>
<b>What's required?</b>		
<p><b>Section 302</b></p> <ul style="list-style-type: none"> <li>• Management certifies that: The filing reflects in all material respects the company's financial position. The effectiveness of disclosure controls has been evaluated</li> </ul> <p><b>Section 404</b></p> <ul style="list-style-type: none"> <li>• Management takes responsibility for and assesses the effectiveness of internal controls and procedures</li> </ul> <p><b>Section 409</b></p> <ul style="list-style-type: none"> <li>• SEC to issue rules for "real time" disclosure of material changes in financial conditions or operations, including accelerated periodic reporting</li> </ul>	<p><b>Section 304</b></p> <ul style="list-style-type: none"> <li>• Increase communications between auditor and Audit Committee on critical accounting policies and practices, alternative accounting treatments, and other required communications with management</li> </ul> <p><b>Section 301</b></p> <ul style="list-style-type: none"> <li>• Makes Audit Committee directly responsible for the selection and oversight of auditors</li> </ul> <p><b>Section 402</b></p> <ul style="list-style-type: none"> <li>• Comprise Audit Committee of only independent directors</li> </ul> <p><b>Section 407</b></p> <ul style="list-style-type: none"> <li>• Prohibits future loans to officers and directors</li> </ul> <p><b>Section 407</b></p> <ul style="list-style-type: none"> <li>• Company must disclose that it has financial expertise on the Audit Committee.</li> </ul>	<p><b>Section 306</b></p> <ul style="list-style-type: none"> <li>• Prohibits insider trades during pension fund blackouts periods</li> </ul> <p><b>Section 403</b></p> <ul style="list-style-type: none"> <li>• Requires accelerated reporting of trades by insiders</li> </ul> <p><b>Section 506</b></p> <ul style="list-style-type: none"> <li>• Company must disclose code of ethics as well as any changes in or waivers from such codes</li> </ul> <p><b>Section 806</b></p> <ul style="list-style-type: none"> <li>• Makes it unlawful to retaliate against "whistle-blowers"</li> </ul>
<p><b>Enforcement:</b> <i>Increase Oversight</i></p>	<p><b>Penalties:</b> <i>Broaden Sanctions</i></p>	<p><b>Relationships:</b> <i>Heighten Auditor Independence</i></p>
<b>What's required?</b>		
<p><b>Section 101.8102</b></p> <ul style="list-style-type: none"> <li>• Requires all public accounting firms to register with and supply information such as client names, fees charged, etc. to newly established Public Company Accounting Oversight Board</li> </ul> <p><b>Section 404</b></p> <ul style="list-style-type: none"> <li>• Auditor to attest to the assessments made by management in reference to internal controls</li> </ul> <p><b>Section 409</b></p> <ul style="list-style-type: none"> <li>• Expanded SEC review of 10-K's and 10-Q's at least once every 3 years</li> </ul>	<p><b>Section 304</b></p> <ul style="list-style-type: none"> <li>• Forfeiture of bonus or profits on the sale of securities by CEO and CFO if restatement occurs due to material non-compliance of the Act</li> </ul> <p><b>Section 306</b></p> <ul style="list-style-type: none"> <li>• Increased criminal penalties for CEO/CFO who certifies the filing in bad faith</li> </ul>	<p><b>Section 201</b></p> <ul style="list-style-type: none"> <li>• Prohibits auditor from providing 9 specific non-audit services</li> </ul> <p><b>Section 202</b></p> <ul style="list-style-type: none"> <li>• Requires pre-approval by Audit Committee of all services by audit firm</li> </ul> <p><b>Section 203</b></p> <ul style="list-style-type: none"> <li>• Requires lead and reviews audit partner rotation every five years</li> </ul>



## SOX Summary: Business Implications

## SOX Summary: The Bottom Line

<b>Reporting:</b> <i>Upgrade Disclosures</i>	<b>Roles:</b> <i>Strengthen Corporate Governance</i>	<b>Conduct:</b> <i>Expand Insider Accountability</i>
<i>What's required?</i>		
<ul style="list-style-type: none"> <li>Implement process for certifying and assessing internal controls, preparing management report, and completing external auditors review of internal controls</li> <li>Develop disclosure committee and have process for identifying items where timely disclosure is necessary</li> </ul>	<ul style="list-style-type: none"> <li>Ensure Audit Committee members are independent and include one "financial expert"</li> <li>Develop a process to ensure future loans to execs do not occur or are in compliance with future guidance</li> <li>Develop a process for Audit Committee to oversee appointment and oversight of auditors and to receive alternative accounting treatments</li> </ul>	<ul style="list-style-type: none"> <li>Upgrade/develop code of conduct, process for insider trading</li> <li>Maintain process to ensure reporting of insider transactions within 2 business days</li> <li>Maintain process to ensure trades by officers and directors during blackout by pension plans are not allowed</li> <li>Establish process for "whistle-blower" program</li> </ul>
<b>Enforcement:</b> <i>Increase Oversight</i>	<b>Penalties:</b> <i>Broaden Sanctions</i>	<b>Relationships:</b> <i>Heighten Auditor Independence</i>
<i>What's required?</i>		
<ul style="list-style-type: none"> <li>Audit firm must help subsidize annual Oversight Board expenses</li> <li>Ensure auditors are engaged to attest to system of internal controls</li> <li>Improve documentation process to expedite responses to SEC comments upon review</li> </ul>	<ul style="list-style-type: none"> <li>Criminal provision are now effective for inaccurate certifications</li> <li>Longer statute of limitations for private securities fraud lawsuits</li> <li>CEO and CFO must disgorge profits from securities sales after restatements due to misconduct</li> </ul>	<ul style="list-style-type: none"> <li>Validate/ensure the auditor does not provide any of the 9 prohibited services</li> <li>Establish pre-approval process for all services by audit firm</li> <li>Review audit partner rotation plans and any potential hires from the audit firm</li> </ul>

<b>Reporting:</b> <i>Upgrade Disclosures</i>	<b>Roles:</b> <i>Strengthen Corporate Governance</i>	<b>Conduct:</b> <i>Expand Insider Accountability</i>
<i>What's required?</i>		
<ul style="list-style-type: none"> <li>Validate/upgrade current processes around reporting and disclosures</li> <li>Create and manage stable IT platform for critical financial and reporting applications</li> <li>Form a disclosure committee</li> <li>Prepare for significant enhanced "real time" disclosures</li> <li>Improve documentation procedures with respect to every SEC filing</li> </ul>	<ul style="list-style-type: none"> <li>Validate/upgrade Audit Committee members</li> <li>Review and enhance Audit Committee charter to comply with new governance requirements</li> </ul>	<ul style="list-style-type: none"> <li>Validate/upgrade policies and procedures around code of ethics and similar items</li> </ul>
<b>Enforcement:</b> <i>Increase Oversight</i>	<b>Penalties:</b> <i>Broaden Sanctions</i>	<b>Relationships:</b> <i>Heighten Auditor Independence</i>
<i>What's required?</i>		
<ul style="list-style-type: none"> <li>Provide guidance to the Audit Committee to develop structure to meet requirements and assess audit firm's qualifications</li> <li>Ensure audit firm provides updates on compliance with the Act's provisions</li> </ul>	<ul style="list-style-type: none"> <li>Significant expansion of penalties</li> </ul>	<ul style="list-style-type: none"> <li>Ensure up-front involvement on audit services, staffing and hiring</li> </ul>



## Examples of Low-Cost Corporate Government Initiatives

- Be aware of the evolving corporate culture – have a Core Set of Values
- Understand risks, pay attention to warnings, and confront problems promptly
- Focus on important processes not often considered as typical “governance items”
  - e.g. an internal FLSA audit



## The FLSA Audit

- *Analyze*
  - Review a current list of employees and job functions (not titles)
- *Segregate*
  - Divide into categories -- employees who are certain to be exempt or non-exempt vs. employees whose FLSA status are uncertain
- *Audit*
  - Have HR and managers execute the review of undetermined employees
- *Notify*
  - Advise any employee of an FLSA status change
- *Document*
  - Memorialize audit and record all changes for future reference



### Auditing Tools: Chart Analysis

### Auditing Tools: Example Management Questionnaire

						Completed 06/29/2006; classification <b>changed</b> <b>to exempt</b> - works within a purely admin. capacity, exercising discretion towards non- manual activities.
Ryan, Jane	Thomas, Leigh	45000	HR Analyst	Non-Exempt	Annapolis	
Schwartz, Anne	Miller, Rob	30000	Visitor Liaison	Non-Exempt	Annapolis	
Parker, Julie	Lydon, Keith	65000	Sr. Technical Recruiter	Exempt	Annapolis	

1. Employee earns at least \$455/week (1971.66/month) (or \$540/week (2340/month) in CA)  
 yes  no (If "no," then employee is non-exempt. If "yes," proceed)
2. Has the duties and responsibilities that involve either office or non-manual work related to management policies or general business operations.  
 yes  no (proceed)
3. Customarily and regularly exercises discretion and independent judgment.  
 yes  no (proceed)
4. Earns \$100,000 (including bonus) or more on an annual salaried basis, and performs at least one exempt activity.  
 yes  no (If "yes," then employee is exempt. If "no," then proceed)
5. Devotes more than 50% of his/her time to exempt activities?  
 yes  no (If "no," then employee is non-exempt. If "yes," exempt)



## Auditing Tools: Informing Your Employees

- ☛ For reclassifications from non-exempt to exempt:

"[Employee's name]: Having recently completed with your Manager a study of your job description and the actual tasks that you are performing, we have decided to reclassify your position as exempt. This means that, beginning as of [near future date], you will continue to be paid at your salaried rate but will no longer be eligible for overtime pay."

- ☛ For reclassifications from exempt to non-exempt:

"[Employee name]: Having recently completed with your Manager a study of your job description and the actual tasks that you are performing, we have decided to reclassify your position as non-exempt. This means that, beginning [near future date], you will be paid at an hourly rate of \$\_\_\_\_\_, and will be eligible for overtime [for all hours worked in excess of 40 in a week [OR for CA] for all hours worked in excess of 8 in a day or 40 in a week]."

### CHECKLIST TO DETERMINE EXEMPT/NON-EXEMPT STATUS FOR PROFESSIONAL EMPLOYEES

*Instructions:*

*This checklist is to be used as a screening device to determine whether a position qualifies as "exempt" or "non-exempt." This is a very complex area and an incorrect determination can be problematic. Therefore, you should review and complete the attached worksheet with the applicable employee's Manager. If, after reviewing this checklist and completing the worksheet, there remains a doubt as to the classification, either select a nonexempt classification, or consult \_\_\_\_\_.*

- Employee earns at least \$455/week (1971.66/month) (or \$540/week (2340/month) in CA)  
 yes     no    (If "no," then employee is non-exempt. If "yes," proceed)
- (a) **Learned Professional:** is primarily engaged in the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (generally, at least a 4-year degree in a specialized field, and not a general academic education, apprenticeship or trained in the performance of routine mental, manual or physical processes)?  
 yes     no    (proceed)
- (b) **Artistic Professional:** is primarily engaged in performance of work that is original and creative in character in a recognized field or artistic endeavor and the result of which depends primarily on the invention, imagination or talent of the employee? (Not work that can be produced by a person endowed with general manual or intellectual ability and training.)  
 yes     no    (proceed)
- Work is predominantly intellectual and varying in character (not routine mental, manual, mechanical or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time?  
 yes     no    (proceed)
- Customarily and regularly exercises discretion and independent judgment in the performance of the above duties. (Authority to make choices, free from immediate direction or supervision. Decisions may not be final, but can be in the form of a recommendation. Involves comparison and evaluation of possible courses of conduct and making a decision after considering various possibilities. To be distinguished from decisions that only require use of skills or knowledge in applying prescribed standards or procedures. "Matters of significance" have a real and substantial impact on the business as a whole.)  
 yes     no    (proceed)
- Earns \$100,000 (including bonus) or more on an annual salaried basis, and performs at least one of the tasks described in #s 2-4.  
 yes     no    (If "yes," then employee is exempt. If "no," proceed)
- Devotes more than 50% of his/her time to exempt activities described above?  
 yes     no    (If "no," proceed to No. 6, otherwise employee is non-exempt. If "yes," then employee is exempt)
- If employee is not exempt under above tests, is employee licensed or certified by the state and primarily employed in the practice of one of the following professions: law, medicine, dentistry, optometry, architecture, accounting, engineering, or teaching  
 yes     no    (If "no," then employee is non-exempt. If "yes," then employee is exempt)



# Sarbanes-Oxley Act of 2002 Overview of Company Provisions

Reporting: <i>Upgrade Disclosures</i>	Roles: <i>Strengthen Corporate Governance</i>	Conduct: <i>Expand Insider Accountability</i>	Enforcement: <i>Increase Oversight</i>	Penalties: <i>Broaden Sanctions</i>	Relationships: <i>Heighten Auditor Independence</i>
<b>What's required?</b>					
<p>Section 302</p> <ul style="list-style-type: none"> <li>Management certifies that: The filing reflects in all material respects the company's financial position. The effectiveness of disclosure controls has been evaluated.</li> </ul> <p>Section 401</p> <ul style="list-style-type: none"> <li>SEC to issue rules to enhance disclosures of off-balance sheet transactions, pro forma financial information, and material correcting adjustments.</li> </ul> <p>Section 404</p> <ul style="list-style-type: none"> <li>Management takes responsibility for and assesses the effectiveness of internal controls and procedures.</li> </ul> <p>Section 409</p> <ul style="list-style-type: none"> <li>SEC to issue rules for "real time" disclosure of material changes in financial conditions or operations, including accelerated periodic reporting.</li> </ul>	<p>Section 204</p> <ul style="list-style-type: none"> <li>Increase communications between auditor and Audit Committee on critical accounting policies and practices, alternative accounting treatments, and other required communications with management.</li> </ul> <p>Section 301</p> <ul style="list-style-type: none"> <li>Makes Audit Committee directly responsible for the selection and oversight of auditors.</li> <li>Comprise Audit Committee of only independent directors.</li> <li>Funding for advisors and auditors as Audit Committee deems necessary to be provided by company.</li> </ul> <p>Section 402</p> <ul style="list-style-type: none"> <li>Prohibits future loans to officers and directors.</li> </ul> <p>Section 407</p> <ul style="list-style-type: none"> <li>Company must disclose that it has financial expertise on the Audit Committee.</li> </ul>	<p>Section 303</p> <ul style="list-style-type: none"> <li>Makes it unlawful for any director/officer or others acting at their direction to fraudulently influence, coerce, manipulate or mislead any independent auditor.</li> </ul> <p>Section 306</p> <ul style="list-style-type: none"> <li>Prohibits insider trades during pension fund blackouts periods.</li> </ul> <p>Section 403</p> <ul style="list-style-type: none"> <li>Requires accelerated reporting of trades by insiders.</li> </ul> <p>Section 406</p> <ul style="list-style-type: none"> <li>Company must disclose code of ethics as well as any changes in or waivers from such codes.</li> </ul> <p>Section 806</p> <ul style="list-style-type: none"> <li>Makes it unlawful to retaliate against "whistle-blowers".</li> </ul>	<p>Section 101 &amp; 102</p> <ul style="list-style-type: none"> <li>Requires all public accounting firms to register with and supply information such as client names, fees charged, etc. to newly established Public Company Accounting Oversight Board.</li> <li>Audit firms must pay annual fees to Oversight Board to help subsidize Board expenses.</li> </ul> <p>Section 104</p> <ul style="list-style-type: none"> <li>Oversight Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm with the Act.</li> </ul> <p>Section 404</p> <ul style="list-style-type: none"> <li>Auditor to attest to the assessments made by management in reference to internal controls.</li> </ul> <p>Section 408</p> <ul style="list-style-type: none"> <li>Expanded SEC review of 10-K's and 10-Q's at least once every 3 years.</li> </ul>	<p>Section 304</p> <ul style="list-style-type: none"> <li>Forfeiture of bonus or profits on the sale of securities by CEO and CFO if restatement occurs due to material non-compliance of the Act.</li> </ul> <p>Section 906</p> <ul style="list-style-type: none"> <li>Increased criminal penalties for CEO/CFO who certifies the filing in bad faith.</li> </ul>	<p>Section 201</p> <ul style="list-style-type: none"> <li>Prohibits auditor from providing 9 specific non-audit services.</li> </ul> <p>Section 202</p> <ul style="list-style-type: none"> <li>Requires pre-approval by Audit Committee of all services by audit firm.</li> </ul> <p>Section 203</p> <ul style="list-style-type: none"> <li>Requires lead and reviews audit partner rotation every five years.</li> </ul> <p>Section 206</p> <ul style="list-style-type: none"> <li>Requires "cooling off" period of one year before an employee of the audit firm who worked on the account can be hired as CEO, CFO, controller, or any like position held by an individual of the issuer.</li> </ul>
<b>What are the business implications?</b>					
<ul style="list-style-type: none"> <li>Consider changes, improvements, or additions to current disclosure procedures.</li> <li>Implement process for certifying and assessing internal controls, preparing management report, and completing external auditors review of internal controls.</li> <li>Strong recommendation to develop disclosure committee and have process for identifying items where timely disclosure is necessary.</li> <li>Identify and track all off-balance sheet transactions, pro forma.</li> </ul>	<ul style="list-style-type: none"> <li>Reassess the composition of Audit Committee.</li> <li>Ensure Audit Committee members are independent and include one "financial expert".</li> <li>Develop a process to ensure future loans to execs do not occur or are in compliance with future guidance.</li> <li>Develop a process for Audit Committee to oversee appointment and oversight of auditors and to receive alternative accounting treatments.</li> </ul>	<ul style="list-style-type: none"> <li>Upgrade/develop code of conduct, process for insider trading and other ethical conduct matters.</li> <li>Maintain process to ensure reporting of insider transactions within 2 business days.</li> <li>Maintain process to ensure trades by officers and directors during blackout by pension plans are not allowed.</li> <li>Establish process for "whistle-blower" program.</li> </ul>	<ul style="list-style-type: none"> <li>Audit firm must annually register, meet Oversight Board requirements, and could be investigated and/or disciplined by Oversight Board.</li> <li>Audit firm must help subsidize annual Oversight Board expenses.</li> <li>Ensure auditors are engaged to attest to system of internal controls.</li> <li>Improve documentation process to expedite responses to SEC.</li> </ul>	<ul style="list-style-type: none"> <li>Criminal provision are now effective for inaccurate certifications.</li> <li>Longer statute of limitations for private securities fraud lawsuits.</li> <li>CEO and CFO must disgorge profits from securities sales after restatements due to misconduct.</li> </ul>	<ul style="list-style-type: none"> <li>Validate/ensure the auditor does not provide any of the 9 prohibited services.</li> <li>Establish pre-approval process for all services by audit firm.</li> <li>Review audit partner rotation plans and any potential hires from the audit firm.</li> </ul>

CONFIDENTIAL

## Sarbanes-Oxley Act of 2002 Overview of Company Provisions

financial information and material correcting adjustments			comments upon review		
<b>"The Bottom Line"</b>					
<ul style="list-style-type: none"> <li>• Validate/upgrade current processes around reporting and disclosures</li> <li>• Create and manage stable IT platform for critical financial and reporting applications</li> <li>• Form a disclosure committee</li> <li>• Prepare for significant enhanced "real time" disclosures</li> <li>• Improve documentation procedures with respect to every SEC filing</li> </ul>	<ul style="list-style-type: none"> <li>• Validate/upgrade Audit Committee members</li> <li>• Review and enhance Audit Committee charter to comply with new governance requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Validate/upgrade policies and procedures around code of ethics and similar items</li> </ul>	<ul style="list-style-type: none"> <li>• Provide guidance to the Audit Committee to develop structure to meet requirements and assess audit firm's qualifications</li> <li>• Ensure audit firm provides updates on compliance with the Act's provisions</li> </ul>	<ul style="list-style-type: none"> <li>• Significant expansion of penalties</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure up-front involvement on audit services, staffing and hiring</li> </ul>

**Exempt Analysis Worksheet  
Professional Exemption**

*This worksheet is to be used only as a guideline to determine exempt or non-exempt status. The completion of this worksheet does not imply or guarantee that the analysis of the position as exempt or non-exempt will be recognized as accurate by the applicable governmental entity. Therefore, this worksheet was created to assist the applicable employee's Manager in determining, along with the evaluator from HR, the proper classifications. If, after reviewing and completing this worksheet, there remains a doubt as to the employee's classification, either select a nonexempt classification, or consult \_\_\_\_\_.*

*The criteria for determining exempt or non-exempt status rests on (1) salary; and (2) duties. If an employee makes less than \$23,660 (\$28,080 in CA) per year, then s/he is non-exempt. If an employee makes more than \$100,000 and performs at least one exempt duty, as listed below, then s/he is exempt. If an employee's annual salary falls between the range of \$23,000 (\$28,080 in CA) and \$100,000, then s/he must spend at least half of their time performing certain exempt duties, as listed below, in order to be classified as exempt.*

Position \_\_\_\_\_

Employee \_\_\_\_\_

Department \_\_\_\_\_

Manager and Title \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date of Evaluation

HR Evaluator \_\_\_\_\_

To be classified as "exempt," under the "Professional" exemption, an employee must:

A. Make over \$100,000 (including bonus) a year and perform *at least one* of the duties (#s 1 & 2) listed below;

or

B. Earn at least \$455/week (1971.66/month) (or \$540/week (2340/month) in CA), and, as spelled out in Paragraph 3 below, spend at least 50% of his/her time doing task #s 1 and 2 listed below.

Monthly Salary: \$ \_\_\_\_\_.

DUTIES

CERTIFICATIONS/PROFESSIONAL

1. The employee must either be:  
a. Licensed or certified and primarily engaged in the practice of one of the following recognizable professions:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Law<br>(does not include<br>paralegals)  | <input type="checkbox"/> Medical<br>(does not include:<br>nurses; may include<br>physician assistants)                   | <input type="checkbox"/> Accounting<br>(Certified Public<br>Accountants, not<br>uncertified<br>accountants) |
| <input type="checkbox"/> Teaching   | <input type="checkbox"/> Optometry   | <input type="checkbox"/> Architecture   |
| <input type="checkbox"/> Engineering<br>(includes licensed civil,<br>mechanical, and<br>electrical engineers, but<br>not junior engineers or<br>drafters) | <input type="checkbox"/> Dentistry<br>(does not include dental<br>hygienists except in<br>very limited<br>circumstances) |   |

or

- b. Primarily engages in an occupation commonly recognized as a learned or artistic profession. "Learned or artistic profession" means an employee who is primarily engaged in the performance of:
- o Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes or work that is an essential part of or necessarily incident to any of the above work; or
  - o Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and
  - o Work that is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

Describe occupation that meets the preceding criteria:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**AUDIT COMMITTEE CHARTER**

**DISCRETION**

2. Customarily and regularly exercises discretion and independent judgment in the performance of his/her duties.

*Give examples of decision-making responsibilities and the consequences of such decisions to the business of its customers:*

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3. Is "primarily engaged" in duties 1 and 2. "Primarily engaged in" means that more than one-half of the employee's work time must be spent engaged in exempt work, or work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions

*List the employee's duties and the percentage of time required for each:*

<u>Exempt Duties (or directly/closely related)</u>	<u>% of time</u>	<u>Non-exempt duties</u>	<u>% of time</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I confirm that I, as Supervisor of the Employee reviewed, have completed this worksheet and agree with its content.

\_\_\_\_\_  
(Print Name Here)                      Date

I confirm that I, as the Employee reviewed, have reviewed this worksheet and agree with its content.

\_\_\_\_\_  
(Print Name Here)                      Date

Witness:

\_\_\_\_\_  
(Name of HR Evaluator)

**Note on Use of the Charter:**

No requirement exists to date for an Audit Committee; however, it is the Board's intent and the Audit Committee's intent to use the requirements of the NYSE rules as a model to the extent practical to the Company's circumstances and as determined by the Audit Committee or the Board in their respective capacities. For example, until such time as the Company is listed on the NYSE, NASDAQ or such other nationally recognized exchange, Audit Committee members will be independent of management, but not necessarily without material relationship with the Company.

- I. Composition of the Audit Committee: The Audit Committee of [Company Name] and Subsidiaries (collectively the "Company") shall be comprised of at least [three] or more directors as determined by the Board. [As of the Company's filing of its Form 10-K for the year ended December 31, 2004, which was filed on February 25, 2005], the Company noted that the Board has determined that it does not have an Audit Committee financial expert as defined under the regulations of the Securities and Exchange Commission serving on its Audit Committee, and it is not required to do so. The Board believes that the current members of the Board have substantial investment and management experience and significant financial expertise, and as a consequence, are fully capable of discharging their responsibilities as members of the Company's Board notwithstanding that no current member of the Audit Committee is an "audit committee financial expert" as so defined.

No director may serve as a member of the Audit Committee if such director serves on the audit committees of more than two other public companies unless the Board of Directors determines that such simultaneous service would not impair the ability of such director to effectively serve on the Audit Committee, and discloses this determination in the Company's annual proxy statement, if applicable. No member of the Audit Committee may receive any compensation from the Company other than (i) director's fees which may be received in cash, stock options or other in-kind consideration ordinarily available to directors, (ii) a pension or other deferred compensation for prior service that is not contingent on future service, (iii) management or other fees payable to an affiliate of any Audit Committee member but not the member and (iv) any other regular benefits that other directors receive.

Members shall be appointed by the Board, and shall serve at the pleasure of the Board and for such term or terms as the Board may determine.

The Committee shall designate one member of the Committee as its chairperson.

II. Purposes of the Audit Committee: The purposes of the Audit Committee are to:

1. assist Board oversight of (i) the integrity of the Company's financial statements, (ii) the Company's compliance with legal and regulatory requirements, (iii) the independent auditors' qualifications and independence, (iv) the performance of the independent auditors and the Company's internal audit function, and (v) the Company's system of disclosure controls and system of internal controls.
2. prepare the report required to be prepared by the Audit Committee pursuant to the rules of the Securities and Exchange Commission (the "SEC") for inclusion in the Company's annual proxy statement, if applicable.

The function of the Audit Committee is oversight. The management of the Company is responsible for the preparation, presentation and integrity of the Company's financial statements. Management is responsible for maintaining appropriate accounting and financial reporting principles and policies and internal controls and procedures that provide for compliance with accounting standards and applicable laws and regulations. In fulfilling their responsibilities hereunder, it is recognized that members of the Audit Committee are not full-time employees of the Company and are not, and do not represent themselves to be, accountants or auditors by profession or experts in the fields of accounting or auditing including in respect of auditor independence. As such, it is not the duty or responsibility of the Audit Committee or its members to conduct "field work" or other types of auditing or accounting reviews or procedures or to set auditor independence standards.

The independent auditors for the Company shall report directly to the audit committee, as representatives of the shareholders. The Audit Committee has the authority and responsibility to retain and terminate the Company's independent auditors (subject, if applicable, to shareholder ratification).

The independent auditors shall review with the Audit Committee, at least annually, the fees billed for each of the following categories of services rendered by the independent auditors: (i) the audit of the Company's annual financial statements for the most recent fiscal year and the reviews of the financial statements included in the Company's Quarterly Reports on Form 10 Q for that fiscal year, and (ii) all other services rendered by the independent auditors for the most recent fiscal year, in the aggregate and by each service.

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III. Meetings of the Audit Committee: The Audit Committee shall meet once every fiscal quarter, or more frequently if circumstances dictate, to discuss with management the annual audited financial statements and quarterly financial statements before they are filed with the Securities Exchange Commission or released to the public, including the Company's disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations", as applicable. The Audit Committee should meet separately periodically with management, the management of the internal auditing function and the independent auditors to discuss any matters that the Audit Committee or any of these persons or firms believe should be discussed privately. The Audit Committee may request any officer or employee of the Company or the Company's outside counsel or independent auditors to attend a meeting of the Audit Committee or to meet with any members of, or consultants to, the Audit Committee. Members of the Audit Committee may participate in a meeting of the Audit Committee by means of conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other.

IV. Duties and Powers of the Audit Committee: To carry out its purposes, the Audit Committee shall have the following duties and powers:

1. with respect to the independent auditors,
  - (i) to retain and terminate the independent auditors (subject, if applicable, to shareholder ratification);
  - (ii) to approve all audit and non-audit engagement fees and terms (other than with respect to de minimis exceptions permitted by the Sarbanes-Oxley Act of 2002). This duty may be delegated to one or more designated members of the audit committee with any such pre-approval reported to the audit committee at its next regularly scheduled meeting;
  - (iii) to discuss with the independent auditors any relationships or services that may impact the quality of audit services or the objectivity and independence of the Company's independent auditors;
  - (iv) if applicable, to consider whether the independent auditors' provision of other non-audit services to the Company is compatible with maintaining the independence of the independent auditors;
  - (v) to discuss the timing of the rotation of the lead audit partner and the concurring partner;

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- (vi) to instruct the independent auditors that the independent auditors report directly to the Board and the Audit Committee, as representatives of the shareholders;
  - (vii) Review and pre-approve all the audit services to be performed, including the independent auditors' engagement letter for the annual audit of the company in accordance with US generally accepted auditing standards and the proposed fees in connection with such audit.
2. with respect to the internal audit function,
- (i) to review the appointment and removal of the director of the internal auditing function or, if applicable, the company or firm acting as the internal audit function;
  - (ii) to advise the director of the internal auditing function or the company or firm acting as the internal audit function that he or she is expected to provide to the Audit Committee summaries of and, as appropriate, the significant reports to management prepared by the internal auditing department and management's responses thereto;
  - (iii) to review the activities, organizational structure, and qualifications of the internal audit function;
  - (iv) Annually, review and recommend changes (if any) to the internal audit charter;
  - (v) Periodically review with the internal audit director or the partner in charge of the company or firm acting as the internal audit function any significant difficulties, disagreements with management, or scope restrictions encountered in the course of the function's work.
3. with respect to financial reporting principles and policies and internal audit controls and procedures,
- (i) to advise management, the internal auditing function and the independent auditors that they are expected to provide to the Audit Committee a timely analysis of significant financial reporting issues and practices;
  - (ii) to consider any reports or communications (and management's and/or the internal audit department's responses thereto) submitted to the Audit Committee by the independent auditors

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required by or referred to in SAS 61 (as codified by AU Section 380), as may be modified or supplemented, including reports and communications related to:

- deficiencies noted in the audit in the design or operation of internal controls; consideration of fraud in a financial statement audit;
  - detection of illegal acts;
  - the independent auditors' responsibility under generally accepted auditing standards; any restriction on audit scope; significant accounting policies; significant issues discussed with the national office; management judgments and accounting estimates; adjustments arising from the audit;
  - the responsibility of the independent auditors for other information in documents containing audited financial statements;
  - disagreements with management;
  - consultation by management with other accountants;
  - major issues discussed with management prior to retention of the independent auditors;
  - difficulties encountered with management in performing the audit;
  - the independent auditors' judgments about the quality of the entity's accounting principles;
  - reviews of interim financial information conducted by the independent auditors; and
  - the responsibilities, budget and staffing of the Company's internal audit function;
- (iii) to meet with management, the independent auditors and, if appropriate, the management of the internal auditing function:
- to discuss the scope of the annual audit and the quarterly reviews;
  - to discuss the annual audited financial statements and quarterly financial statements before the Company files

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them with the Securities Exchange Commission and or releases them to the public, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations";

- to discuss any significant matters arising from any audit including any audit problems or difficulties, whether raised by management, the internal auditing department or the independent auditors, relating to the Company's financial statements;
- to discuss and approve the independent auditors' management letter and management responses;
- to discuss any difficulties the independent auditors encountered in the course of the audit including any restrictions on their activities or access to requested information and any significant disagreements with management;
- to discuss any accounting adjustments that were noted or proposed by the independent auditors but were "passed" (as immaterial or otherwise), and any "management" or "internal control" letter issued, or proposed to be issued, by the independent auditors of the Company;
- to review the form of opinion the independent auditors propose to render to the Board of Directors and shareholders;
- to discuss any significant changes to the Company's auditing and accounting principles, policies, controls, procedures and practices proposed or contemplated by the independent auditors, the internal auditing department or management;
- to discuss, as appropriate: (a) any major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles and major issues as to the adequacy of the Company's internal controls, (b) analyses prepared by management setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; and (c) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the Company; and

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- to inquire about significant risks and exposures, if any, and the steps taken to monitor and minimize such risks;

- (iv) to discuss guidelines and policies governing the process by which senior management of the Company and the relevant departments of the Company assess and manage the Company's exposure to risk, and to discuss the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures;
  - (v) to discuss with the Company's Chief Legal Officer any significant legal, compliance or regulatory matters that may have a material effect on the financial statements or the Company's business, financial statements or compliance policies, including material notices to or inquiries received from governmental agencies;
  - (vi) to review earnings press releases with management, which may be done by the Chairman of the Audit Committee by telephone or by way of a meeting before the release is issued;
  - (vii) to discuss the types of financial information and earnings guidance provided, and the types of presentations made, to analysts and rating agencies, which may be done through consultation with the Audit Committee members either outside the Audit Committee meetings as part of the Board meetings or in a separate meeting prior to release of the information;
  - (viii) to establish hiring policies for employees or former employees of the independent auditors;
  - (ix) to review and approve all related party transactions and to discuss these transactions and the appropriate disclosure in the company's financial statements with management and independent auditors;
  - (x) to establish and maintain procedures for the receipt, retention, and treatment of complaints regarding accounting, internal accounting, or auditing matters; and
  - (xi) to establish and maintain procedures for the confidential, anonymous submission by company employees regarding questionable accounting or auditing matters;
4. with respect to reporting and recommendations,

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- (i) to prepare any report or other disclosures, including any recommendation of the Audit Committee, required by the rules of the SEC to be included in the Company's annual proxy statement, if any and as applicable;
- (ii) to review this Charter at least annually and recommend any changes to the full Board of Directors;
- (iii) to report its activities to the full Board of Directors on a regular basis and to make such recommendations with respect to the above and other matters as the Audit Committee may deem necessary or appropriate; and
- (iv) to prepare and review with the Board an annual performance evaluation of the Audit Committee, which evaluation must compare the performance of the Audit Committee with the requirements of this charter. The performance evaluation by the Audit Committee shall be conducted in such manner as the Audit Committee deems appropriate. The report to the Board may take the form of an oral report by the chairperson of the Audit Committee or any other member of the Audit Committee designated by the Audit Committee to make this report.

authority for such pre-approval may be delegated to one or more members of the Committee, which the Committee designates until revocation or resignation as [insert name] the decisions of any members to whom the pre-approval authority is delegated shall be presented to the full Committee at the next Committee meeting. Each quarter management or the auditors present to the Committee a scheduling detailing the fees paid to the independent auditors for all such projects, or planned to be paid.

- V. Delegation to Subcommittee. The Audit Committee may, in its discretion, delegate all or a portion of its duties and responsibilities to a subcommittee of the Audit Committee.
- VI. Resources and Authority of the Audit Committee: The Audit Committee shall have the resources and authority appropriate to discharge its duties and responsibilities, including the authority to select, retain, terminate, and approve the fees and other retention terms of special or independent counsel, accountants or other experts, as it deems appropriate, without seeking approval of the Board or management.
- VII. Management of Other Services from Independent Auditors

In addition to the annual audit, management is authorized to retain, as it considers appropriate, the independent auditors to provide audit related services including: services related to SEC filings, accounting and reporting research and consultations, internal control reviews, quarterly reviews, benefit plan audits, consultations as to regulatory issues as to benefit plans, statutory audits of subsidiaries, attest services (e.g. SAS 70 Agreed Upon Procedures), acquisition due diligence services and corporate and subsidiary tax compliance and consulting services. Any additional services that management chooses to hire the independent auditors to perform must be approved individually by the Committee, prior to the engagement. The

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## Principal Financial Officer Code of Ethics

Effective Date:

Page 1 of 2

Approved by:

### Policy

#### I. GENERAL POLICY STATEMENT

It is the policy of [Company Name] that [Company Name]'s Principal Financial Officers conduct business in accordance with the highest ethical standards in order to merit and maintain the complete confidence and trust of its customers, shareholders and the public in general. Principal Financial Officers must conduct their personal affairs and manage their business transactions in a manner which does not result in adverse comments or criticism from the public or in any way damage [Company Name]'s reputation as a responsible organization. This policy addresses the requirements for honest and ethical conduct between personal and professional relationships, the full, fair and accurate disclosure of reports, compliance with applicable laws, internal procedure for prompt reporting of violations to this code, and accountability for adherence to the code. The term "Principal Financial Officers" refers to all principal executive officers, principal financial officers, principal accounting officers or controller, or persons performing similar functions.

This Code of Ethics for Principal Financial Officers is intended to supplement the requirements in [Company Name]'s Code of Conduct that is applicable to all [Company Name] officers and employees.

#### II. CODE OF ETHICS

- A. Honest and Ethical Conduct. It is the policy of [Company Name] for all Principal Financial Officers to act in an honest and ethical manner, including the handling of actual or apparent conflict of interest between personal and professional relationships. [Company Name] expects its Principal Financial Officers to use good judgment and high ethical standards and to refrain from any form of illegal, dishonest or unethical conduct. Additionally, Principal Financial Officers may not personally or cause anyone else to, influence, coerce, manipulate or mislead any accountant engaged in preparing an audit for [Company Name].
- B. Full, Fair and Timely Disclosures. It is the policy of [Company Name] that Principal Financial Officers provide to shareholders and financial markets fair, accurate, timely and understandable disclosure in reports and documents that [Company Name] files with, or submits to the Securities Exchange Commission and other public communications, if applicable.
- C. Compliance with Applicable Government Laws and Regulations. Principal Financial Officers must fully comply with the spirit and intent of all applicable laws, regulations and corporate governance standards.
- D. Internal Reporting of Code Violations. [Company Name] is committed to establishing procedures that will permit the receipt, retention and treatment of complaints received by [Company Name] regarding accounting, internal accounting controls or accounting matters. The Principal Financial Officers will proactively

## Principal Financial Officer Code of Ethics

Effective Date:

Page 2 of 2

Approved by:

promote both ethical behavior and compliance with this Code of Ethics. [Company Name] encourages Principal Financial Officers and employees to talk to supervisors, managers, or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, Principal Financial Officers and other employees should report violations of laws, rules, regulations or codes of business conduct to [the Audit Committee]. [Company Name] will not permit retaliation against any employee for reports of breaches of this Code of Ethics made in good faith. [An anonymous complaint can be made by calling \_\_\_\_\_.]

- E. Administration of the Code of Ethics. It is the responsibility of each Principal Financial Officer to be familiar with [Company Name]'s Principal Financial Officer Code of Ethics and the [Company Name] Code of Conduct.

Principal Financial Officer who violate the provisions of the Principal Financial Officers Code of Ethics may be subject to discipline, up to and including, but not limited to, dismissal from employment.

#### III. DISCLOSURES

Waivers. Any waiver from this Code may be made only with the prior consent of the [Chairperson of the Board of Directors] or [a board committee appointed by the Chairperson]. Any material waiver must be promptly disclosed via a Form 8-K, if applicable, or [Company Name]'s website.

## Toolkit for the Corporate Secretary

### INTRODUCTION

The purpose of this toolkit is to assist the Company's departments (legal, treasury, finance, accounting and executive management) engaged in maintaining compliance efforts with the primary focus on issues effecting the capital structure, government standing to conduct business in applicable jurisdictions and regulatory standing to trade Company's securities. Specific tactics for achieving this purpose are (1) accurate, up-to-date and unified corporate records for each of Company's domestic business entities, (2) an explanation of control mechanisms for foreign subsidiary compliance and a structural framework for compliance of a limited liability company and corporation under applicable statutes, laws, precedent, credit agreements, bond indentures, investor agreements, stock and other incentive agreements and all other capital structure agreements. Set forth in each of the sections below is a summary of the applicable legal requirements, followed by a set of processes and procedures designed to ensure compliance with those legal requirements. Any questions about this toolkit should be directed to the Office of the General Counsel ("OGC").

This toolkit is a guide to a dynamic corporate function – the secretary to the board of directors (the "Corporate Secretary"). As people, vendors, lenders, customers and others change the records of the Company must reflect those changes. This often requires the Corporate Secretary to preserve the history of those changes and decisions around them. The on-line version of the toolkit is the official version of the toolkit. You may enter any suggestions on-line via the "Ask the GC button" on the Company OGC website.

**NOTE: Originals of all corporate documents specified in these procedures should be maintained in one location. This repository is currently located in the OGC department.**

### SECTION 1:

### CORPORATE AND CAPITAL STRUCTURE

#### Corporate Structure

- Company is a privately-held corporation.
- Company's corporate structure consists of:
  - the parent company, \_\_\_\_\_, a \_\_\_\_\_ corporation,
  - \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Company"), and
  - direct and indirect wholly-owned subsidiaries.

[insert corporate structure]

**Capital Structure**

In order of priority:

Key Information	AKA	Description	Key Docs
<b>CREDIT AGREEMENT</b>			
<b>\$200,000,000</b> Revolving Credit Facility 3-year term December 22, 2004  <b>Borrower:</b>  <b>Lender and Agent:</b>  <b>Documentation Agent and Joint-Lead Arranger:</b>  <b>Collateral Agent:</b>	<ul style="list-style-type: none"> <li>• The Credit Agreement</li> <li>• The Revolver</li> </ul>	Revolving credit facility to fund the repayment of certain indebtedness of Company, to provide working capital financing for Borrower and to provide funds for other general corporate purposes.  <b>Restricted Subsidiaries/Credit Parties:</b>	<ul style="list-style-type: none"> <li>• Credit Agreement (dated as of 12/22/04)</li> <li>• Annex A to Credit Agreement (Definitions)</li> <li>• U.S. Security Agreement (dated as of 12/7/99 and Amended and Restated as of 6/6/03)</li> </ul>
<b>TRADE RECEIVABLES SECURITIZATION FACILITY ("AR")</b>			
<b>\$130,000,000</b> Trade Receivables Securitization Facility 3-year term Dated as of November 25, 2005  <b>Originators:</b>  <b>Borrower:</b>  <b>Servicer:</b>  <b>Lender, Swing Lender and Administrative Agent:</b>	<ul style="list-style-type: none"> <li>• The AR</li> <li>• The Accounts Receivables Facility</li> </ul>	_____ is a bankruptcy-remote, special purpose entity formed for the limited purpose of purchasing all the receivables originated by designated parts of the Originators to finance such receivables under the Funding Agreement.	<ul style="list-style-type: none"> <li>• Receivables Sale and Servicing Agreement (11/25/05)</li> <li>• Annex X to Receivables Sale and Servicing Agreement and Receivables Funding Administration Agreement (Definitions)</li> <li>• Receivables Funding and Administration Agreement (11/25/05)</li> </ul>

INDENTURES			
<b>\$350,000,000</b> Senior Secured Second Lien Notes <b>9 3/4%</b> Due 2009 June 6, 2003  <b>Trustee:</b>  <b>Lead Managers:</b>  <b>Co-Managers:</b>	<ul style="list-style-type: none"> <li>• The 2003 Indenture</li> <li>• The Senior Secured Notes</li> <li>• The Senior Second Notes</li> <li>• The 2nd Lien Notes</li> <li>• The 9 3/4 Notes</li> </ul>	Secured Notes	<ul style="list-style-type: none"> <li>• Offering Memorandum</li> <li>• Purchase Agreement</li> <li>• Registration Rights Agreement</li> <li>• Indenture</li> </ul>
MEZZANINE			
COMMON STOCK			

**SECTION 2:**  
**REPORTING AND NOTICE REQUIREMENTS  
UNDER FINANCING AGREEMENTS**

Under its financing agreements, the Company must provide the following reports and documents:

**Contact Information for Notices:**

Lender  
Address  
City, State Zip  
Attention:

**Daily Delivery**

Daily Delivery Requirements Under Securitization Facility –

Documents to Deliver	Time Frames	Deliver to
1 Daily Report, reporting on yesterday's balance [link to form]	No later than 5 p.m. (New York time) on each day	
2 Completed Funding Agreement Borrowing Base Certificate as of the last day of the previous calendar month	No later than 5 p.m. (New York time) on each Tuesday	

**Monthly and Quarterly Delivery**

After the end of each fiscal month and fiscal quarter, the Company has to deliver the following documents to the parties and within the time frames set forth below:

Documents to Deliver	Time Frames (after end of each fiscal month/ quarter)	Deliver to
<b>Credit Agreement</b>		
1 Credit Agreement Borrowing Base Certificate as of the last day of such month [link to form]	<b>Monthly:</b> 10 Business Days	Credit Agreement Agent
2 Financial Information <ul style="list-style-type: none"> <li>o consolidated balance sheet and the related consolidated statement of income, stockholders' equity and cash flow of Holdings and its subsidiaries for such month/quarter and on a year-to-date basis;</li> <li>o supplemental non-consolidated information customarily prepared by management;</li> <li>o a report setting forth a comparison of such financial information with the corresponding figures from the previous fiscal year and the corresponding figures from the most recent projections for the current fiscal year.</li> </ul>	<b>Monthly:</b>  As soon as available, but no later than 35 days <sup>1</sup>  <b>Quarterly:</b>  As soon as available, but no later than 50 days	

**Annual Delivery**

On an annual basis, the Company has to deliver the following documents to the parties and within the time frames set forth below:

Documents to Deliver	Time Frames (after end of each fiscal year)	Deliver to
<b>Credit Agreement</b>		
1 Financial Projections of Holdings and its subsidiaries for the forthcoming three years and the forthcoming Fiscal Year, fiscal month by fiscal month. (same as Securitization Facility)	As soon as available, but no later than 30 days after the end of each fiscal year	Credit Agreement Agent

<sup>1</sup> The deadline for the last fiscal month of the year is 45 days.

**Periodic Delivery**

**Credit Agreement and Indentures**

Promptly upon any of the following events occurring or the information becoming available, the Company has to deliver the following documents to the following parties:

Documents to Deliver	Deliver to
<b>1 Significant reports from Company's accountants</b> in connection with each annual, interim or special audit or review of its financials or internal control systems.	Credit Agreement Agent
<b>2 All financial statements, reports, notices and proxy statements</b> sent or made available by and of Holdings, the Company or any of its subsidiaries to its shareholders	Administrative Agent under Securitization Facility
<b>3 All regular and periodic reports and all registration statements and prospectuses filed with the SEC</b>	
<b>4 All press releases</b> and other statements made available to the public by Holdings, the Company or any of its subsidiaries concerning developments in the business of Holdings, the Company or any of its subsidiaries	
<b>5 The institution of any action, charge, claim, demand, suit, proceeding, petition, governmental investigation, tax audit or arbitration</b> pending or threatened against or affecting the Company or any credit party not previously disclosed to the Agent if it could reasonably be expected to have a <b>Material Adverse Effect (6.2(k))</b>	Credit Agreement Agent
With the notice above regarding events of default and MAE, the Company must also deliver a <b>certificate of the CFO</b> of the Company specifying: <ul style="list-style-type: none"> <li>o the nature and period of existence of such event or condition; and</li> <li>o what actions Holdings, the Company or any of their subsidiaries have taken, are taking or propose to take.</li> </ul>	

<b>Any entity that is a party to the Security Agreement must give the Collateral Agent written notice of:</b>	
<b>Any changes in the following (must give at least 15 day's prior written notice):</b>	
<b>1</b>	Location of such entity's chief executive office, originals of documents, books of account and records relating to Receivables, Contract Rights and Trade Secret Rights, the Receivables, Contract Rights and Trade Secret Rights themselves and inventory and equipment
<b>2</b>	legal name or organizational identification number; and
<b>3</b>	jurisdiction and type of organization.
The notice must describe the new location, new name or other changed information as appropriate and provide other information as reasonably requested by the Collateral Agent. The entity must take all actions reasonably requested by the Collateral Agent to maintain the Collateral Agent's security interest in any collateral moved to a new location (see Sections 2.4, 2.5, 2.7 and 2.8 of the Security Agreement).	

<b>Any entity that is a party to the Security Agreement must give the Collateral Agent written notice of:</b>		
<b>The following regarding Intellectual Property</b> <sup>2</sup>		
Intellectual Property	Documents to Deliver	Timeframe for Delivery
<b>Trademarks</b>	<b>Notice of Abandonment</b> with respect to any registered Significant <sup>3</sup> Mark that the affidavits or use or the renewal is being processed or being abandoned.	30 days prior to the dates on which the affidavits of use or the applications for renewal registration are due
	<b>Notice of Registrations:</b> deliver a copy of the certificate and an assignment for security in the Mark, unless an assignment was already signed as part of the Security Agreement. [Add link to form of Assignment, which is Annex G to the Security Agreement]	Within 30 days of receiving a certificate of registration for any Mark <sup>4</sup>
	<b>Notice of Infringements.</b> Provide all pertinent information related to third parties infringing upon Assignor's Marks or third parties claiming the Assignor has infringed. Unless otherwise agreed with the Agent, Assignor must prosecute infringers in accordance with reasonable business practices.	Promptly upon learning of it

<sup>2</sup> See Articles IV and V of the Security Agreement.

<sup>3</sup> A Mark, Copyright or Patent is Significant if the relevant Assignor believes in its reasonable judgment it is material to its business and the failure to maintain or to keep it valid and subsisting would have a material adverse effect on the value of the Marks/Copyrights/Patents, as the case may be, taken as a whole.

<sup>4</sup> A "Mark" means all right, title and interest in and to any U.S. or foreign trademarks, service marks and trade names now held or hereafter acquired by any Assignor, including any registration or application for registration of any trademarks and service marks in the U.S. Patent and Trademark Office or the equivalent thereof in any State of the U.S. or in any foreign country, and any trade dress including logos, designs, trade names, company names, business names, fictitious business names and other business identities used by any Assignor in the U.S. or any foreign country.

**SECTION 3:  
DISPOSITION OF ASSETS**

CHECKLIST		
1	<input checked="" type="checkbox"/>	Determine if the disposition, sale or transfer of assets is permitted under each of the: <ul style="list-style-type: none"> <li>• Credit Agreement</li> <li>• Indentures</li> <li>• Securitization Facility</li> <li>• Mezzanine Agreement</li> </ul>
2	<input checked="" type="checkbox"/>	If required, prepare any notices or consents.
3	<input checked="" type="checkbox"/>	Obtain required lien releases for the assets under each of the Credit Agreement and the Indentures.
4	<input checked="" type="checkbox"/>	Put all documentation related to notices, consents and releases in the Compliance binders for the applicable lending agreements.

**Under the Credit Agreement and Indentures**

The Credit Agreement and the Indentures impose certain restrictions on the disposition of assets. Subject to the mandatory prepayment requirements described below, any Credit Party may make the following dispositions, without limitation.

Type of Transaction	Credit Agreement	Indenture
<b>\$2,500,000 or Less Aggregate Consideration</b>		Any transaction or series of related transactions for which the Company or its Restricted Subsidiaries receive aggregate consideration of less than \$2,500,000
<b>Sale of Inventory and Disposition of Obsolete Equipment in the Ordinary Course of Business</b>	Sales of inventory in good faith to customers for fair value in the ordinary course of business and dispositions of obsolete equipment	The sale, lease, transfer, assignment or other disposition of property in the ordinary course of business that is not otherwise prohibited or restricted by the Indentures. Disposals or replacements of obsolete equipment in the ordinary course of business

**Release of Collateral**

Release of liens on property permitted to be sold or disposed of:

The Agent may release any lien it has or holds on any property that is being sold or disposed of, if such sale or disposal is permitted under the Credit Agreement and a Borrower certifies this. (Section 8.2(h) of the Credit Agreement)

The Indentures require that a similar certification be delivered to the Collateral Agent and that, if requested, appropriate legal opinions also be delivered. (Section 10.8 of the Security Agreement)

**Release of a Guarantor**

As detailed above, the Credit Agreement does not permit the sale or other transfer of stock of a Holdings' Subsidiary to an unaffiliated third party, although consent to do so may be obtained via an amendment to the Credit Agreement. Similarly, pursuant to Section 9.2 of the Credit Agreement, no Guaranty shall be released unless consented to by the Agent and all the Lenders.

**SECTION 4:  
ACQUISITIONS**

**Under the Credit Agreement**

The Company may only acquire all or substantially all of the assets or stock of another person<sup>5</sup> if the following tests are satisfied. (Section 5.6 of the Credit Agreement)

1	<b>Permitted Acquisition Involves Assets Of Same Type Engaged In By Borrowers</b>	Business type engaged in by the Borrowers as of December 22, 2004.
2	<b>No Regulatory Or Third-Party Approvals For Agent</b>	The proposed acquisition must not subject the Agent or any of the lenders to regulatory or third-party approvals in connection with the exercise of their rights

<sup>5</sup> Note that the Credit Agreement expressly prohibits acquiring "any substantial part of the stock, business or assets of another person," and the permitted acquisition criteria discussed in this section only applies for an acquisition of "all or substantially all of the assets or stock" of any person.

Delivery Obligations for Permitted Acquisitions (Delivery is to Agent)		
1	<input checked="" type="checkbox"/>	Written notice at least <b>15 Business Days prior</b> to the date of the proposed acquisition, with a reasonably detailed description of the proposed acquisition <sup>6</sup>
2	<input checked="" type="checkbox"/>	A pro forma consolidated balance sheet, income statement and cash flow statement (see Section 5.6(ix)(A) of the Credit Agreement) reflecting the permitted acquisition and the funding of all Loans in connection therewith and demonstrating compliance with criteria for Permitted Acquisitions (as set forth in chart above)

Company may need to take some or all of the additional actions for Permitted Acquisitions:	
<b>Involves Fixed Assets:</b>	
<input checked="" type="checkbox"/>	Agent will need to conduct a Fixed Asset Appraisal before the Fixed Assets may be included in the Borrowing Base calculations.
<b>Involves Accounts and Inventory:</b>	
<input checked="" type="checkbox"/>	Agent will need to conduct a Field Examination before the Accounts and Inventory may be included in the Borrowing Base calculations.
<b>Company acquires or succeeds to any new insurance policies:</b>	
<input checked="" type="checkbox"/>	Ensure that the Agent is named as: <ul style="list-style-type: none"> <li>o an additional insured on any liability insurance that is maintained;</li> <li>o loss payee on any casualty insurance that is maintained; and</li> <li>o assignee on any business interruption insurance that is maintained.</li> </ul>
<b>Company or assets acquired includes any deposit accounts:</b>	
<input checked="" type="checkbox"/>	Company will need to enter into a control agreement with respect to the account(s).

**Under the Security Agreement**

**Actions to be Taken in Connection with the Acquisition of Any Assets.** In addition to the restrictions above, in general, if any assets are acquired at any time that are of the same type of asset that is part of the collateral package pledged under the Security Agreement (e.g., Receivables, Contracts, Marks, Patents, Copyrights, Commercial Tort Claims, Software), the Company may need to notify the Collateral Agent of the acquisition and take action to grant a security interest in the asset in favor of the Collateral Agent (see Section 1.1 of the Security Agreement).<sup>7</sup>

<sup>6</sup> This timing should be seen as a formal minimum time, as experience shows counsel to Lenders often has significant questions that can delay closing. Early and often update calls with the Lenders on Permitted Acquisitions is advisable.

<sup>7</sup> Pursuant to Section 4.7(c) of the 2003 Subordinated Indenture, the Company must inform the Trustee and Holders when a new subsidiary is formed or acquired.

**SECTION 5:  
OTHER COMPLIANCE WITH DEBT AGREEMENTS –  
OPERATIONAL COVENANTS AND LIMITATIONS**

Along with the need to comply with the provisions of the various agreements governing Company's debt that have been specified in other sections of this Toolkit, the Company and its subsidiaries must comply with certain operational covenants and limitations. The main ones are described below.

Section #	Description of Section
1	Conduct of Business
2	Financial and Related Covenants
3	Loss, Destruction or Condemnation of Assets
4	Transactions with Affiliates
5	Limitations on Indebtedness and Prepayment
6	Limitations on Contingent Obligations
7	Limitations on Guarantees
8	Limitation on Investments
9	Restricted Payments
10	Negative Pledges and Restrictions on Subsidiary Distributions
11	Limitations on Liens
12	Covenants Regarding New Real Property and Deposit Accounts
13	Covenants Regarding Accounts Receivable and Other Rights to Payment and Property
14	No ERISA Events
15	Other

**SECTION 6:  
MERGERS, CONSOLIDATION, AND CHANGE OF CONTROL**

**Under the Credit Agreement and Indentures**

Type of Transaction	Credit Agreement	Indenture

**SECTION 7:  
DELAWARE LIMITED LIABILITY COMPANY AND CORPORATION:  
BEGINNING TO END**

*Summary of Steps:*

Step 1	Obtain Authorization to Form New Entity
Step 2	Make Decisions About New Entity - Name the LLC or Corporation, Reserve and Register Name and Select Registered Agent and Registered Office
Step 3	Prepare, Execute and Record Necessary Documentation for New Entity – Create Operating Agreement or Bylaws, Draft Documents to Comply Under Financing Arrangements, Execute Documents, Recordkeeping

**Step 1: Obtain Authorization to Form New Entity**

**Step 2: Make Decisions Regarding New Entity**

**Name the Limited Liability Company or Corporation**

- 1- **Choose Name.** Executive team sponsor consults with marketing and tax departments and the OGC and chooses name.

**Guidelines for Selecting a Name**

	Required/Prohibited	Permitted
<b>LLC</b>	May contain the words "Limited Liability Company," the designation "LLC," or the abbreviation "L.L.C."	May contain the name of a member or manager of the company.  Contain the words "Company," "Association," "Club", "Foundation," "Fund," "Institute," "Society," "Union", "Syndicate," "Limited," "Trust," or any abbreviations of like import

- 2 – **Check Availability.** The OGC will check availability of the name chosen with the Secretary of State of the State of Delaware and check against registered federal and state trademarks.
  - Check with Delaware Secretary of state for name availability by one of these options:
    - Go to <https://sos-res.state.de.us/tin/EntitySearch.jsp>
    - Call the office of the Secretary of State at 302-739-3073
    - Fax a request to 302-739-3812
    - Submit a written search request to the Division of Corporations, John G. Townsend Bldg., 401 Federal Street, Suite 4, Dover, Delaware 19901; or
    - Call the then currently engaged registered agent.
- It is advisable to submit more than one name in case the first choice is not available.
- 3 - **Reserve Name.** OGC reserves name, if available.
  - If there are other states where the subsidiary may do business in the future, it may be advisable to register the name in each state, if such state's law provides for this type of filing. In general, a name registration gives the subsidiary the rights to its name in a foreign state in which is not yet registered to do business and prevents others from using it. These types of registrations are generally renewable for one year periods.
- 4 – **Notify Tax.** OGC notifies the tax department that a new subsidiary is being formed in the State of Delaware and provides them with the subsidiary's name.

There are cost benefit reasons to pursue further strategies on name registrations which the OGC will coordinate with the tax and finance departments and others at its discretion. This may include an analysis of trademark, trade name and web address issues.



**Reserve the Name for the LLC or Corporation**

	LLC	Corporation
<b>How to reserve name</b>	File an application for reservation with the Secretary of State of the State of Delaware.  To reserve online: go to the Delaware Department of State: Division of Corporation's website located at: <a href="https://sos-res.state.de.us/tin/EntitySearch.jsp">https://sos-res.state.de.us/tin/EntitySearch.jsp</a>  Other states will have different registration processes.	File an application for reservation with the Secretary of State of the State of Delaware.  To reserve online: go to the Delaware Department of State: Division of Corporation's website located at: <a href="https://sos-res.state.de.us/tin/EntitySearch.jsp">https://sos-res.state.de.us/tin/EntitySearch.jsp</a> .  Other states will have different registration processes.
<b>How long name is reserved</b>	120 days from registration (can reserve for successive 120-day periods)	30 days from registration
<b>Transferability</b>	May transfer right to exclusive use of the name to any other person by filing a notice of transfer with the Secretary of State	Generally, may not transfer use of name to any other person; may transfer use of name to an LLC by filing a letter of consent with the Secretary of State
<b>Cancellation</b>	File a notice of cancellation with the Secretary of State	May not cancel consent to use of the name once given
<b>Fee</b>	A fee of \$75 paid to the Secretary of State at the time of filing of any of the above mentioned applications or notices	\$10 for name reservation; no fee associated with filing letter of consent with Secretary of State

**Select a Registered Agent and Registered Office**

Every Delaware limited liability company and corporation is required to have and maintain in the State of Delaware:

- (1) a registered office, which may but need not be a place of its business in Delaware, and
- (2) a registered agent for service of process.

Company's current practice is to engage a professional registered agent company to serve as both the registered office and registered agent in the State of Delaware.

**Current Professional Registered Office and Agent Company for Company's entities:**

**Step 3: Prepare Necessary Documentation Related to New Entity**

**Draft Formation Documents for the Limited Liability Company or Corporation**

- ❑ 1 - **File Certificate.** The OGC will direct Corporation Service Company or internal or outside counsel to prepare and file the certificate of formation (if a limited liability company) or certificate of incorporation (if a corporation). The OGC will provide the details of the new subsidiary such as the names of the individuals that will serve as managers (if a limited liability company) or directors (if a corporation) and officers. [See additional details on formation in chart below.]
- ❑ 2 - **Arrange for EIN.** The tax department will direct or arrange for an EIN for the new entity.

	LLC	Corporation
<b>How to Form</b>	In Delaware, it's formed by filing a Certificate of Formation in the office of the Secretary of State.  In other states, file a document with the secretary of state or other office in charge of business entity filings.	In Delaware, it's formed by filing a Certificate of Incorporation in the office of the Secretary of State.  In other states, file a document with the secretary of state or other office in charge of business entity filings.
<b>Filing Must Contain</b>		
<b>Who Executes Formation Document</b>		
<b>Where to File</b>		
<b>Filing Fee</b>		
<b>Existence Begins</b>		

- 3 - **Create Operating Agreement (if LLC) or Bylaws (if Corporation).** OGC will coordinate the drafting of the operating agreement (if a limited liability company) or the bylaws (if a corporation).

	LLC – Operating Agreement	Corporation - Bylaws
<b>What is it?</b>	Also referred to as the limited liability company agreement.  An agreement between the members of the company (or by the sole member) establishing how the business and affairs of the limited liability company will be conducted.	The regulations of a corporation.  Contain the basic rules for the conduct of the corporation’s business and affairs.  The bylaws may contain any provision for managing the business and regulating the conduct of the corporation’s affairs and its rights and powers or the rights and powers of its directors, stockholders, officers or employees provided, however, that none of the provisions are inconsistent with Delaware law or the provisions contained in the corporation’s certificate of Incorporation
<b>What does it usually contain?</b>		
<b>Who Signs?</b>		
<b>Amend or Repeal</b>		

- 4 - **Update Website.** Once confirmation is received that the certificate of formation or certificate of incorporation has been filed and the Operating Agreement or Bylaws are completed, the Corporate Secretary should notify the people responsible for maintaining Company’s internal website of the need to update the website to add the entity to the organization chart and post all formation documents.

**Documentation Related to Financing Arrangements:**

- 5 – **Prepare and Execute Credit Agreement Documentation.** In connection with the creation of any new Restricted Subsidiary, the following actions must be taken, after which the Restricted Subsidiary becomes a Credit Party.
  - a- **Guaranty the Obligations under the Credit Agreement.** The new subsidiary must guaranty the Obligations under the Credit Agreement by entering into a guaranty agreement.

- b- **Grant the Agent a Security Interest in the Subsidiary’s Assets.** The new subsidiary must grant a security interest in the real, personal and mixed property of such subsidiary by:
  - If there is real property involved, the subsidiary must grant the Agent a mortgage on such property.
  - The new subsidiary must file a UCC–1 with respect to all of its assets.
- c - **Grant the Agent a Security Interest in the Stock or Other Equity Interests of the Restricted Subsidiary.** The Credit Party creating the new subsidiary shall update the pledge agreement it entered into in connection with the Credit Agreement to reflect the new assets and shall deliver the certificates evidencing the stock or other equity interest together with an executed stock power to the Collateral Agent under the Credit Agreement.

**SECTION 8:  
ISSUES FOR LIMITED LIABILITY COMPANIES ONLY**

**Members and Member Interests**

**What is a “Member”?**

- Refers to the individuals or entities that hold equity interests called “membership interests” in a limited liability company.
- Members own the limited liability company, like stockholders own a corporation.
- However, members do not own the limited liability company’s property and they may or may not manage the business of the limited liability company.
- Initial members are admitted at the time of formation.
- Additional members may be admitted upon the conditions set forth in the operating agreement.

**Identity and Structure of Member Interests**

OGC will coordinate with the tax and finance departments regarding the identity and structure of member interests in the limited liability company.

**Management**

The OGC will coordinate with outside counsel on establishing the management structure of the limited liability company.

**Who manages a limited liability company?**

A limited liability company may choose whether to be managed by its member(s) or by manager(s). In Delaware, the management of the business and affairs of a limited liability company is vested in its members unless the operating agreement states otherwise.

The choice of whether to be member-managed or manager-managed depends on a number of factors such as, how many members there are, their relationship to each other, their expertise in the type of business being operated, the size of the business and the complexity of the operations.

Management by Members	Management by Managers	Management of our Sole Member Limited Liability Companies
<p>Every member is an agent of the limited liability company.</p> <p>Unless otherwise set forth in the operating agreement, each member has an equal right to manage the limited liability company's business in proportion to their then current percentage or other interest in the profits of the limited liability company.</p> <p>The operating agreement may set up different classes of members with one class having superior management rights.</p> <p>Members may appoint officers and delegate to them the right to run the daily operations of the company while the members set policy and make major decisions.</p>	<p>May be managed by one or more managers.</p> <p>This management structure is more like a corporation where there is a central governing body who may make decisions and take actions without having to first obtain the members consent.</p> <p>The operating agreement may provide that the managers either serve both functions of making policy and running the day-to-day operations of the company <i>or</i> it may provide for the appointment of officers to run the day-to-day operations while the managers focus only on setting policy and making fundamental decisions.</p>	

Unless otherwise included in the operating agreement for a limited liability company, organizational resolutions appointing officers or managers (as specified in the operating agreement) must be prepared and the Corporate Secretary needs to ensure that these are included in the minute book of the respective limited liability company.

**SECTION 9:**

**ISSUES FOR CORPORATIONS ONLY**

**Organizational Meeting**

After the filing of the certificate of incorporation, an organizational meeting of the incorporator(s) or the board of directors, if the initial directors were named in the certification of incorporation, needs to be held, at the call of a majority of the incorporator(s) or directors, as the case may be.

The purpose of the organizational meeting is to adopt bylaws, elect directors (if the meeting is of the incorporators), elect officers (if the meeting is of the directors), accept subscriptions for and issue stock, do any other act to perfect the organization of the corporation and transact such other business as may come before the meeting.

**Steps for Organizational Meeting**

- ❑ **1 → Draft Minutes or Written Consent.** Draft minutes or written consent containing the resolutions that need to be adopted by the incorporator(s) or directors at the organizational meeting.
  - *Minutes* will be used if the incorporator(s) or directors will meet face-to-face or over the phone to adopt the resolutions.
  - If the incorporator(s) or directors will not be meeting face-to-face or over the phone, a *written consent* will be used.
  - In most cases, a written consent will be preferred, but the OGC will need to confirm.
- ❑ **2 → Determine Officers.** The OGC will determine who will serve as the initial officers of the corporation.
  - Company Holdings and Company, Inc. have a common slate of officers and directors, and each of the other subsidiaries has a different but common slate of officers and directors, as do the foreign subsidiaries.
- ❑ **3 → Obtain Signatures.** The OGC will ensure that the necessary signatures are obtained if it is a written consent.
- ❑ **4 → File in Minute Book.** The Corporate Secretary will file the minutes or written consent evidencing the meeting in the corporation's minute book.

**Issuance or Transfer of Stock**

**Who holds the stock of the Company?**

**What types of equity does the Company have?**

Type of Equity	Description of Equity
Investor Common Stock	
Retained Shares	
Management Shares	
Rights	
Restricted Shares	
Options	
Warrants	

**Steps for Issuing Company Stock**

- ❑ **1 → Determine whether the number of authorized but unissued shares is sufficient.** The number of authorized but unissued shares together with the number of shares held in the Company's treasury must be sufficient to satisfy the Company's obligations to issue shares upon execution of warrants, options and other rights to acquire shares.
- ❑ **2 → Determine the next available certificate number** Corporate Secretary will go to the stock ledger, which is in the minute book, to determine the next available certificate number.
- ❑ **3 → Prepare a stock certificate.** Corporate Secretary will prepare a stock certificate with the preprinted stock certificates. These are kept in the safe in the OGC department. The stock certificate must bear the stockholder's full, legal name, the appropriate number of shares, the stock certificate number and certain legends that need to be placed on the back of the certificate. The OGC will determine which legends must go on each certificate.
- ❑ **4 → Obtain board approval.** OGC prepares a written consent in order to obtain board approval to issue the stock.
- ❑ **5 → Obtain Signatures.** Corporate Secretary ensures that the stockholder has signed the Investor Agreement or a restricted stock agreement, if applicable, and that Company Holdings, Inc. has received the necessary consideration for the stock. The Corporate Secretary shall also confirm that the issuance of the shares will not cause the number of shares of stock outstanding to exceed the authorized amount.

- ❑ **6 → Notify Treasury.** Corporate Secretary notifies Company's treasury department of the new issuance of stock.
- ❑ **7 → Update Minute Book and Ledger.** Corporate Secretary updates the minute book to include a copy of the newly-issued stock certificate, the transmittal letter (or location, if applicable) and Company's treasury department update the stock ledger to include the holder's name, contact information and share information.
- ❑ **8 → Deliver Certificate.** After OGC final sign-off, the Corporate Secretary will coordinate the delivery of the new certificate to the stockholder.

For Company's restricted stock program, only copies of stock certificates are delivered to the stockholder. The original is retained in the safe in the OGC department.

If an original stock certificate is sent to a stockholder, it must be accompanied with a written transmittal letter that specifies the number of shares, the holder and the certificate number and the requests the recipient to sign and fax back the letter to acknowledge receipt.

**Steps to Transfer Stock of Company Holdings, Inc.**

**General Information Regarding Stock Issuance**

**How does a corporation issues shares?**

In general, a corporation may issue shares of stock in a variety of situations, such as pursuant to a share exchange, share dividend or upon subscription.

**How do you determine the number of shares that can be issued?**

The number of shares a corporation has authority to issue is set forth in the certificate of incorporation. These are called the authorized shares. A corporation may issue any amount of shares up to the authorized amount. If the authorized amount of shares needs to be increased, the certificate of incorporation will need to be amended.

**How do you evidence stock issuance?**

**Can stock be transferred or reacquired by the corporation?**

**Stockholder Meetings and the Board of Directors**

**Stockholder Meetings**

**Steps for Written Consent of Stockholders to Annually Elect Officers**

- ❑ **1 → Draft Written Consent.** OGC will coordinate with Corporate Service Company, internal resources or outside legal counsel to draft a written consent of stockholders to be used annually for the election of directors. Such form of written consent will be available on the OGC website. [add link]
- ❑ **2 → Obtain Signatures.** Corporate Secretary ensures that the necessary stockholder signatures are obtained.
- ❑ **3 → Put Consent in Minute Book.** Corporate Secretary places a copy of the written consent signed by the stockholders of Company Holdings, Inc., Company, Inc. or its corporate subsidiary in the respective corporation's minute book.

**For a stockholders' meeting to be valid** it must be duly called and noticed and a quorum must be present.

A **quorum** is the minimum number of shares that must be represented at the meeting before any business may be transacted.

**Under the Company's by-laws, quorum means:**

The holders of a majority of the capital stock issued and outstanding and entitled to be voted.

**Board of Directors**

**What is the Board of Directors?**

A corporation is managed by its board of directors. In Delaware, the board of directors of a corporation must consist of one or more members and each is required to be a natural person.

**What are the qualifications and duties of the members of the Board of Directors?**

Number of Directors:

The number and qualifications of directors is set in the bylaws. Each director shall hold office until his successor is elected and qualified or until his resignation or removal. Under the Company's by-laws, the board shall consist of not less than 3 and not more than 12 members

**Current Board Composition**

Name	Nominated By	Comments/Notes

**What are the requirements for director meetings?**

Under the Company's by-laws, the time, location and notice requirement for director meetings are as follows:

The Board may hold meetings, regular and special within or without the state of Delaware.

**Regular meetings** may be held without notice at such time and such place as may be determined by the Board.

**Special meetings** may be called by the Chairman, President or any 3 directors. Notice of special meeting stating place, date, and hour shall be given to each director by:

- mail not less than 48 hours before the meeting,
- by telephone on 24 hours or
- shorter notice if deemed necessary.

**Committees**

The Board may, by resolution passed by a majority of the Board, designate one or more committees.

Each committee must consist of one or more directors of the Company.

The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee.

**The current committees of the Company Board are:**

**SECTION 10:**

**TRANSACTIONING BUSINESS IN STATES OTHER THAN DELAWARE**

Domestic Entity	Foreign Entity
"domestic" entity in the state in which LLC or Corporation is formed	considered to be a "foreign" entity in every other state

**Why register as a foreign corporation?**

If a limited liability company or a corporation "transacts business" outside of its state of formation, it **must** formally register with that state's business entity filing office as a foreign company (if a limited liability company) or foreign corporation (if a corporation).

Each state defines either what constitutes doing business or what activities are do not constitute doing business (check state rules). In general, activities such as holding meetings, maintaining bank accounts, or engagement in a single, isolated transaction do not constitute doing business.

**Steps to Register as a Foreign Company**

- ❑ **1 ➔ Filing as a foreign company.** OGC coordinates with Corporation Service Company, internal resources and/or outside counsel to establish, modify or withdraw authority to transact business in a state as a foreign company.
- ❑ **Complete an application,** usually either called an application for certificate of authority or an application for registration, and file it with the applicable states
  - may require that the application be accompanied by evidence that it was validly formed and in good standing in its state of formation
  - Secretary of State or similar department
- ❑ **2 ➔ Notice to Tax.** OGC provides notice of registration to do business as a foreign company to Company's tax department and posts the information on the OGC website.
- ❑ **3 ➔ Cancel Authorization.** If the limited liability company or corporation stops doing business in a foreign state, it should cancel its authorization to do business in that state.
- ❑ **File a certificate of cancellation.** Some states may also require the limited liability company or corporation to state or prove that it has no outstanding tax liability in that state.

Although a cancellation is not required by law, it is advisable to do so because the limited liability company or corporation will continue to be subject to the state's franchise tax, annual reporting and other requirements until it is cancelled.

**SECTION 11:**

**TRADE NAMES ("DOING BUSINESS AS...")**

**Why register trade names?**

If an entity does business under a name other than its legal name (i.e., the name that appears in the entity's organizational documents) it **must** first file a certificate in the appropriate office(s) of the appropriate state(s) in which it is transacting such business, designating the trade name it will use.

**Steps to Register a Trade Name**

- ❑ **1 ➔ Notice to OGC of Need for Filing.** Tax, finance, real estate or marketing department will notify the OGC if a subsidiary needs to have a trade name registered.
- ❑ **2 ➔ OGC Coordinates Registration of Filing.** The OGC will coordinate with Corporation Service Company, internal resources and/or outside counsel to register the trade name in the appropriate state(s).
  - ❑ Internal resources, such as a paralegal, should **check** the website of the **United States Patent and Trademark Office** to confirm that the chosen name has not been trademarked or registered.
  - ❑ **File a certificate** in the appropriate office of the appropriate state(s):
    - **Delaware:** File in the Prothonotary of each county in which it is transacting such business, designating the trade name it will use.
    - **Maryland:** File a certificate with the Maryland State Department of Assessments and Taxation (the "MSDAT").
    - **Other States:** All other states have similar rules requiring the filing of a certificate at the state or county level before conducting business in that state or county under a trade name.
- ❑ **3 ➔ USPTO Registration.** OGC will determine if the name needs to be registered with the United States Patent and Trademark Office and may engage outside counsel to assist with such matters.

**SECTION 12:**

**AMENDMENT AND RESTATEMENT OF CERTIFICATE OF FORMATION OR CERTIFICATE OF INCORPORATION**

OGC will determine when it is necessary to amend or restate the certificate of formation (if a limited liability company) or certificate of incorporation (if a corporation). Because of the limited information contained in

the certificate of formation or certificate of incorporation, an amendment or restatement *will rarely be required*. Some examples of times when an amendment or restatement may be needed are to:

- Change the corporate name
- Alter the nature of its business or corporate powers
- Increase or decrease its authorized capital stock
- Cancel or otherwise affect the right of stockholders to receive dividends which have accrued but not declared
- Create a new class of stock having rights and preferences either superior or subordinate to the stock of any existing authorized class or change the period of its duration

	Limited Liability Company	Corporation
<b>Amendment to Certificate of Formation</b>		
<b>Required</b>	A certificate of formation is required to be amended if a member or manager becomes aware that a statement in the certificate of formation was false when made or that any matter described has changed making the certificate false in any material respect.	
<b>Permitted</b>	A certificate of formation may also be amended at any other time for any proper purpose.	A corporation may, within statutory guidelines, amend its original certificate of incorporation by adding a new provision, modifying an existing provision or by deleting a provision in its entirety.

**SECTION 13:  
MINUTE BOOKS**

**What is a Minute Book?** A minute book is an organized compilation of the company records. It serves as a formal record of the formation and continuing existence of the limited liability company. It is the Corporate Secretary's responsibility to create, update and maintain the minute book. A minute book should be kept for each limited liability company and corporation. Maintaining and updating the minute book for Company Holdings, Inc., Company, Inc. and each subsidiary is critically important, not only from a corporate governance point of view, but also because we are often required to provide our minute books to third parties as part of customary due diligence reviews.

**Contents of Minute Book (at a minimum):**

	Limited Liability Company	Corporation
1	A company fact sheet, to be located on the inside front cover of the minute book (see the OGC website for an example). [add link]	Same
2	A table of contents (see the OGC website for an example). [add link]	Same
3	A certified copy of the certificate of formation and all amendments and restatements thereto.	A certified copy of the charter, the original certificate of incorporation and all amendments and restatements thereto.
4	The operating agreement and all amendments and restatements thereto.	The bylaws and all amendments and restatements thereto.
5	Minutes of the meetings/consents of the sole member or members.	Minutes of the meetings/consents of the board of directors.
6	Minutes of the meetings/consents of managers, if applicable.	Minutes of the meetings/consents of the stockholders
7	A membership interest ledger (see the OGC website for an example).	A stock ledger (see the OGC website for an example).
7a		Copies of stock certificates and other stock records (including stock powers and Lost Stock Affidavits).
8	Documentation related to registering to do business as a foreign company in states other than Delaware, and cancellation thereof.	Same
9	Application for an Employer Identification Number (EIN) and any related documentation.	Same
10	Option plan, if any.	Stock option plan, if any. Note that the only equity for management or employees is in Company Holdings, Inc.

11	Citations to material capital structure documents (the Corporate Secretary should confer with the OGC to determine what should be included) and executed copies of any lender or other consents required to establish the subsidiary.	Same
12	If applicable, documentation related to dissolution of the limited liability company, including the certificate of cancellation.	If applicable, documentation related to dissolution of the corporation, including the certificate of dissolution
13	Miscellaneous	Same

**SECTION 14:**  
**DISSOLUTION OF A LIMITED LIABILITY COMPANY OR A CORPORATION**

	Limited Liability Company	Corporation
When does it dissolve?		

**Steps for Dissolving an Entity**

- 1 → OGC Decides.**
- 2 → OGC Notifies Tax.**
- 3 → Documentation in Minute Books/Update Website.**

**Tier Announces Ethics Line**

On behalf of the Board of Directors and Tier’s Executive Team, we announce the introduction of Ethics Line. Ethics Line is a toll-free, anonymous, 24-hour hotline so employees can: 1) report issues involving accounting, internal accounting controls and/or auditing problems; and 2) do so anonymously if they choose.

All Tier books, records, accounts, funds, and assets must be maintained to reflect fairly and accurately the underlying transactions and disposition of Company business. For example:

No undisclosed or unrecorded funds or assets should be established for any purpose; No false or fictitious invoices should be paid or created; No false or artificial entries should be made or misleading reports issues.

Accounting irregularities, fraudulent misrepresentations of data, or anything peculiar around the management of our funds - from petty cash to Accounts Receivable - should be reported. This may be a result of dishonest, reckless or careless behavior. At Tier, we want our employees to be able to quickly and easily report anything that troubles you or makes you uncomfortable. Even if you don't have all the facts, if you have a concern, your quick action could help prevent serious consequences.

When you call the Ethics Line, a trained Communications Specialist from an independent company answers your call. He or she will ask you to describe your concern and then may ask additional Tier questions to clarify the situation. This information is then forwarded to the appropriate Tier representative for follow-up. No call tracing, tracking or recording devices are ever used, and you are offered the option of remaining anonymous. Your call will be assigned a personal identification number, which you can use on a specified date to call back and check on the status of your concern.

**Ethics Line #**

Ethics Line is created for issues specifically around auditing, accounting and financial concerns. Others concerns should be addressed to individuals within our company such as your local management team or Human Resources Staff. Examples of other concerns are harassment, safety violations, policy violations, benefit or payroll questions, etc. If you have concerns in any of these areas and feel that you cannot address them with your local management, please seek the assistance of one of the individuals below.

**Affirmative Action Officers for issues related to harassment or discrimination**

**Benefits**

**Payroll**

**Workplace Safety**

**Legal Compliance**



## AlertLine Calls

### Phone Number:

**Greeting:** “Thank you for calling AlertLine. My name is \_\_\_\_\_. I am here to document your workplace concern. I will ask you a series of questions which will help me create a report by focusing on the facts surrounding your concern. From this interview, I will create an actionable report to be sent promptly to your company. Let's begin.”

## Call Categories

### Category A

An “A” priority call is one that requires the client’s immediate action due to an allegation of immediate threat to person, property or environment. Verbal notification will be made to the client contact immediately regardless of what time the call was taken.

For example, “One of my co-workers got in an argument with a supervisor today. This employee told me he has a gun in his locker.”

AlertLine will call in this order until a contact is made: [list names]

### Category S

Issues involving accounting, internal accounting controls and/or auditing matters. “S” calls will be reported during normal business hours or on the next business day following their receipt, if received after normal business hours.

AlertLine will send an email to \_\_\_\_\_[Company] and directly to designated person on Audit Committee within 6 to 8 hours.

### Category B

A “B” priority call (typically an on-going issue) will be reported during normal business hours. “B” priority calls shall be reported on the next business day following their receipt, if received after normal business hours. For example, “I think one of my co-workers uses drugs. We all know he has parties every weekend, and sometimes he behaves erratically at work. He has not caused any accidents and I have not witnessed him using drugs, but I am concerned.”

AlertLine will send an email to \_\_\_\_\_ typically within 6 to 8 hours.

## Call Categories (continued)

### Category C

All other types of calls that do not require immediate response by the client shall be priority “C” calls. For example, “One of my co-workers leaves work one hour early every day.”

AlertLine will send an email to \_\_\_\_\_.

## Internal Referrals

Callers with issues that would be more appropriately addressed at a local level rather than making a report will be referred to the following contacts:

- HR-related issues will be referred to \_\_\_\_\_.
- Payroll-related issues will be referred to \_\_\_\_\_.
- EAP phone number will be given to employees upon request

No contact will be made with these types of calls. They will, however be logged in on the monthly reports.

## Monthly Reports

Monthly Management Summary Reports will be emailed to \_\_\_\_\_ and \_\_\_\_\_ on the 5<sup>th</sup> or 6<sup>th</sup> day of every month.

COMPANY  
Compliance Enforcement Policy

COMPANY is committed to high ethical standards and strict compliance with the law in all its operations. COMPANY requires all employees to report illegal activity or activities not in compliance with COMPANY policies, including our Corporate Code of Conduct, in order to assist COMPANY in detecting and putting an end to fraud and unlawful conduct. To this end, COMPANY has established a system for reporting fraud, illegality and non-compliance by employees. An employee who has a good faith<sup>1</sup> belief that a violation of law or a failure of compliance may occur, is occurring or has occurred has a duty to come forward and file a report under this Policy, as follows:

1. Reports should be forwarded in writing to COMPANY's Corporate Compliance Officer in any of the following ways:

- a. by mail:

COMPANY, Inc.  
Corporate Compliance Officer/General Counsel  
Street  
State

- b. by email:

[compliance@COMPANY.com](mailto:compliance@COMPANY.com)

or from the intranet on an anonymous basis by clicking on the [Compliance Report CC Officer button](#).

- c. by voicemail: by calling xxx-xxx-xxxx and leaving a detailed message concerning the report. Note: This voicemail message recording system does not track incoming phone numbers in order to preserve caller anonymity.

In the event a report pertains to conduct in which the Corporate Compliance Officer was allegedly involved, or to concerns regarding questionable accounting or auditing matters, the employee filing the report may file it directly with the Board's Audit Committee:

- d. by mail:

COMPANY, Inc.  
Audit Committee Chair  
Board of Directors

<sup>1</sup> "Good faith" does not mean that a reported concern must be correct, but it does require that you believe that you are providing truthful information.

Street  
State  
  
or  
  
Person  
Address  
State, Country

e. by email:

[auditcomm@COMPANY.com](mailto:auditcomm@COMPANY.com)  
or  
[email](#)

or from the intranet on an anonymous basis by clicking on the Compliance Report Audit Committee button.

2. The employee may sign the report or remain anonymous.
3. There is also a "hotline" available for anonymous reports of compliance concerns. You may also use this "hotline" for confidential, anonymous submission of concerns regarding questionable accounting or auditing matters. That number is: xxx-xxx-xxxx.
4. Officers and managers have an "open door" for reporting compliance concerns.
5. The Corporate Compliance Officer will conduct a comprehensive investigation taking such actions as he or she deems advisable including use of internal and/or external investigators, written witness statements, ensuring cooperation of employees and managers, written findings of fact and written recommendations for bringing COMPANY into compliance. The complaining employee will be kept generally aware of the results of the investigation.
6. The Corporate Compliance Officer will follow up on the investigation to make sure that those who violate compliance policies are disciplined and there are no acts of retribution or retaliation against the person(s) reporting violations or cooperating in an investigation.
7. The Corporate Compliance Officer will report to COMPANY's Board of Directors concerning the findings of each investigation.

Please note that it is a violation of our Corporate Code of Conduct to submit a report that is known to be false.

Attachment 16

**Document Retention Policy**

\* Time period in years unless otherwise noted. P = Permanent DH = Department Head  
 All time periods begin to be measured after the item has occurred. For example, contracts are to be kept for 7 years after they have terminate. CPE records are kept for a period after the event has ended.

The objective of the NYSSCPA/FAE Records Retention Policy is to implement a records retention program that meets the following criteria:

1. All records shall be retained for the period required by applicable state and federal laws and regulations.
2. Adequate records shall be developed and maintained to document the companies' compliance with all relevant laws and regulations.
3. All records necessary for business reasons shall be retained for a period of time that will reasonably assure the availability of those records when needed.
4. Records vital to the ongoing operation of the business shall be identified and appropriately safeguarded.
5. All records not necessary for legal or business reasons and not required to be retained by law or regulation shall be destroyed in order to reduce the high cost of storing, indexing, and handling the vast amount of documents that would otherwise accumulate and to maximize the performance of the computer systems.
6. Destruction of records shall take place only in compliance with a standard written policy in order to avoid any inference that any document was destroyed in anticipation of a specific problem.
7. Documents that are not otherwise subject to retention for business reasons may need to be retained because of unusual circumstances, such as litigation or a government investigation. If for any reason it is felt that an unusual circumstance exists or arises, the legal department shall be notified immediately. When litigation or investigations occur, the legal department will notify the appropriate departments and direct that relevant categories of documents be labeled for retention until further notice.
8. The privacy and security of records shall be appropriately assured.
9. This policy shall apply to records maintained on all types of storage media, including electronic storage.
10. Records, such as notes, memoranda, letters, reports, computer disks, tapes, and so forth, located in individual offices, at home, or any other offsite location are subject to these guidelines and shall be managed consistent with these guidelines.

**Off-Site Storage**

The office services manager shall be responsible for maintaining a master log, based on the combined departmental logs, and sending of boxes to and retrieval from off-site storage. These logs shall be made available office wide by being posted on a public folder on the computer network.

**Departmental Record Keepers**

Each department head shall designate one or more persons in their area to be the keeper of records, responsible for making a listing of boxes, i.e. keeping departmental logs, and checking the retention requirements before the boxes are toted off to storage.

**Audit**

The director of finance and legal counsel shall be responsible for auditing the content of the records retention program. Each department head shall be responsible for auditing the actual implementation of such programs within their respective departments.

**Exceptions**

Requests for exceptions from this policy must be submitted to the director of finance and legal counsel for approval before implementation. In order to obtain an exception from this policy, there must be a program that will assure compliance with the basic objectives stated above at least as effectively as this policy.

**Review**

The director of finance and legal counsel will review this policy annually. Suggested changes should be submitted to both of them. Changes in this policy necessitated by changes to laws or regulations (or the existence of new litigation or an investigation) will be communicated directly by the director of finance or legal counsel to each of the department heads who shall cause appropriate changes to be made in the records retention requirements applicable to their respective department.

**Interpretation**

The director of finance and legal counsel will be responsible for interpreting any portions of this records retention policy as they may apply to specific situations.

Record Retention Schedule Worksheet

Department / Item	Ret'n Period *		Department / Item	Ret'n Period *	
	Here	Stor'g		Here	Stor'g
Society-wide requirements					
• Correspondence and Email: • Important items (consult DH*)	3	P	• Periodicals and books	DH	--
• Routine items	1	--	• Property ownership records (deeds, assignments, etc.)	P	--
• Contracts (unless otherwise noted)	7	--			
Accounting Department					
• Audited financial statements	P	--	• Cancelled checks • for special purposes (purchasing property or paying taxes)	P	--
• Accounts receivable / Accounts payable / Employee expense reports / Member reimbursements / Petty cash receipts /	2	5	• Cancelled checks • routine	2	5
• Bank statements and reconciliations / Bank deposit slips	2	5	• General ledgers & year-end journal entries (computerized)	P	--
• Budgets (computerized)	P		• Property records	P	--
• Chapter financial records	2	5	• Tax returns (except payroll)	P	--
Chapters					
• CPE files	See FAE		• Officer positions (computerized)	P	
Committees					
• Appointment / reappointment material (incl. committee evaluations)	2	5	• CPE records	See FAE	--
• Awards committee materials	2	5	• Minutes and agendas (paper)	0	--

Department / Item	Ret'n Period *		Department / Item	Ret'n Period *	
	Here	Stor'g		Here	Stor'g
• Award recipients	P	--	• Minutes and agendas (web)	P	--
• Committee annual report info	2	5	• Technical comments (paper)	2	5
• Committee event files	2	5	• Technical comments (web)	P	--
• Committee service records (computerized)	P	--	• Telephone inquiry statistical information (hotline)	7	--
Communications / Production					
• Insertion orders and tear sheets	7	--	• Newspaper clippings	3	--
CPA Journal					
• Artwork and ad materials	3	--	• Magazine – back copies	♣	--
• Content backup for each issue (documenting entire process from receipt of manuscript through editing and production)	2	--	• Manuscripts returned to authors for revision	2	--
• Copyright letters / author agreements on all published manuscripts	2	P	• Rejected manuscripts	2	--
• Magazine – permanent copy	P	--	• Reprint authorizations	2	P
Ethics					
• Files • Expulsion	P	--	• Minutes, agendas, meeting files	P	--
• No-violation/ no further action	1	--	• Telephone inquiry documentation	6 mo	--
• Required corrective action	5	--	• Written inquiries and responses	10	--
• Subject files	P	--			
• Suspension	10	--			
FAE					

\* 50 copies kept for 12 months thereafter 10 copies are retained, all at the printers.

ACC's 2006 ANNUAL MEETING

THE ROAD TO EFFECTIVE LEADERSHIP

ACCA's 2003 ANNUAL MEETING

CHARTING A NEW COURSE

ACCA's 2003 ANNUAL MEETING

CHARTING A NEW COURSE

Department / Item	Ret'n Period *		Department / Item	Ret'n Period *	
	Here	Stor'g		Here	Stor'g
• Brochures / promotional materials	2	3	• Trustees' Minutes and agendas	P	--
• Contracts for speakers / authors / hotels	2	5	• Speaker outlines / manuals	2	3
• Evaluations / summaries	2	3	• Rosters / CPA credit slips	2	3
<b>Governance</b>					
• Agenda materials (Board/EC)	2	P	• Minute books	P	--
• Meeting handouts	2	P	• Tax exemptions letters	P	--
<b>Government Affairs / PAC</b>					
• Audited financial statements	P	--	• PAC Reports ?What is this?	6	--
• Checks/ bank statements	2	5	• Tax returns	P	--
• Minutes, agendas	P	--			
<b>Human Resources (incl. payroll)</b>					
• Employment-tax records	2	5	• I-9's	▼	--
• Employee time records	2	5	• Payroll journals and records	3	5
• Employee releases / nondisclosure agreements	P	--	• Personnel files after termination	7	--
• Employment applications	1	--	• Retirement plan description / financial statements / notices	P	--
• Hiring solicitations, incl resumes	1	--	• Workers' Compensation / Unemployment Insurance	5	--
• FMLA leave information	7	--			
<b>Information Technology</b>					
• Backup of AM4		1	• Backup of "F: drive"		1
• Backup of Exchange Server		?	• Software		P
<b>Legal</b>					

Department / Item	Ret'n Period *		Department / Item	Ret'n Period *	
	Here	Stor'g		Here	Stor'g
• Contracts (after termination)	7	--	• Insurance policies (after cancellation)	2	5
• Insurance claims	7	--			
<b>Membership</b>					
• Applications	P		• Dues batches	2	1
<b>Peer Review</b>					
• Acceptance letters	3		• Workpaper files		90 da
<b>Trusted Professional</b>					
• Newspaper (one copy)	P		• Back copies	1	
<b>Website</b>					
• Committee minutes & agendas	P				

▼ Later of 3 years after hire date or 1 year after employment termination.

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**TIER BUSINESS CODE OF CONDUCT**

**1. GENERAL STATEMENT**

Tier Technologies, Inc., (“Tier” or “the Company”) and its subsidiaries and affiliates depend not only upon the skills, abilities and commitment of all our employees, but also on our collective goodwill, judgment, self-discipline, common sense and integrity.

We can only be successful if we are sensitive to the legitimate concerns of those dependent upon and affected by our activities, including customers, stockholders, employees, communities in which we do business, suppliers and competitors. Therefore we will:

- Provide our customers with quality solutions and services that are innovative, safe, and responsive to their requirements, at appropriate prices, and will treat our customers with respect and honesty;
- Pursue growth and earnings objectives while always keeping ethical standards at the forefront of our activities;
- Provide an environment for our co-workers that fosters both individual and team excellence and helps Tier achieve competitive success;
- Act in an ethical manner as a responsible and responsive corporate citizen;
- Treat suppliers fairly, honestly, and objectively; and
- Compete fairly, honestly and aggressively within the boundaries established by law and ethical standards.

The benefits of integrity in our daily business activities may appear obvious, but doing the right thing is not always easy. This *Business Code of Conduct* is designed to aid all our employees in conducting themselves in a legal and ethical manner.

The Tier *Business Code of Conduct* has been designed to offer a clear outline of the Company’s position and expectations regarding corporate conduct and employee responsibility. It is our continuing desire to be viewed as a valued and forthright corporate citizen in all aspects of our business, always committed to conducting our business honestly, ethically, and in accordance with all applicable laws.

The guidance provided in the Code is intended to provide general information regarding certain subject matters related to ethics and compliance and is not intended to provide an exhaustive discussion of the various topics covered or a discussion of every applicable law. Employees should seek guidance from a member of the Ethics Compliance Team for further in-depth discussion on topics related to this Code.

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It is important that you understand that this *Business Code of Conduct* is a statement of our current policies and that Tier has the right to amend the policies at any time. Exceptions to any policy listed in this code, as it applies to Tier's executive officers or Directors, must be approved in writing by the Company's Board of Directors. Exceptions to any policy listed in this code, as it applies to any other employee of the Company, must be approved in writing by the Chief Executive Officer.

## 2. TIER'S ETHICS COMPLIANCE TEAM

In order to provide effective guidance to all employees around business activities that lend themselves to issues as outlined in this *Business Code of Conduct*, Tier has established an Ethics Compliance Team that will assist employees with questions and provide guidance when necessary. This cross-organizational compliance team will meet regularly with other team members to discuss and research matters that cannot be resolved immediately and without additional assistance.

The Ethics Compliance Team will receive extensive training on antitrust law and will have the requisite skills, knowledge and experience in understanding Tier operations, GAAP Accounting Rules and matters of law. Outside counsel will be sought in matters that cannot be adequately addressed by members of the Compliance Team.

No employee should consider himself or herself as a subject matter expert related to issues outlined in the Tier *Business Code of Conduct*. The Ethics Compliance Team will have final say on all matters that are escalated and presented to the team. Any employee who fails to seek guidance from a member of this team and knowingly disregards policies and guidance set forth in this Code is subject to disciplinary action, up to and including termination. In addition, if found liable for any violation of law (i.e. antitrust, Securities and Exchange, regulatory, etc.) the Company and the employee may be subject to civil and criminal proceedings.

## 3. ETHICS CODE

Code of Ethics for Chief Executive, Chief Financial and Chief Accounting Officers

The Tier Employee Handbook includes Tier's business "Values," by which we measure all of our decisions and behaviors. One of these values is that we have integrity and are trusted. We hold all Tier employees to the highest standards of personal integrity: that we are honest and ethical in all our business dealings; that we keep our promises and admit our mistakes. Such personal conduct ensures that Tier's name is always worthy of trust.

The Employee Handbook and this *Business Code of Conduct* apply to **all** employees of Tier, including the Chief Executive, Chief Financial and Chief Accounting Officers. However, these officers, given the special nature of the responsibilities entrusted to them, are held to additional standards of conduct. In addition to the Handbook and *Business Code of Conduct* provisions of ethical conduct, conflicts of interest and compliance with law, Tier's Board of Directors has adopted the following Code of Ethics specifically for our Chief Executive, Chief Financial, and Chief Accounting Officers:

- You are responsible for full, fair, accurate, timely and understandable financial disclosure in reports and documents filed with or furnished to the Securities and Exchange Commission and NASDAQ by Tier and in other public communications made by Tier. You must ensure that Tier's accounting records are maintained in accordance with all applicable laws, properly supported and classified, and you must not knowingly include any false or misleading entries.
- You are responsible for Tier's system of internal financial reporting and accounting controls. You shall promptly bring to the attention of the Audit Committee any information you may have concerning:
  - Significant deficiencies in the design or operation of internal controls that could adversely affect Tier's ability to record, process, summarize and report financial data, or
  - Any fraud, whether or not material, that involves management or other employees who have a significant role in Tier's financial reporting, disclosures or internal controls.
- Your conduct cannot be such that it would interfere with Tier's business interest and you may never let business dealings on behalf of Tier be influenced - or even appear to be influenced - by personal interests. You shall promptly bring to the attention of the Audit Committee any information you may have concerning any actual or apparent conflict of interest between personal and professional relationships, involving any management or other employee who has a significant role in Tier's financial reporting, disclosures or internal controls.
- Tier is committed to complying with both the letter and the spirit of all applicable laws, rules and regulations. You shall promptly bring to the attention of the Audit Committee any information you may have concerning evidence of a material violation of the securities exchange or other laws, rules or regulations applicable to Tier or its employees or agents. You shall promptly bring to the attention of the Audit Committee any information you may have concerning any violation of this Code of Ethics. The Board of Directors shall be responsible for determining disciplinary action to be taken by Tier in the event of a violation of this Code of Ethics.



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#### 4. POLICIES AND PRACTICES

##### 4.1 CONFLICTS OF INTEREST

A conflict of interest may arise in any situation in which an employee's loyalties are divided between business interests that are incompatible with the interests of the Company. All such conflicts should be avoided. Tier demands absolute integrity from all its employees and will not tolerate any conduct that falls short of that standard. Tier expects that no employee will knowingly place himself or herself in a position that would have the appearance of being, or could be construed to be, in conflict with the interests of the Company.

###### 4.1.1 Accepting Gifts and Entertainment

The Company's aim is to deter givers of gifts from seeking or receiving special favors from Company employees. Accepting any gift of more than nominal value or entertainment that is more than a routine social amenity can appear to be an attempt to influence the recipient into favoring a particular customer, vendor, consultant or the like.

Gifts such as merchandise or products, as well as personal services or favors may not be accepted unless they have a value of less than \$100. This dollar limit is intended as a guideline, and employees are required to consult with a member of the Ethics Compliance Team before accepting any gifts of more than nominal value. Gifts of any amount may never be solicited. A gift of securities may never be accepted.

###### 4.1.2 Giving Gifts and Entertainment

###### a. Government Employees

Federal, state and local government departments and agencies are governed by laws and regulations concerning acceptance by their employees of entertainment, meals, gifts, gratuities, and other things of value from firms and persons with whom those government departments and agencies do business or over whom they have regulatory authority. We are to comply strictly with those laws and regulations. These laws and regulations vary and you must refer to these laws and regulations prior to offering a government employee anything of value.

###### b. Business Courtesies to Non-Government Employees

It is permissible to provide meals, refreshments, entertainment, and other business courtesies of reasonable value to non-government person in support of business activities provided (1) the practice does not violate any law or regulation or the standards of conduct of the recipient's organization and; (2) the business courtesy must be consistent with marketplace practices, infrequent in nature, and may not be lavish or extravagant.

Tier employees are prohibited from offering or giving tangible gifts (including tickets to sporting, recreational, or other events) having a market value of \$100 or more, to a person or entity to which the Company conducts or seeks to conduct business, unless specifically approved by a member of the Ethics Compliance Team.

###### c. Foreign Government Personnel and Public Officials

The Company may be restricted by giving meals, gifts, gratuities, entertainment, or other things of value to personnel of foreign governments and foreign public officials by the Foreign Corrupt Practices Act and by the laws of other countries.

###### 4.1.3 Bribery, Kickback and Fraud

Any employee found to be receiving, accepting or condoning a bribe, kickback, or other unlawful payment, or attempting to initiate such activities, may have their employment with Tier terminated and may be subject to possible criminal prosecution. Any employee found to be attempting fraud or engaging in fraud may have their employment with Tier terminated and may be subject to possible criminal proceedings. All employees have a responsibility to report any actual or attempted bribery, kickback or fraud to the Company.

###### 4.1.4 Outside Income and Employment

No employee can be employed by another company or render consulting services to another firm, company, or organization as an employee, a director, or a consultant without the express written approval from a member of the Ethics Compliance Team.

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No employee should engage in a “free-lance” or “moonlighting” activity that will materially encroach on the time or attention which should be devoted to the employee’s duties; adversely affect the quality of work performed; compete with the Company’s activities; imply sponsorship or support by the Company of the outside employment or organization; or adversely affect the good name of the Company. All free-lance or moonlighting activities require the written approval of a member of the Ethics Compliance Team. Employees who free-lance or moonlight may not use Company time, facilities, resources, or supplies for such work.

Employees in our child support operation may seek additional part-time work (second job) or, if employed by Tier in a part-time capacity, may work for another company provided the other company is unrelated to Tier’s industry, products and services and has no relationship with Tier in any capacity. If the second job is with a company in a related industry, the employee must receive Tier’s prior written approval before accepting such position. The employee must document this relationship in writing and present to his/her Project Manager. The Project Manager will bring this matter to the attention of an Ethics Compliance Team Member for review and approval, as appropriate.

#### 4.1.5 Relationships at Work

##### a. Consensual Relationships

Tier does not seek to insert itself into employee’s personal relationships. However, when an employee has a significant personal relationship with another employee, complications can arise that may cause problems in the workplace. To minimize the chances of any adverse impact on the workplace, it is essential that employees conduct themselves in a fully professional, appropriate, and mature manner.

Additionally, employees with management responsibilities should be aware that having an intimate relationship with a lower-level employee might limit their ability to manage certain aspects of the business or otherwise cause problems in the workplace. Therefore, the Company discourages employees from living with, dating, or becoming involved in a romantic relationship with another person over whom the employee has supervisory, hiring, or disciplinary authority. Managers/subordinates who have or enter into such a relationship are required to immediately disclose the existence of this relationship to Human Resources or to a member of the Ethics Compliance Team. In such event, the Company may take appropriate action including reassignment of either or both parties.

##### b. Familial Relationships

Any employee with supervisory responsibilities over another employee where a familial relationship exists (i.e. parent, sibling, cousin, aunt, uncle, etc.) should be aware that this relationship might limit their ability to manage certain aspects of the business or otherwise cause problems in the workplace. Again, Tier discourages such relationships in the workplace that may create a conflict of interest. If such a familial relationship exists where one employee has supervisory responsibilities over the other, all supervisory activities must be removed to a higher-level authority within the Company and the more senior party in the relationship must remove him or herself from all supervisory activities related to that employee.

#### 4.1.6 Organizational Conflicts of Interest

A potential conflict of interest exists when a Tier consultant performs services for a client while also having a relationship with another entity (suppliers, clients, alliance partners, competitors, etc.) that could be viewed, by the client or others, as potentially impairing Tier’s objectivity. The potential for conflict of interest is inherent when the company provides business advice on matters that can affect other existing clients. Examples of situations where a conflict may arise include:

- Initiating services to a company when a direct competitor of that company is already receiving similar services;
- Providing services to a prospective client when there is a preexisting agreement with a current client or alliance partner to not provide services to that entity; and
- Providing services to a client where there is a personal or family relationship between a client employee and a Tier Consultant.

On discovering a potential conflict of interest, the first consideration must always be whether the conflict of interest will impair objectivity. If, after conferring with a member of the Ethics Compliance Team, the employee responsible believes that she or he will not be able to act objectively, then the work is either assigned to a more appropriate employee or the work is declined.

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#### 4.1.7 Assistance in Evaluating Conflicts of Interest

A member of the Ethics Compliance Team should be notified whenever there is reasonable doubt as to whether an organizational or personal conflict of interest exists that may adversely affect the Company with respect to the Company's government or commercial contracts. The Ethics Compliance Team will provide business counsel to the individual or organization on the apparent conflict and appropriate actions. The Legal Department is available to provide legal advice as to whether a conflict of interest does, in fact, exist. When a conflict does exist, the Legal Department can advise with respect to steps that may help eliminate or adequately mitigate the conflict.

#### 4.2 PARTICIPATION IN OTHER ORGANIZATIONS

In the course of their employment with Tier, employees may be approached to participate in activities for other organizations, outside of Tier. While participation in many organizations is appropriate, it can be inappropriate in others. Tier endorses the concept of employees serving selected entities, with limitations, but recognizes that employees may not allow any efforts put forth in this secondary capacity to impact their primary responsibility and duties as an employee of Tier.

##### 4.2.1 Professional Association Participation

Employees are encouraged to join and serve professional organizations where they are afforded the opportunity to create industry contacts, enhance their knowledge of industry issues and challenges, and be exposed to other points of view.

##### 4.2.2 Community and Elected Office Participation

Tier encourages its personnel to be active in responsible community service groups, as well as to participate in local government activities. Such participation is beneficial to the community as a whole, helps develop the individual by broadening his or her knowledge and acquaintances, and enhances the image of the individual and the Company. In serving these organizations, however, employees should endeavor to:

- Maintain a separation of their personal beliefs and support of these organizations from their employment activities with Tier; and
- Make certain that opinions expressed while serving the community and elected organization are in no way represented as the opinions and beliefs of Tier.

#### 4.2.3 Board of Directors Participation

A Tier employee may be asked to serve in another capacity of another organization, such as member of the board of directors, voting trustee, or advisor (collectively referred to as Board members). Serving in these roles allows our personnel to offer their skills and experience to clients, prospective clients, and volunteer organizations within the community.

##### a. Guidance

Tier employees may serve as Board members of any volunteer organization, charitable organization, professional organization, religious organization, social club, or investment club.

Only Tier Executives who have been approved by the Board of Directors may serve on the Boards of public corporations, for-profit corporations, nonpublic corporations, closely held businesses, and governmental advisory units.

##### b. Time

Working hours spent serving on the commercial entity's Board, away from Tier duties and responsibilities, may not be charged to Tier time reports as working time. Notwithstanding this provision, time is not charged as personal time and may be charged on a Tier time report when the Board membership position is being filled at the request of Tier.

##### c. Expenses

Expenses associated with performing Board member duties for another entity are the responsibility of the individual and cannot be charged to Tier. Notwithstanding this provision, expenses will be reimbursed when the Board membership position is being filled at the request of Tier.

##### d. Directors and Officers Insurance.

Tier does not provide insurance for serving on the Board of Directors of other companies, unless such service is performed at the request of Tier.

#### 4.3 EMPLOYMENT RELATIONSHIPS WITH A CLIENT

##### 4.3.1 Tier Employees

Tier employees may not solicit employment with client organizations, subject to the terms and conditions of their employment agreement.

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If an employee is approached by a client soliciting them for employment, the employee should (1) indicate to the client that they are flattered by the interest that the client has expressed; and (2) remind the client that the terms of the client's agreement with Tier precludes any discussion of employment with a Tier employee.

#### 4.3.2 Client Personnel

Tier employees are not permitted to solicit client personnel for employment in the Company. Any attempt to recruit or secretly encourage an employee of a client to join Tier is prohibited.

If an employee of a client contacts a Tier employee to discuss employment opportunities with the Company, the Tier employee is required to inform the Practice Leader or Project Manager in charge of the client engagement. The Practice Leader or Project Manager will contact the employee and indicate that our commitment to our clients precludes us from discussing employment opportunities with a client staff member unless:

- The client staff member has informed his or her employer of his or her intent to leave; and
- Client management informs Tier that they have no objection to Tier approaching their departing employee about employment opportunities.

#### 4.4 CLIENT STAFF EVALUATIONS

A Tier employee may be requested to appraise and evaluate client staff members. This is a difficult situation that can easily result in a degradation of relationships with the client at many levels. If efforts to avoid the situation fail, such appraisals may be provided orally, not in writing, to client management and only when based on verifiable facts of which we have knowledge. Care should be exercised to ensure that the evaluation is sound and fair to the parties involved.

#### 4.5 CLIENT REFERENCES

Client engagement experiences must not be referenced by client name in Company proposals, reports, or similar communications with outside organizations without the prior, written authorization from the referenced client. Proposals and other materials prepared to assist with informing existing and potential clients of work that Tier can perform typically make some reference to work done for other clients. Such materials:

- Should only identify clients after consent is secured;
- Should use preapproved illustrative lists of clients that have been prepared for inclusion in proposals;

- Should use preapproved generic descriptions of client work that are authorized and available for inclusion in proposals;
- Can make reference to specific engagements using a client's name, only where prior written approval of the client has been obtained; and.
- Can make reference to specific client engagements, beyond preapproved descriptions (but without identifying specific clients) only if such disclosure is approved by the lead managing director on the client engagement. Such approval will only be granted where it is clear that the generic description of the particular work will not reasonably enable industry insiders to identify work for a particular client or where the client(s) has granted Tier written approval to make the disclosure.

#### 5. ANTITRUST COMPLIANCE POLICY

Tier requires its personnel to comply with the U.S. antitrust laws at both the federal and state level as well as the laws of any foreign countries in which Tier does business. The antitrust laws prohibit collusion among competitors on price and other competitive terms and forbid other unreasonable restraints on trade and competition. Tier believes that the antitrust laws of the U.S. and other countries have contributed substantially to economic growth, and that our full compliance with them is in the best interest of the Company. Further, Tier seeks to avoid even the appearance of a violation of any applicable antitrust law. This policy is an important aspect of Tier's comprehensive commitment to acting legally and ethically at all times.

This Antitrust Compliance Policy is intended to provide personnel with a general understanding of the obligations that the antitrust laws place on Tier and on each individual officer, director, and employee. Final responsibility for ensuring compliance with the antitrust laws rests in the Tier Legal Department. All Tier personnel, however, represent Tier's first line of defense to antitrust violations and must be familiar with the information contained in this policy.

Failure to comply with the antitrust laws may constitute a felony and subject Tier and responsible individuals to criminal fines of up to double the amount lost by any victim or gained by any violator, without limit. In addition, responsible individuals may be sentenced to up to three years in prison. Antitrust violations, even if not treated as a criminal matter, can subject the violator to crippling civil liabilities and injunctions that can inhibit the Company's operations. Even if no violation is found, investigations by enforcement agencies and lawsuits brought by private plaintiffs are costly to defend and disrupt the Company's day-to-day business.

Because compliance with the antitrust laws is so important, Tier will take disciplinary action, up to and including suspension or termination, against personnel who violate the antitrust laws or this policy.

This policy includes below a basic list of antitrust "rules of conduct," expressed in terms that all employees should understand.

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These rules of conduct provide a general guide to avoiding the most serious antitrust pitfalls. Antitrust issues are often highly complex and fact-specific. Because of this complexity, this policy primarily helps you to identify sensitive subjects that you should bring to the attention of the Legal Department.

#### 5.1 GENERAL

- A. **COMPLIANCE WITH THE ANTITRUST LAWS IS A CORE POLICY OF THE COMPANY THAT CAN NEVER BE COMPROMISED IN THE PURSUIT OF PROFITS OR OTHER OBJECTIVES.**
- B. **NEITHER THIS POLICY NOR THE ANTITRUST LAWS PROHIBIT VIGOROUS COMPETITION ON THE MERITS.** Tier's policy is to compete hard and to strive for success within the bounds of the law.
- C. **REPORTING POTENTIAL PROBLEMS:** If you become aware that a potential antitrust problem might exist, you should immediately notify the Legal Department. It is always better to deal with issues sooner rather than later. Employees that knowingly fail to report potential antitrust issues that they become aware of to the Legal Department may face disciplinary action.
- D. **Relationships with Competitors:**
- NEVER ENTER INTO AN AGREEMENT WITH A COMPETITOR WITHOUT THE PRIOR APPROVAL OF THE LEGAL DEPARTMENT.** Agreements between competitors present the most serious antitrust risks and are most likely to lead to criminal penalties. Some agreements with competitors are pro-competitive and justifiable under the antitrust laws, such as certain joint ventures that create cost savings or other benefits for consumers. Naked agreements (*i.e.*, those unconnected to a lawful and procompetitive collaboration) among competitors not to compete, however, are always illegal. Accordingly, all agreements with competitors require prior approval from the Legal Department.

#### 5.2 EXAMPLES OF AGREEMENTS THAT ARE ALWAYS SENSITIVE

- A. **Price Fixing:** It is always illegal for actual or potential competitors to enter into a naked price fixing agreement. This prohibition includes agreements to raise, lower, maintain or stabilize prices, discounts or rebates, even if no specific price is discussed. It also includes agreements to set other terms and conditions of sale that affect prices, including warranty terms, credit terms, delivery terms, product availability, service charges, or discounts.

B. **Bid Rigging:** It is also illegal for actual or potential competitors to engage in naked agreements to artificially interfere with the competitive bidding process. Such agreements include arrangements with competing companies as to the bids to be submitted by each, agreements to rotate bids, agreements not to bid, and agreements to submit "complementary bids" (even when the complementary bidder otherwise would not have submitted a bid).

- C. **Customer or Market Allocation:** Actual or potential competitors may not enter into naked agreements to allocate or assign (i) the geographic market in which each will sell, or (ii) the customers or classes of customers that each will serve.
- D. **Production Allocation:** Actual or potential competitors may not enter into naked agreements as to (i) the products that each will offer, or (ii) a limit on production or sales.
- E. **Group Boycotts:** Actual or potential competitors may not enter into naked agreements to refuse to deal with (*i.e.*, not to buy from or not to sell to) a particular customer or supplier or a class of customers or suppliers.

Even when a contemplated agreement would not be naked, agreeing as to topics such as those set forth above can raise significant antitrust issues. As a result, never enter into an agreement with a competitor without the prior approval of the Legal Department.

Be aware that the antitrust laws do not require a formal contract for an agreement to run afoul of antitrust law; all that is required is a mutual understanding that may be inferred from circumstantial evidence. If competitors reach such an understanding, then an agreement and a potential violation may exist, even though no one at either company ever uttered the words "we agree," and even if that understanding never has any actual effects in the marketplace.

#### 5.3 DO NOT TALK TO COMPETITORS ABOUT ANY TOPIC ON WHICH AGREEMENT WOULD BE ILLEGAL

Aside from dealing with current business matters related to the teaming agreements already in effect, you should always be sensitive to any and all contact with competitors, since even innocent contacts can create an appearance of impropriety. You will, however, encounter situations in which you need to communicate with a competitor. These might include, for example, attending trade association meetings that are important to the Company's business or possibly discussing Tier's purchase from or sale to a company that also happens to be a competitor in some market. To the extent it is feasible, you should discuss all such contacts with competitors in advance with the Legal Department.

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If you do come into contact with a competitor, you should never discuss, directly or indirectly, Tier's dealings with its other customers or suppliers. You should specifically avoid discussing prices, bids, costs, customers, territories, distribution lines, other terms and conditions of contracts or sales, general business conditions, business strategies, marketing programs, and the like. More generally, avoid engaging in "shop talk" with competitor representatives. If the other persons present persist in discussing improper topics, leave the meeting immediately and report the incident to the Legal Department.

5.4. DO NOT SOLICIT FROM TIER'S COMPETITORS INFORMATION ON ANY TOPIC ON WHICH AGREEMENT WOULD BE ILLEGAL AND NEVER GIVE ANY INFORMATION ON THESE TOPICS TO OUR COMPETITORS

In particular, do not give Tier pricing information to any competitor, and never accept pricing or bidding information from a competitor. Where Tier engages in legitimate purchasing from or sales to a competitor, limit the exchange of information to the specific transaction. Where bidding information or a price list from a competitor is in our files, or where our price lists are in a competitor's files, it may look like we have talked about bids or prices with a competitor even though we have not done so. If you get bidding information or a price list from some source other than the competitor itself (such as bid tabulations published by a governmental entity or a price list from a customer), note on the document how and from whom you obtained the document, including lists that were unsolicited or received from anonymous sources.

5.5 BE ALERT AT TRADE ASSOCIATION MEETINGS

Trade, professional, industry and similar associations perform many legitimate and useful functions. These associations, however, can bring Tier employees in contact with competitors, and this fact alone calls for considerable caution. Unless properly monitored by legal counsel, associations may adopt or undertake restrictive codes of conduct, compulsory performance or product standards, restrictive membership requirements, exchanges of confidential financial data, or other actions which may involve antitrust problems. They also provide an opportunity for improper discussions.

Agendas for trade association meetings or other meetings with Tier's competitors should be provided to the Legal Department prior to the meeting for review.

If at a trade association meeting officials of competing companies discuss inappropriate topics, Tier personnel should immediately halt the conversation – or leave – and promptly inform the Legal Department. Personnel who hold individual memberships in trade associations are responsible for obtaining guidance with respect to their own activities in order to assure that their conduct will not affect adversely the interests of Tier.

Remember, in certain circumstances, agreements and communications between competitors may be legal. For example, formal joint ventures or partnerships can be a limited exception to some of the foregoing rules. You must however consult with the Legal Department regarding the facts of your particular situation before engaging in any such activity with a competitor.

5.6 RELATIONSHIPS WITH CUSTOMERS AND SUPPLIERS

A. DO NOT REQUIRE A CUSTOMER TO PURCHASE ONE TIER PRODUCT OR SERVICE IN ORDER TO BE ABLE TO PURCHASE ANOTHER TIER PRODUCT OR SERVICE WITHOUT PRIOR APPROVAL OF THE LEGAL DEPARTMENT. Requiring a customer purchasing one product or service from Tier to purchase a second product or service may constitute an illegal "tying" arrangement in some circumstances. Price discounts that reward customers for purchasing larger quantities of products, or induce customers to buy other Tier products, may raise similar concerns. Any proposed arrangement of this sort must have the prior approval from the Legal Department.

B. DO NOT ENTER INTO EXCLUSIVE DEALING ARRANGEMENTS WITHOUT PRIOR APPROVAL OF THE LEGAL DEPARTMENT. Exclusive dealing arrangements involve any form of contract that prevents a supplier or customer of Tier from dealing with other companies. Requirements and sole-source contracts can fall into this category. Such arrangements can raise questions about whether other companies are substantially foreclosed from competing in the marketplace and must have prior approval from the Legal Department.

C. DO NOT CHARGE A PRICE BELOW COST. Pricing products below cost can lead to allegations of predatory pricing in certain circumstances. The exact measure of cost, however, is not clearly defined under the law. If you think a proposed price (after any discounts, rebates, etc.) might yield revenue less than Tier's costs, seek the advice of the Legal Department.

D. DO NOT ENGAGE IN UNFAIR METHODS OF COMPETITION. The term "unfair method of competition" is a broad concept potentially encompassing any unethical or unfair practice directed against a competitor. Specifically, it is contrary to Tier policy to engage in any of following practices:

- bribing a competitor's or customer's employee;
- industrial espionage;
- stealing or otherwise wrongfully obtaining a competitor's trade secrets, designs, technical data or other proprietary or confidential information;
- disparaging a competitor or its products or communicating false or unfair statements or rumors about a competitor; or

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- inducing the breach of a contract between a competitor and one of its customers, suppliers or employees.

5.7 OTHER TOPICS

- A. Document Creation: Tier and its employees will be judged by their words as well as their actions. What Tier personnel write – both in formal written documents as well as e-mail and handwritten notes – should adhere strictly to this compliance policy. In addition, Tier personnel should be careful to avoid inaccurate or imprecise language in creating documents that might lead a later reader to perceive an antitrust problem when in fact none exists. For example, personnel should not use imprecise language that might be misconstrued to suggest that an agreement exists between the Company and a competitor. Similarly, personnel should not make exaggerated claims about the Company's ability to influence the competitive process. For the same reasons, where facts are uncertain, you should avoid speculation. Once committed to paper, such speculations may be taken as fact by readers unfamiliar with the business. Writers should make clear when they are relying on estimates or educated guesses. In particular, if estimates of markets or market shares rest on incomplete information or do not include all substitutes or suppliers that might fairly be included in a "market," that fact should be noted in the document.
- B. Contact From Government Officials or Private Counsel: In the unlikely event that you are contacted by a government official or an attorney for a private party with questions relating to Tier or its personnel, be aware that you are under no obligation to answer these questions. You should record the name, contact information and government agency or party requesting the interview and promptly report this information to the Legal Department.

\* \* \* \* \*

This policy does not address all subjects or situations that might arise. For example, this policy does not deal with the complicated laws surrounding mergers, acquisitions, and joint ventures. Remember, whenever any question arises in your mind about whether past, present, or planned activity – by Tier or by a competitor – raises an antitrust issue, contact the Tier Legal Department.

6. POLITICAL ACTIVITIES

6.1 POLITICAL CONTRIBUTIONS

6.1.1 Contributions in the Name of Tier

No political contribution, at any level of government, shall be made in Tier's name, whether directly or indirectly, by reimbursement or otherwise, without the express prior approval of the Company's Chief Executive Officer. Advice shall be sought and obtained from the Company's General Counsel before any such approval is given.

Contributions covered by this policy include all direct and indirect contributions to any political candidate, political party or other organization that might use the contributions in connection with federal, state, local, or foreign elections. The policy also applies to contributions in support of or opposition to any ballot proposition to be decided by voters. Indirect contributions subject to this policy include, but are not limited to:

- Donating products or services (including employee time) to candidates;
- Sponsoring fund-raising events on behalf of one or more political candidates,
- Mailing fund-raising solicitations;
- Providing assistance through consultants, suppliers, customers or other third parties; and
- Reimbursing employees for personal political contributions or payments.

No political contribution of any kind involving Tier shall be made in violation of any applicable law or regulation.

The laws and regulations governing political contributions are subject to frequent change or interpretation. They often impose corporatwide prohibitions or limitations, as well as reporting requirements. Company coordination and approval of Tier political contributions is required as specified below.

6.1.2 Individual Political Contributions

It is not the Company's intention to prohibit individual personnel from making personal contributions to candidates and committees as long as such contributions are not associated with Tier.

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### 6.1.3 Political Action Committees

Tier may permit contributions to federal and local political action committees on behalf of the Company in order to support legislation favorable to the Company and our clients. Volunteer activity by employees must be taken on personal time, and Company resources (including secretarial services, telephones, computers, etc.) may not be used. Any such contribution or activity must be pre-approved by the Ethics Compliance Team.

Solicitation of employee contributions to a political action committee by another employee is inappropriate.

### 6.1.4 Lobbying Activities

Lobbyists are individuals who attempt to influence or sway a public official toward a desired action, typically in order to promote a project or secure the passage of legislation. Lobbyists are typically contacted and engaged when they are perceived to enhance a message that is delivered to a public official or to the constituency served by a public official.

Lobbyists are increasingly the subjects of public scrutiny and regulation. There are established guidelines that govern the actions of lobbyists and require individuals who wish to serve as lobbyists to register with the government. Many regulatory bodies have Web sites to register lobbyists and provide reference sources for individuals who wish to serve as lobbyists.

### 6.1.5 Tier Employee Serving as a Lobbyist

Because of our past relationships with government officials, Tier employees are occasionally asked by others to help influence a client's decision on a project or proposed piece of legislation. Providing assistance in either case could be considered a lobbying act by certain regulatory bodies and require registration and reporting. It is Tier's policy that no individual should participate in the lobbying of an official for any project other than a project being proposed by Tier. Further, any efforts that are made need to strictly follow the guidelines of the government entity's contract awards process.

If Tier is also presented with opportunities to serve as a lobbyist for a client that wishes to present a position to a governmental entity on proposed legislation, such activity may also require the Company to register as a lobbyist.

## 7. INTELLECTUAL PROPERTY RIGHTS

### 7.1 CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

Intellectual property is a term used to describe the results of creative efforts of the mind. The term includes inventions, works of authorship, patents, trademarks, software, copyrights, and trade secrets. Practice Leaders should obtain advice from the Legal Department before negotiating any agreement involving unique or complex intellectual property provisions.

There is a sharp distinction between Tier's information and confidential client information that is the proprietary information of our clients.

#### 7.1.1 Client-Provided Nondisclosure Agreements (Confidentiality Statements)

Occasionally, clients will request that Tier employees execute a nondisclosure agreement (NDA) or confidentiality agreement as a condition of the engagement or even the proposal opportunity. Tier employees may enter into such agreements with express permission from a member of the Ethics Compliance Team and with the understanding that by signing such agreement is in the best interests of Tier and does not void or negate an employee's full responsibility to Tier's NDA and Data Security agreements.

#### 7.1.2 Client Intellectual Property Rights

Tier employees are required to keep the affairs of clients confidential at all times, both during their association with Tier and afterward. Any client information that has not been publicly disclosed is considered by Tier to be confidential. Such information should not be shared outside the client service team.

It is common for clients and government agencies to expect their intellectual property rights to be protected. Recent lawsuits have sought damages in excess of \$10 million for violations of nondisclosure agreements and intellectual property. Project teams need to be cognizant of the importance of intellectual property and the appropriate means to protect both intellectual property that is rightfully Tier's and that which is requested by our clients and often specified in intellectual property and nondisclosure provisions in contracts.

As to client information, the following requirements apply:

- Client information must be maintained as confidential.



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- The Practice Leader and Project Manager should communicate with team members the provisions of any nondisclosure agreement (NDA) executed with the client and have team members accept personal responsibility for these provisions. Each team member must execute an acknowledgment and undertaking of confidentiality confirming that the team member: (i) has read, (ii) understands, and (iii) will be bound by the terms of confidentiality that have been agreed to between Tier and the client. These signed acknowledgments are to become part of the permanent work paper files.
- Team members should only discuss confidential client information with other team members in connection with the delivery of services to the client.
- Do not discuss any information about work for one client with another client.
- Do not assume that all client employees are privy to the work you are doing.
- Stress the importance of not discussing any aspects of our work in public (e.g., airplanes, elevators, and social events).
- Hold all subcontractors to the same provisions as our professionals (signed NDA).
- Protect ourselves against false allegations of misuse or misappropriation of confidential information by requesting clients to label documentation that is confidential, date and log receipt of such documentation, and obtain confirmation when the documentation has been returned to the client. Where confidential documentation is destroyed, provide written evidence of its destruction.
- Safeguard confidential information physically while on client premises and in Tier offices.
- Segregate/identify confidential e-mails and limit distributions on a client permission "need to know" basis. In cases where aspects of any client work is intended to be used as qualifications, success stories, trade shows, booths, speeches, articles, etc., obtain client approval before using.

Exceptions to this guidance on client confidentiality occur when:

- Disclosure is required by law or judicial process;
- Disclosure is necessary, under the circumstances, to protect Tier, as determined by Tier's General Counsel.

### 7.1.3 Tier's Intellectual Property Rights

Tier will: (1) protect its intellectual property rights; (2) avoid infringement of intellectual property rights of third parties; (3) avoid unnecessary obligations of confidentiality with respect to the intellectual property rights of third parties; and (4) accomplish the sale, licensing, and acquisition of intellectual property rights by proper means.

Our thought leadership and extensive consulting work with clients results in a considerable generation of ideas, solutions, templates, architectures, diagrams, and other work products. In addition, our professionals are in demand to share ideas, experiences, and the like in public forums, articles, books, and publications. Intellectual property is one of our most important assets and must be protected.

Tier's intellectual property should be protected:

- Through trademarks and copyrights;
- Through having subcontractors sign nondisclosure agreements and being held to the same standards as our professionals;
- Through provisions in our standard terms and conditions;
- Through labeling with Tier's logo and trademark and dating presentations to clients;
- Through labeling critical, private, and confidential e-mail as confidential;
- By exercising caution in the dissemination of e-mail both internally and externally ("need to know" rule of thumb);
- By safeguarding and physically protecting personal computers, hard-copy documentation, and other media containing Tier or client privileged materials at client locations, airports, or other public places and in Tier offices;
- By paying particular attention at client locations where competitors are also engaged;
- By following procedures to protect intellectual property assets and have appropriate intellectual property returned when professionals and staff leave Tier's employ; and
- By assuring that our rights to Tier work products, working papers, and intellectual property that we bring to a client, as well as intellectual property that may be fairly produced, are protected.

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#### 7.1.4 Tier-Provided Nondisclosure Agreements

Tier provides services and products to clients. Much of the value in our services is driven by our employees' knowledge and associated tools, documents, and methodologies. Tools, documents, and methodologies should be clearly labeled as the confidential property of Tier, thus limiting our need to request the execution of a nondisclosure agreement by our clients, subcontractors, suppliers, and alliance partners.

However, there are some instances where Tier has created products or solutions with the client. In these cases, the product or solution may not always be clearly labeled as confidential information. Practice Leaders and Project Managers should consider each situation that deals with a joint product or solution.

#### 7.1.5 Infringement or Violation of Intellectual Property Rights

The Legal Department must be notified of any known or suspected infringement or violation of Tier's intellectual property rights before any contact is made with a third party.

In the event allegations of infringement or violation of intellectual property rights of a third party are made against Tier, the Legal Department is to be consulted prior to any response being given.

#### 7.1.6 Retention of Client-Specific Project Information

Tier restricts access to, and maintains control over, its work papers. Work papers are not made available to the client or others outside of Tier. In certain circumstances, a client may request access to, or permanent possession of, our work papers. This would be an unusual request that should be directed to a member of the Ethics Compliance Team.

In negotiating a client contract where the client desires retention of our work product, we should agree to the following:

- Any documents that the client provides to Tier will be returned at the conclusion of the engagement, but Tier will retain a copy;
- Any deliverables that Tier produces will be provided to a client, but Tier will retain a copy; and
- Tier will control and protect any work papers (i.e., interim products and record keeping items) that we produce and we will not provide them to the client.

## 8. REPORTING AND DISCLOSURE

### 8.1 PROPER ACCOUNTING

The books of account, financial statements, and records of Tier are intended to reflect accurately, fairly and in reasonable detail the Company's operations and financial position and the underlying transactions and any dispositions of assets. They should be maintained in accordance with the established financial and accounting policies issued by Tier and with generally accepted accounting principles. All assets and liabilities of Tier should be properly recorded in the Company's books.

#### 8.1.1 Recording Company Information

All Company books, records, accounts, funds, and assets must be maintained to reflect fairly and accurately the underlying transactions and disposition of Company business in reasonable detail. Falsifying or destroying Company books or records, other than in accordance with any Policy the Company may implement from time to time regarding document retention, is a violation of this Code. Examples of Company books and records include financial records, records regarding the approval of business transactions, applications, resources, medical reports or claims, production records and logs, time and attendance records, expense accounts, purchasing documents, shipping and receiving records and any other books or records.

The Company has established internal accounting and operating controls to ensure that its accounting records and operational procedures are complete, accurate and maintained in reasonable detail. Employees are expected to maintain and adhere to these controls and policies so that all underlying transactions, both within the Company and with third parties, are properly documented, recorded, and reported. No accounting entries will be recorded that intentionally conceal, disguise or misrepresent the true nature of any transaction involving the Company.

In this respect, the following guidelines must be followed:

- No undisclosed or unrecorded funds or assets should be established for any purpose;
- No false or fictitious invoices should be paid or created;
- No false or artificial entries should be made or misleading reports issued; and

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Assets, liabilities, and contingent liabilities of the Company shall be recognized and reported on the Company's financial statements (or notes thereto) or in the Company's publicly filed documents, all in accordance with the Company's standard practices and generally accepted accounting principles ("GAAP").

If an Employee believes that the Company's books and records are not being maintained in accordance with these requirements, the Employee should report the matter in accordance with Company policy and procedures.

### 8.2 DISCLOSURE OBLIGATIONS

Tier's policy is to release publicly important data at the earliest appropriate time consistent with the need both to maintain confidentiality before final decisions are made and to avoid endangering the Company's business or providing information helpful to a competitor. All public statements, oral or written, must be accurate with no material omissions. Information that could reasonably be expected to have an impact on the market for Tier securities may be released only with the prior approval of the Chief Financial Officer. All inquiries from financial analysts, media representatives, or financial consultants should be directed to the Chief Financial Officer. Financial information and results should not be presented to the press or others in presentations or advertising campaigns, or released to local media, without pre approval and review by the Chief Financial Officer. This also includes financial information and results relating to a specific subsidiary, unless the information has been previously disclosed by the Company through a legally required process such as the filing of a statutory report.

### 8.3 DOCUMENT RETENTION

The space available for the storage of Company documents, both on paper and electronic, is limited and expensive. Therefore, periodic discarding of documents may be necessary. There are legal requirements that certain records be retained for specified periods of time. Before disposing of documents, please refer your questions to the Ethics Compliance Team

In the event the Company is obligated to retain documents, both on paper and electronic, in connection with a lawsuit or government investigation, all documents should be preserved, and any ordinary disposal or alteration of documents should be immediately suspended.

## 9. REPORTING NON-COMPLIANCE

If you suspect, observe or learn of unethical or illegal conduct, you are required to immediately notify your manager, a member of the Ethics Compliance Team or Human Resources, as appropriate. At Tier, we want our employees to be able to quickly and easily report anything that troubles or makes them uncomfortable. To facilitate this, Tier has established the Tier AlertLine, a toll free, anonymous, 24-hour hotline to report any non-compliance issue relating to this Code, including any complaint or concern regarding unlawful or unethical conduct or accounting, internal accounting controls or auditing matters. The TierAlert number is (888) 475-8272.

A trained Communications Specialist from an independent company will answer all calls made to the Tier AlertLine. He or she will ask the employee to describe his or her concern and then may ask additional questions to clarify the situation. This information is then forwarded to the appropriate Tier representative for follow-up. No call tracing, tracking or recording devices are ever used, and the Tier employee will be offered the option of remaining anonymous. The call will be assigned a personal identification number, which the employee can use on a specified date to call back and check on the status of the concern.

Reports of misconduct, including those made anonymously, will be investigated and feedback will be provided when appropriate. Tier is committed to complying with all applicable rules of ethics, applicable securities laws and regulations, accounting standards, accounting controls and audit practices. Upon receiving a complaint or concern, Tier will escalate the matter to the appropriate personnel and investigate the matter, as necessary. The complaint or concern will be promptly evaluated and appropriate remedial action will be taken consistent with the verifiable facts and applicable rules and regulations.

The law provides protection against retaliatory termination or adverse employment action by Tier, and its officers and employees, against any employee who (1) provides information to a manager, the federal government or Congress that the employee reasonably believed related to federal securities or anti-fraud violations, or (2) files, testifies, participates in, or otherwise assists in any actions involving conduct that the employee reasonably believed related to federal securities or anti-fraud violations. Tier will not condone reprisals against people who report suspected violations in good faith, and their identities will be protected to the maximum extent possible.

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The Tier AlertLine is created for issues specifically around non-compliance with this Code, and auditing, accounting and financial concerns. Others concerns should be addressed to individuals within the Company such as the employee's local management team or the Human Resources Staff. Examples of other concerns are harassment, safety violations, policy violations, benefit or payroll questions, etc. If you have concerns in any of these areas and feel that you cannot address them with your local management, please seek the assistance of one of the individuals below.

- Affirmative Action Officers for issues related to harassment or discrimination  
Don Fairbairn, Sr. VP Human Resources (571) 382-1026  
Jennifer Patno, HR Field Director (773) 325-1620
- Benefits  
Faye Nelson, Benefit Services Coordinator (925) 941-2836  
Kathy Gilchrist, Human Resources Associate (925) 941-2831
- Payroll or TOCK  
Maureen DeBarr, Payroll Manager (925) 941-2852
- Workplace Safety  
Susan Wood, Corporate Facilities Director (925) 941-2870  
Jennifer Patno, HR Field Director (773) 325-1620
- Legal Compliance  
Deanne Tully, General Counsel (925) 941-2825

Employees who deliberately misreport or are grossly negligent in their reporting of information will be subject to disciplinary action, up to and including termination.

#### ACKNOWLEDGMENT AND CERTIFICATE OF COMPLIANCE

- I acknowledge that I have received, have carefully read and understood the Tier Business Code of Conduct and have voluntarily signed this Acknowledgment. I understand that this document outlines the Tier *Business Code of Conduct* program; and the policies and expectations regarding conduct and employee responsibility. I understand that this document outlines the Company's requirements to conduct business honestly, ethically and in accordance with Company policies and all applicable United States and local laws.
- I understand the importance of these policies and my obligation to conduct at all times my business affairs in a legal and ethical manner in accordance with Tier policies. I will promptly report any possible violation of the Codes in accordance with Company policy.
- I understand that my employment with the Company is at will and terminable by me or the Company at any time. On occasion, the Company's policies may be amended or revoked, or new policies may be established by the Company, which retains the right to make such changes unilaterally within its discretion.
- I will act with honest and integrity and adhere to a high standard of ethical conduct, avoiding actual or apparent conflicts of interest in personal and professional relationships. I will report any material transaction or relationship that could be expected to give rise to such a conflict.
- I will provide constituents and public stakeholders if any, with information that is accurate, complete, objective, relevant, timely and understandable.
- I will comply with all applicable laws, rules and regulations of federal, state, provincial and local governments, and other appropriate private and public regulatory agencies. I will report promptly any violations thereof.
- I will act in good faith, responsibly, with due care, competence and diligence, without misrepresenting material facts or allowing my independent judgment to be subordinated.
- I will respect the confidentiality of information acquired in the course of my work except when authorized or otherwise legally subject to disclosure. I agree that I shall not use confidential information acquired in the course of my work for personal advantage.
- I will responsibly use and control all business assets and resources employed or entrusted to me during the course of my employment.
- I have described below all matters which I believe the Company should know regarding the Codes in connection with my work at Tier.

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**MATTERS TO BE DISCLOSED:** (If none, write "None")

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\_\_\_\_\_  
Signature (New Employee)

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Date

\_\_\_\_\_  
Printed Name (New Employee)

\_\_\_\_\_  
Signature (Tier Representative)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name (Tier Representative)