

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-K

FOR ANNUAL AND TRANSITION REPORTS  
PURSUANT TO SECTIONS 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended **December 31, 2009**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number **000-53205**

**Diligent Board Member Services, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction  
of Incorporation or Organization)

**26-1189601**

(I.R.S. Employer  
Identification No.)

**39 West 37 St. 8th Floor, New York, NY, 10018**  
(Address of Principal Executive Offices)(Zip Code)

**(212) 741-8181**

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: **None**

Securities registered pursuant to Section 12(g) of the Act:

Title of Each Class

Name of Each Exchange on Which Registered

**Common Stock, par value \$0.001 per share**

**The New Zealand Stock Exchange**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes \_\_\_ No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes \_\_\_ No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No \_\_\_

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).  Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to their Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "accelerated filer," "large accelerated filer" and smaller company: in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer \_\_\_ Accelerated filer \_\_\_ Non-accelerated filer \_\_\_ Smaller reporting company

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes \_\_\_ No

The aggregate market value of common equity held by non-affiliates as of the last business day of the registrant's second fiscal quarter, computed by reference to the last sales price as reported by NZX on June 30, 2009 of NZD 0.12 (US\$ 0.08) per share, was US\$8.6 million.

The number of shares of the registrant's common stock outstanding as of March 1, 2010 was 90,440,000.

**DOCUMENTS INCORPORATED BY REFERENCE**

The following documents are incorporated herein by reference:

(1) Proxy Statement for the Annual Meeting to be held June 8, 2010, New Zealand Time.



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## **FORWARD LOOKING STATEMENTS**

Except for statements of historical fact, certain information described in this document contains "forward-looking statements" that involve substantial risks and uncertainties. You can identify these statements by forward-looking words such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "should," "will," "would" or similar words. The statements that contain these or similar words should be read carefully because these statements discuss our future expectations, contain projections of our future results of operations or of our financial position, or state other "forward-looking" information. Diligent Board Member Services, Inc. believes that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able accurately to predict or control. Further, we urge you to be cautious of the forward-looking statements which are contained in this Form 10-K because they involve risks, uncertainties and other factors affecting our operations, market growth, service, products and licenses. Events in the future may cause our actual results and achievements, whether expressed or implied, to differ materially from the expectations we describe in our forward-looking statements. The occurrence of future events could have a material adverse effect on our business, results of operations and financial position.

## **AVAILABLE INFORMATION**

We file reports, proxy statements, information statements and other information with the Securities and Exchange Commission. You may read and copy this information, for a copying fee, at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information on its public reference rooms. Our Securities and Exchange Commission filings are also available to the public from commercial document retrieval services, and at the web site maintained by the Securities and Exchange Commission at <http://www.sec.gov>. Our internet address is <http://www.boardbooks.com>. We will make available through a link to the SEC's web site, electronic copies of the materials we file with the SEC (including our annual reports on Form 10-K, our quarterly reports on Form 10-Q, our current reports on Form 8-K, the Section 16 reports filed by our executive officers, directors and 10% stockholders and amendments to those reports). To receive paper copies of our SEC materials, please contact us by mail addressed to Robert E. Norton, Corporate Secretary, Diligent Board Member Services, Inc., 39 West 37 St. 8th Floor, New York, NY 10018, (212) 741-8181.

## **PART I**

### **ITEM 1. BUSINESS**

*As used herein, unless the context otherwise requires, the terms “Company”, “we”, “us”, “our” and words of similar import refer to the combined business of Diligent Board Member Services, Inc. and its consolidated subsidiaries.*

#### **GENERAL INFORMATION**

##### **History**

We are a Delaware corporation that was incorporated on September 27, 2007. On October 1, 2007, our accounting predecessor entity and sole stockholder at that time, Services Share Holding, LLC, (previously known as Diligent Board Member Services, LLC and referred to in this document as “SSH LLC”), contributed substantially all of its assets and its “Diligent Boardbooks” business to Diligent Board Member Services, Inc. SSH LLC was founded in 1994 and developed complex database-driven software for large and small companies until 2003, when it shifted its focus to corporate governance service delivery software.

##### **Company Overview**

We develop and sell an online software application called Diligent Boardbooks, which is a web-based portal that directors and administrative staff use to compile, update and examine board materials before, during and after board meetings. Each of our clients enters into a service agreement whereby we agree to provide and support the Diligent Boardbooks service. Diligent provides clients with subscription-based access to its software and also provides associated services including securely hosting the clients’ data and customer service and support for the application.

The Boardbooks product features an on-screen interface that resembles a book and displays documents in single web-viewable pages, from a secure central database. The software is accessed via the internet and is a “point and click” system that gives directors the ability to navigate throughout the entire virtual book.

Diligent uses the Software-as-a-Service (“SaaS”) model to distribute its Diligent Boardbooks application to the market and maintain the security and integrity of its clients’ data. Under this model, Diligent offers annual renewable subscriptions for customer access to its Boardbook product which is hosted on Diligent’s secure servers, and offers a complete suite of related services including training, support, data migration and data security/backup.

The SaaS model allows Diligent to differentiate itself through technological innovation and customer service while the subscription billing approach results in a predictable and recurring revenue stream. This SaaS model also allows companies to retain control over access to the application while outsourcing to Diligent the support activities, such as managing the IT infrastructure and maintaining the software.

The first phase of our business focus was developing and testing the Boardbooks system, building a loyal core of blue chip customers to become champions of the product, and promoting product awareness through exposure in print media. During this phase we did not focus on revenue growth or profitability, and sales and marketing had been conducted by two to three staff members, who fit this role alongside their other responsibilities. By 2007 we had a commercially viable product and shifted our focus to commit substantial resources to the sales and marketing of our Boardbooks product. We are now in the customer acquisition phase of our business and currently provide the Boardbooks service to over 280 companies and 7,300 users.

## **Development Timeline**

The paragraphs below provide a general timeline of the development of the Diligent Boardbooks system:

- *The Diligent Boardbooks Concept (1998-2001)*. We began developing components of the Diligent Boardbooks system starting in 1998. In 2001, SunAmerica Funds requested a solution to automate the management of its board meeting papers. With this request, the Diligent Boardbooks concept was launched and a working concept was produced and tested, which was licensed to SunAmerica Funds.
- *Diligent Boardbooks Delivery and Development (2000-2002)*. The development process took more than three years to create the first commercially viable version of Diligent Boardbooks. The founders of SSH LLC made this investment foreseeing the end product could become an extremely valuable licensing opportunity.
- *Diligent Boardbooks Testing (2002-2004)*. With SunAmerica Funds as an anchor client, SSH LLC spent a year getting other major accounts to buy licenses in a market that had yet to deal with the implications of the Sarbanes-Oxley Act. These clients had to be “seasoned” (a term we use to describe the time an account takes to become a “paying, satisfied Boardbooks client”) for years in many cases prior to them having the comfort to move their board materials to our servers.
- *Building Credentials (2004-2006)*. After “seasoning” the anchor accounts we began establishing our own credentials. Our marketing group produced credential style marketing materials featuring the initial test license accounts.
- *Scaling (2006-2007)*. Before undertaking an international rollout of a large licensing sales force, we tested several key growth assumptions relating to scaling the Diligent Boardbooks service.
- *Roll-out (2007-2008)*. The roll-out of a sales force commenced in 2007 and by the end of the 3<sup>rd</sup> quarter our sales force had increased from 3 to 23 full time salespeople, which was subsequently reduced to 18 following performance evaluations. At the end of 2008, a general workforce reduction, due to a difficult worldwide economic climate, further reduced the sales force to 10.
- *Growth (2009- )*. Despite the current global economic crisis and sales force reduction, the Company had an exceptional year in 2009. The fourth quarter of 2009 was the best quarter since inception for new sales, with the addition of 41 new agreements for Boardbook licenses and \$0.75 million in annual recurring revenue. For the full year 2009, we added 110 new agreements (63% growth) and \$2.5 million in annual recurring revenue (64% growth). Additionally, our revenues for 2009 increased 71% to over \$5.0 million.

## **New Zealand Offering**

### *Acquisition of the Diligent Boardbooks Business.*

On October 1, 2007, we entered into a Contribution Agreement with SSH LLC, under which SSH LLC contributed assets and certain liabilities relating to the Diligent Boardbooks business as a contribution to our capital. In order to effectuate this as a tax-free transaction, SSH LLC retained certain Diligent Boardbooks liabilities, which SSH LLC discharged using proceeds of a loan by us to SSH LLC of approximately \$6,800,000. The monies for this loan were part of the proceeds of the share offering

described below under “New Zealand Offering.” To our knowledge, SSH LLC has no continuing operations other than acting as a holding company for its Diligent shares.

*New Zealand Offering.*

On December 12, 2007, we completed an offshore offering of 24,000,000 common shares to members of the public in conjunction with a listing of our stock on the New Zealand Stock Exchange. The net proceeds of the offering were approximately \$16.4 million, which we used to:

- Recruit additional staff to grow our business, including more licensing sales people in North America, Europe and the Pacific Rim.
- Invest in the operational infrastructure required to scale the business.
- Provide working capital to sustain the operations of the business while we further built our revenue streams.
- Advance approximately \$6.8 million to or on behalf of SSH LLC to retire certain debt obligations incurred by SSH LLC in connection with the development of the Diligent Boardbooks business. Of the \$6.8 million, approximately \$3.1 million was reinvested by the holders of the obligations in our common stock in a private placement (See “Recent Sales of Unregistered Securities” within Item 5) such that our net cash outflow as a result of the loan was only \$3.7 million.

Our common stock is listed on the New Zealand Stock Exchange and trades under the symbol “DIL.NZ”.

*Acquisition of Diligent Board Member Services NZ Limited; Activities of UK Subsidiary*

Effective January 1, 2008, we acquired the stock of Diligent Board Member Services NZ Limited, for consideration of NZD 5,000 (approximately US \$3,800), which provides software development services and support. Effective April 2008, our United Kingdom subsidiary, Diligent Boardbooks Limited, became active and is engaged in European sales.

**Market Opportunity**

The online board portal industry remains in its early stages with market penetration still relatively low. Our client base was previously comprised of blue chip companies predominantly in the financial services sector. These entities had previously been prime targets because their board materials are crucial to effectively managing the corporate governance process. Public recognition by prominent publications has helped us become a leader in the provision of online board portal software in this sector, and a vast opportunity for us remains in the global financial services sector.

In addition to the financial services sector, Diligent has successfully expanded into numerous other sectors as well, including energy, oil and gas, health care, and universities. In spite of the financial stress in the key US market, an impressive list of new clients has been added, including several international brand names. Further inroads have also been made into Canada with major energy companies and one of Canada’s largest pension funds selecting the Boardbooks board portal to provide them with real time access to their vital board materials.

In 2009, Diligent achieved sales revenue of over \$5 million, a year-to-year increase of 71%. The Company’s ability to continue to significantly grow its recurring income each quarter confirms that its SaaS business model is strongly positioned for the future.

The drivers behind Diligent’s significant sales growth include:

- Greater brand recognition of the Diligent Boardbooks product.

- A highly skilled and focused sales force.
- Faster sales turnaround driven, in part, by a general return of business confidence.
- High customer confidence in, and satisfaction with, the product; supporting a trend where existing clients continue to upgrade services, add new users and provide new client referrals.

An important factor to also note is that this growth has been achieved even though the number of trained sales staff has remained relatively consistent throughout 2009 and significantly down from sales staffing levels of 2008.

As confidence appears to be returning to US companies and the Diligent sales pipeline continues to grow, the company is considering expanding its sales force to take advantage of the real growth opportunities. Given the sales performance to date, management has now achieved a proven model when it comes to driving results from its sales force.

### **Our Product Strengths**

*Established Brand.* We compete against several competitors within the board portal industry. Notably however, we began development in early 2001 ahead of many of our competitors. As a result, we believe our brand is more established in the marketplace.

*Ease of Use.* In an article published in The Wall Street Journal on October 23, 2006, the author commented that “The portal from Diligent Board Member Services may be the easiest to use. The Diligent layout looks like a paper book. A binding coil and divider tabs are drawn onto the screen and directors “flip” pages with the click of a mouse.” This “ease of use” has been one of the many key elements to Diligent Boardbooks' popularity among executives with little time to learn a new system.

*Flexible Online and Offline Viewing.* Diligent Boardbooks may be viewed online via the Internet or offline on the user’s computer. The offline version of Diligent Boardbooks allows a user to download a secure encrypted database of their own corporation’s entire Diligent Boardbooks database. This allows meetings to be run off-site without an Internet connection. The same book-like interface is used to view offline as well as online. This system is secured through high-level security and encryption technology.

Additionally, when paper copies are requested, Diligent Boardbooks has a “Print Book” feature that allows directors to print the entire collated Boardbook complete with page numbers, agenda-related footers and more. This feature is controlled by the user, allowing a page, a tab or a whole book to be printed. This is a password-specific functionality controlled by the users.

*Offline Synchronization.* The main distinction between Diligent Boardbooks and other systems is that Diligent Boardbooks maintains a single copy and does not download information that has already been downloaded, making synchronization an efficient and rapid process. Accordingly, there is no risk of having multiple copies or outdated documents floating on the computer desktop.

*Regular Upgrades.* The Diligent Boardbooks software is regularly updated by our software development team. Updates are applied automatically and users receive the benefit of enhanced functionality without the inconvenience of software reinstallation.

*Application Security.* We designed a powerful and secure triple redundant network to promote absolute protection and availability of client data. Primaries, secondaries and fail-over servers and systems are located in geographically diverse locations for application and data delivery security. An automated intrusion detection system blocks malicious activity and reverse proxy authentication provides another barrier of protection for sensitive data. For complete security, each individual Diligent Boardbooks user has a distinct user name and password that is required to access the Diligent Boardbooks site. All data is encrypted.

We are SAS 70 – Series II Audited (Statement on Auditing Standards – Service Organizations). This means our licensed client base can be assured that their most intimate corporate information is secure.

*Global Support.* We serve the highest level officers of some of the largest companies in the world. To assist with completely meeting the expectations of these directors and their key employees, we have staff and contractors in four countries. Our support team is trained to work with its high-level clients to solve any problem a user might encounter. This high level of support is a core competency that has helped to ensure successful implementation and retention for over 280 companies and over 7,300 users to date, while keeping client attrition rates to less than five percent per year.

*Full Management and Implementation Team.* We provide personalized and high quality account management and implementation to our clients. Each client has a dedicated team that includes an assigned day-to-day account manager, an assigned security engineer and an assigned executive.

*Rapid, Cost Effective Deployment.* Diligent Boardbooks can be rapidly deployed for use within an organization. Once a company chooses to use Diligent Boardbooks, it can begin to realize the benefits almost immediately. Director training typically takes less than 45 minutes and full product administration training less than 10 hours. We consider this a very important distinguishing factor relative to key competitors whose systems can take considerably longer to implement.

## **Business Model**

We use the SaaS model to distribute our Diligent Boardbooks software to the market and maintain the security and integrity of our clients' data. Under this model, we license customer access to our Boardbook product, which is hosted on our secure servers, and offer a complete suite of related services including training, support, data migration and data security/backup.

The SaaS model is characterized by a company providing on-demand access to its complex software through a web-based interface in return for subscription-based revenue. The SaaS industry has undergone significant growth over the past five years, spurred on by several factors:

- SaaS providers can cost-effectively share one application across hundreds or thousands of companies;
- Clients can accelerate the deployment process and eliminate additional infrastructure costs;
- A continuing decline in the cost of bandwidth has meant web-based solutions have become more viable;
- Lower cost of implementation. Clients do not pay large sums for a product with a long development and implementation timeframe with no guarantee of success. Instead, clients that pay a nominal set-up and/or training fee (installation fee), and a recurring subscription fee, can begin to use the fully developed service immediately and retain the ability to cancel the service, if unsatisfied;
- The success of on-demand services in the consumer market (e.g., Google, iTunes and YouTube) have made accessing content and services commonplace in professionals' personal lives. Professionals are now demanding similar features in business software; and
- The success of early leaders such as WebEx and salesforce.com has demonstrated the viability and value proposition of the SaaS model.

Central characteristics of implementing the SaaS model include the:

- Ability to obtain rapid growth in market share and revenue over a sustained period of time;
- Highly scalable operations that can support sales growth with much lower increases in operating costs;
- Significant up-front investment in sales and marketing in order to maximize the market penetration;
- Negative earnings over the expansion period offset by equity capital; and
- After a period of intense competition, typically one or two companies emerge as the market leaders.

### **Marketing; Growth Strategy**

We believe building a successful sales and marketing team to present to and serve the boards of the world's major corporations is a significant undertaking. Staff must have a deep understanding of corporate governance issues while also being able to interact credibly with the board members and senior executives of major US and international corporations.

The roll-out of our sales force commenced in 2007. By the beginning of the 4<sup>th</sup> quarter 2008, our sales force had increased to 23 full-time salespeople and then was subsequently reduced to 18 after performance evaluations. In November 2008, after consideration of the then current market environment and economic conditions, and the concern about the Company's ability to raise additional growth financing on historically favorable terms, management decided to implement a cost reduction program that reduced staff by 13 people, including 8 in sales and 1 in marketing, leaving a total of 10 active in sales. Although this was a dramatic cut in sales force, the Company retained its most effective salespeople and continued the pattern of growth necessary to maintain its market position. We currently have 8 fully trained sales people and we continue on an ongoing basis to evaluate the performance of our sales team and make adjustments as prudent and/or necessary.

### **Intellectual Property**

We acquired all Diligent Boardbooks-related intellectual property from SSH LLC, as of October 1, 2007. We have protected our unique graphical user interface by copyright. We have registered our "Diligent"® trademark and applied for "Diligent Boardbooks"™ and will continue to take steps to protect our intellectual property.

All software developed by us is protected by copyright and has been developed entirely by our employees. Employees and contractors have no rights to the application source code, design, user interface or any other aspect of the application, which is protected by copyright and provisions in our employment contracts.

Clients have no rights, other than licensed use, to the application source code, and generally have no visibility of the source code. We make occasional exceptions to allow clients to perform due diligence security audits, which are protected by non-disclosure/non-use agreements. Client rights to the application are defined and protected by the client service agreement with us.

### **Customers and Certain Contracts**

Our client base is currently comprised of large companies predominantly in the financial services sector, however, the Company has successfully expanded into numerous other sectors as well, including energy, oil and gas, health care and universities. Our customers currently include SunAmerica Funds, Allianz Global Investors, New York Life Investment Management and Motorola. We have implemented the Diligent Boardbooks system for over 280 companies and over 7,300 users.

## **Research and Development**

Our research and development efforts are now focused on improving and enhancing our Diligent Boardbooks system.

## **Competition**

We are subject to significant competition that could impact our ability to gain market share, win business and increase the price pressure on our products. We face strong competition from a wide variety of firms, both large and small. Some of our primary direct competitors are the following:

- Thomson Reuters, headquartered in New York, which provides a board portal service through a product called Thomson BoardLink;
- BoardVantage, Inc., located in California, which provides a product called BoardVantage Board Portal;
- Directors Desk, located in New York and Washington, which provides a product called Directors Desk; and
- SAI Global Limited, which acquired 80-20 Software Inc., a Melbourne-based service provider with a product called Leaders4.

We believe the principal factors that generally determine a company's competitive advantage in the market in which Diligent Boardbooks competes are:

- software development capabilities;
- functionality and reliability of products and services;
- competitive sales and marketing capabilities;
- proven testing record of software products and services; and
- market share.

We believe that we compete favorably regarding each of these factors.

## **Regulation**

Our business is not subject to any industry-specific regulation that affects our business as currently conducted, although we are subject to general tax, corporate, securities, employment, privacy and other laws and regulations that affect businesses generally. We are a beneficiary of the push to improve corporate governance and oversight stimulated by the Sarbanes-Oxley Act of 2002, which we believe has increased demand for our Diligent Boardbooks product.

## **Environmental Matters**

We do not believe that the costs and effects of compliance with environmental laws will be material to our business.

## **Employees**

As of March 1, 2010, we had approximately 45 full-time employees. Of these, the majority are located in our New York, New York offices. The remaining employees are located predominantly in our Christchurch, New Zealand office, which provides software and help desk support for several large corporations, as well as providing the software development of the Diligent Boardbooks product. We also have administrative employees in our Wayne, New Jersey office.

## **ITEM 1A. RISK FACTORS**

Because the Company qualifies as a smaller reporting company, as defined by §229.10(f)(1) it is not required to provide the information required by this Item.

## **ITEM 1B. UNRESOLVED STAFF COMMENTS**

Because the Company qualifies as a smaller reporting company, as defined by §229.10(f)(1) it is not required to provide the information required by this Item.

## **ITEM 2. PROPERTIES**

Our headquarters are located at 39 West 37 St. 8th Floor, New York, NY 10018, where our primary executive, sales and administrative offices are located. We also have an ancillary administrative office located at 155 Willowbrook Boulevard, Suite 100, Wayne, NJ 07470. We have sales offices in England and New Zealand. We also have an office at 49 Carlyle Street, Christchurch, New Zealand, where our software development takes place. We lease all of these properties and do not own any real property.

We believe that our current facilities are suitable and adequate to meet our current needs, and that suitable additional or substitute space will be available as needed to accommodate expansion of our operations, although we intend to open additional sales offices as our geographic sales footprint warrants.

We believe that our facilities are adequately covered by insurance.

## **ITEM 3. LEGAL PROCEEDINGS**

The Company is not a party to any material legal proceeding required to be disclosed under Item 103 of Regulation S-K.

## **ITEM 4. [RESERVED]**

## PART II

### ITEM 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Market Information

There is no United States established public trading market for our common stock. On December 12, 2007 we completed a public share offering of 24,000,000 shares of our common stock in conjunction with a listing of our stock on the New Zealand Stock Exchange under the symbol “DIL.”

The following table shows the high and low closing sales prices for our common stock in New Zealand dollars.

Period	Closing Price of Common Stock (NZD)	
	High	Low
2008 – 1 <sup>st</sup> Quarter	.76	.63
2008 – 2 <sup>nd</sup> Quarter	.65	.23
2008 – 3 <sup>rd</sup> Quarter	.40	.18
2008 – 4 <sup>th</sup> Quarter	.25	.15
2009 – 1 <sup>st</sup> Quarter	.15	.15
2009 – 2 <sup>nd</sup> Quarter	.25	.10
2009 – 3 <sup>rd</sup> Quarter	.25	.14
2009 – 4 <sup>th</sup> Quarter	.44	.18

#### Holdings

As of March 3, 2010 there are 710 holders of record of our common stock.

#### Dividends

We have not paid any dividends on our common stock within the past two fiscal years or during the current fiscal year, and have no plans to do so in the foreseeable future.

#### Equity Compensation Plan Information

As of December 31, 2009, no shares of common stock are issuable by us upon the exercise of options, warrants and rights under any equity compensation plan, except as follows:

Plan category	Number of securities to be issued upon exercise of outstanding options	Weighted-average exercise price of outstanding options	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plan approved by security holders	4,660,003	.1439	899,997

#### Recent Sales of Unregistered Securities

The following is a summary of transactions by our company within the past three years involving sales of its securities that were not registered under the Securities Act of 1933 (or “Securities Act”).

On October 1, 2007, we issued 68,484,611 shares of our common stock to SSH LLC in exchange for a contribution of certain of its assets related to our Diligent Boardbooks business, subject to certain liabilities, as specified in a Contribution Agreement dated October 1, 2007, in a private offering under Section 4(2) of the Securities Act of 1933.

On December 10, 2007, we issued 7,515,389 shares of our common stock to various accredited investors for NZD1.00 (US\$0.75) per share in a private placement that met the requirements of the safe harbor under Rule 903 of Regulation S promulgated under the Securities Act of 1933 for non-US persons and for accredited investors who were existing debt holders of SSH LLC.

On December 12, 2007, we issued 24,000,000 shares of our common stock pursuant to our initial public floatation on the New Zealand Stock Exchange for NZD1.00 per share in an offshore transaction that met the requirements of the safe harbor under Rule 903 of Regulation S promulgated under the Securities Act of 1933. The offering was led by McDouall Stuart, a participant on the New Zealand Stock Exchange, on a best efforts basis. In connection with the offering, McDouall Stuart received NZD420,000 as a lead sponsor fee, NZD720,000 in brokerage fees and NZD200,000 in incentive fees.

On December 12, 2007, we issued 4,000,000 shares of our common stock in recognition of services provided, or to be provided, to various employees, directors and service providers pursuant to written agreements under our 2007 Stock Option and Incentive Plan in accordance with Rule 701 promulgated under the Securities Act of 1933. Of the 4,000,000 shares, 1,929,000 shares were subject to a substantial risk of forfeiture based on continued service requirements that lapsed in January 2009. During 2008, 160,000 of these shares were forfeited.

On October 23, 2008, we issued 600,000 shares of our common stock to our General Counsel and former CFO pursuant to written agreements under our 2007 Stock Option and Incentive Plan pursuant to the exemption from registration provided by Rule 506 and/or Section 4(2) of the Securities Act of 1933. These shares were subject to a substantial risk of forfeiture based on continued service requirements that lapsed at various dates through May 2009.

On March 11, 2009, we issued 30,000,000 shares of newly created Series A Preferred Stock to Spring Street Partners, L.P. and Carroll Capital Holdings, LLC for US\$0.10 per share. The Series A Preferred Stock was issued pursuant to the exemption from registration provided by Rule 506 of Regulation D and/or Section 4(2) of the Securities Act of 1933 (based on the issuance not involving any public offering and the shares being issued solely to accredited investors). The Preferred Shares carry a fixed, cumulative, dividend of 11% per annum (adjusted for stock splits, consolidation, etc). The dividend may (at Diligent's option) be paid on the first business day of each calendar year for the prior year either in cash or in kind by the issue of additional Preferred Shares (PIK Shares), to be issued at the same issue price of US\$0.10 per share. The 11% annual dividend on the Preferred Shares will rank ahead of the declaration or payment of any dividends on Diligent's common stock (ordinary shares). In addition to the 11% preferred dividend, the holders of the Preferred Shares will also be entitled to participate pro rata in any dividend paid on Diligent's common stock. The Preferred Shares will be convertible at any time at the option of the holders into Diligent common stock on a one-for-one basis based on a conversion price of US\$0.10 per share. For the year 2009, the Board of Directors of the Company approved the issuance of PIK shares in lieu of cash, which dividend was effective January 4, 2010. Accordingly, the holders of the Series A Preferred Stock received an aggregate of 2,667,123 PIK Shares on January 4, 2010.

## **ITEM 6. SELECTED FINANCIAL DATA**

Because the Company qualifies as a smaller reporting company, as defined by §229.10(f)(1) it is not required to provide the information required by this Item.

## ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Management’s Discussion and Analysis of Financial Condition and Results of Operations

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes that appear elsewhere in this Form 10-K. In addition to historical consolidated financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements.*

#### Overview

The Company develops and makes available an online software application called Diligent Boardbooks, a web based portal that board members, management and administrative staff use to compile, update, review and archive board materials before, during and after board meetings. The Company provides clients with subscription-based access to its software and also provides associated services including securely hosting the client’s data and customer service and support for the application.

#### Software-as-a-Service (“SaaS”) Model

The Company uses the Software-as-a-Service (“SaaS”) model to distribute its Diligent Boardbooks application to the market and maintain the security and integrity of its clients’ data. Under this model, the Company offers annual renewable subscriptions for customer access to its Boardbook product which is hosted on the Company’s secure servers, and offers a complete suite of related services including training, support, data migration and data security/backup.

The SaaS model allows the Company to differentiate itself through technological innovation and customer service while the subscription billing approach results in a predictable and recurring revenue stream. This SaaS model also allows clients to retain control over access to the application while outsourcing to the Company the support activities, such as managing the IT infrastructure and maintaining the software.

#### SaaS Benefits

The Company’s SaaS model addresses several difficulties found in the traditional software model and offers the following critical advantages for our company:

- **Highly scalable operations.** Because our client’s boards do not ordinarily meet on a daily or monthly basis, our system has the capability to support many more Boards without absorbing increased costs associated with customer growth.
- **Better revenue visibility.** By offering renewable annual subscriptions instead of one time perpetual licenses, the Company has much better revenue foresight. This high revenue visibility allows the Company to undertake much better planning and budgeting, with significant advantages for corporate strategy and profitability.
- **Lower cost of development.** The Company has developed one application that is cost effectively shared across thousands of end users. This is considerably less expensive than developing all the permutations (data bases, operating systems, etc) needed by customers who want to run the software on their own premises. These economies allow the Company to spend resources on developing increased functionalities for its Boardbooks application instead of on creating multiple versions of the same code.

- **Longer corporate life.** The SaaS model has a long tail of recurring revenue that reduces investment risk, simplifies corporate planning and leads to extended corporate life.
- **Better expense visibility.** Because revenue is more predictable, the Company is able to better plan expenses.

### **Diligent's History**

We began developing components of the Diligent Boardbooks system starting in 1998. In 2001, SunAmerica Funds requested a solution to automate the management of its board meeting papers. With this request, the founders of the Company launched the Diligent Boardbooks concept and produced and tested a working concept that was delivered to SunAmerica Funds. By 2002, the founders of the Company believed the end product could become an extremely valuable licensing opportunity. With SunAmerica Funds as one of our anchor clients, the Company spent a year selling Boardbooks licenses to other major accounts to buy licenses in a market that had yet to deal with the implications of the Sarbanes-Oxley Act. Starting in 2006, after fully developing the capabilities of our product with our anchor clients, we began establishing our own credentials. Our marketing group produced promotional marketing materials featuring our anchor clients which described the Boardbooks product and explained its benefits for boards of directors. For the next two years, before undertaking an international rollout of a large licensing sales force, we tested several key growth assumptions relating to scaling the Diligent Boardbooks product.

On December 12, 2007 we completed a public share offering of 24,000,000 shares of our common stock in conjunction with a listing of our stock on the New Zealand Stock Exchange under the symbol "DIL." As a result, the Company is subject to the regulation and reporting requirements imposed by the New Zealand Stock Exchange. There is no United States established public trading market for our common stock. However, because the Company is a U.S. company incorporated in Delaware with over 500 shareholders, it is also treated as a public company in the U.S. subject to the reporting and regulatory requirements of the Securities and Exchange Commission ("SEC") and the Securities Exchange Act of 1934. Because of this dual regulation in New Zealand and the U.S., the Company is required to meet both standards, which means the Company sometimes is faced with conflicting requirements and always must comply with the more stringent rule.

Today, as a result of our commitment to sales and marketing, we are currently experiencing outstanding financial growth. Despite the current global economic crisis, the Company had an exceptional year in 2009. The fourth quarter of 2009 was the best quarter since inception for new sales, with the addition of 41 new agreements for Boardbook licenses and \$0.75 million in annual recurring revenue. For the full year 2009, we added 110 new agreements (63% growth) and \$2.5 million in annual recurring revenue (64% growth). Additionally, our revenues for 2009 are over \$5.0 million, an increase of 71%. The Company now has over 280 worldwide clients and more than 7,300 users of its Boardbooks products, servicing customers across a wide range of industry segments

### **Critical Accounting Policies and Estimates**

Our consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates its estimates and judgments, including those related to revenue recognition, deferral of costs, the allowance for accounts receivable, software development costs, the impairment of long-lived assets and note receivable, income taxes and assumptions for stock-based compensation. Management bases its estimates and judgments on historical experience, known trends or events and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not

readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We define our “critical accounting policies” as those that require us to make subjective estimates about matters that are uncertain and are likely to have a material impact on our financial condition and results of operations or that concern the specific manner in which we apply GAAP. Our estimates are based upon assumptions and judgments about matters that are highly uncertain at the time the accounting estimate is made and applied and require us to assess a range of potential outcomes.

We believe the following critical accounting policies to be both those most important to the portrayal of our financial condition and those that require the most subjective judgment.

### **Revenues and Accounts Receivable**

We derive our revenues from set-up and training fees (“installation fees”) of the Boardbooks system and license fees for the ongoing use of our Diligent Boardbooks software. We have no other significant sources of revenues at this time.

The Company recognizes revenue when all of the following criteria are met: (a) persuasive evidence of the arrangement exists, (b) delivery has occurred or services have been rendered, (c) the seller’s price to the buyer is fixed and determinable and (d) collectability is reasonably assured. Revenue from the Boardbooks licenses is recorded ratably over the contract period, which is generally twelve months. License fees paid in advance are recorded as deferred revenue until recognized. The Company generally invoices its customers in annual installments. Accordingly, the deferred revenue balance does not represent the total contract value of annual or multi-year, noncancelable subscription agreements. The Company also earns fees for set-up and training (“installation fees”) of the Boardbooks system. Historically, installation fees were recognized upon completion of the installation. Effective October 1, 2008, installation fees are recorded ratably over the contract period. The effect of this change is not material to the Company’s consolidated financial condition, results of operations or cash flows.

Accounts receivable are recorded at estimated net realizable value. A provision for doubtful accounts is based on management’s assessment of amounts considered uncollectable for specific customers based on age of debt, history of payments and other relevant information. An allowance for doubtful accounts is provided for accounts receivable which management determines will not be collectable in full.

### **Cost of Revenues and Operating Expenses**

*Cost of Revenues.* Cost of revenues consists of direct expenses related to account management, customer support and IT hosting. We do not allocate indirect overhead to cost of revenues.

*Selling and Marketing Expenses.* Selling and marketing expenses are comprised of sales commissions, salaries for sales and marketing employees, and direct advertising expenses, including mailings and travel. We do not allocate indirect overhead to selling and marketing.

*General and Administrative Expenses.* General and administrative expenses consist of compensation and related expenses for executive, finance, accounting, administrative, legal, professional fees, other corporate expenses and overhead costs such as rents, utilities etc.

*Research and Development Expenses.* Research and development expenses are incurred as we upgrade and maintain our software, and develop product enhancements. Such expenses include compensation and employee benefits of engineering and testing personnel, materials, travel and all direct overhead associated with design and required testing of our product line. We do not allocate indirect overhead to research and development.

Software development costs are expensed as they are incurred until technological feasibility has been established, at which time those costs are capitalized until the product is available for general release

to customers. To date, software has been available for general release concurrent with the establishment of technological feasibility and, accordingly, the Company has not capitalized any development costs. Costs incurred to enhance products after the general release of the service using the product are expensed in the period they are incurred and included in research and development costs in our consolidated statements of operations.

Prior to January 1, 2008, our research and development was outsourced to Diligent Board Member Services, NZ Limited (“DBMS NZ”), an affiliate of ours through common ownership by a stockholder and former director of the Company. Effective January 1, 2008, the Company acquired DBMS NZ and now the research and development activities are fully integrated into the Company.

*Share-Based Compensation.* In November 2007, we adopted our 2007 Stock Option and Incentive Plan pursuant to which we intend to issue share-based compensation from time to time, in the form of stock, stock options and other equity based awards.

Share-based compensation consists of stock issued to employees and contractors for services rendered. The Company measures the cost of employee services received in exchange for an equity-based award using the fair value of the award on the date of the grant, and recognizes the cost over the period that the award recipient is required to provide services to the Company in exchange for the award.

The Company measures compensation cost for awards granted to non-employees based on the fair value of the award at the measurement date, which is the date performance is satisfied or services are rendered by the non-employee.

#### **Interest Income (Expense), net**

Interest income is derived from interest bearing bank deposits held by US, UK and New Zealand bank accounts, together with investment income from a loan receivable due from a related party, SSH LLC.

#### **Foreign Exchange**

As a worldwide company, certain of Diligent’s revenues and expenses are denominated in foreign currencies, which are recorded at the approximate rates of exchange in effect at the transaction dates. Assets and liabilities are translated at the exchange rates in effect at the balance sheet dates, with differences recorded as foreign exchange gains or losses in the statements of operations. Additionally, the Company has cash balances maintained in New Zealand Dollars (NZD) and British Pound Sterling (GBP).

The Company’s wholly-owned subsidiaries, Diligent Boardbooks Limited (“DBL”) and DBMS NZ, utilize the GBP and the NZD, respectively, as their functional currencies. Assets and liabilities of these subsidiaries are translated to US dollars at exchange rates in effect at the balance sheet dates, with the resulting translation adjustments directly recorded to a separate component of accumulated other comprehensive income.

#### **Income taxes**

Diligent Board Member Services, Inc. files U.S. federal and state income tax returns. Foreign operations file income tax returns in their respective foreign jurisdictions. The Company accounts for deferred income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

#### **Note receivable from affiliate**

The note receivable from affiliate (the “Note”) is recorded at net realizable value, adjusted for any valuation allowance for amounts considered uncollectable. The valuation allowance is reviewed for adjustment at each reporting period.

At December 31, 2008, the Company recorded a \$5.8 million valuation allowance and a corresponding charge to impairment loss in order to write down the Note to the estimated fair value of the underlying collateral. In the absence of an active market for the Company’s stock, or other observable inputs for similar instruments, the Company based its valuation principally on the value of the March 2009 issuance of preferred stock, adjusted using an assumed discount rate of 20%, which is management’s estimate based on the value of the preferred features of the Series A Preferred Stock. In addition, management assumed that SSH LLC and/or its members would sell a portion of the underlying collateral to meet their quarterly interest payments, thereby reducing the amount of collateral expected to be available when the Note matures in 2010. These are considered unobservable inputs falling within the definition of Level 3 inputs.

At December 31, 2009, the Company reduced the valuation allowance to \$5.5 million and recorded a corresponding gain of \$300,000. This recovery was based on the greater than expected number of shares held as collateral at December 31, 2009, due to the ability of SSH LLC to sell shares to meet the interest payments at higher than anticipated prices.

#### **Recent Accounting Pronouncements**

See Note 3 to the consolidated financial statements at Item 8 of this Form 10-K.

#### **Results of Operations for the Years Ended December 31, 2009 and 2008**

##### **Revenues**

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Revenues	\$ 5,000,639	\$ 2,930,702	\$ 2,069,937

The growth in revenues of 71% in the year ended December 31, 2009 when compared with 2008 is a result of the cumulative addition of license agreements each quarter. The Company has continued to add license agreements each quarter since inception. At December 31, 2009, the cumulative license agreements were 284, compared with 174 at December 31, 2008, a 63% increase. This increase in revenues is in line with our targets and was achieved at a significantly lower customer acquisition cost. All of the deferred revenue of \$1.6 million recorded on the balance sheet at December 31, 2009 will be recognized as revenue in the next twelve months.

##### **Cost of Revenues and Operating Expenses**

###### *Cost of Revenues*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Cost of Revenues	\$ 2,186,850	\$ 1,878,027	\$ 308,823

Cost of revenues is comprised of account management, customer support and IT services. For the year ended December 31, 2009, employee costs included in cost of revenues increased by approximately \$135 thousand as compared to the year ended December 31, 2008, primarily as a result of a realignment of certain management responsibilities from research and development to account management and customer support, offset by reductions in headcount. The remainder of the increase in cost of revenues is attributable to an increase in IT services of \$153 thousand, which has increased primarily due to hosting facilities the Company has added as a result of the growth in the number of users.

Cost of revenues as a percentage of revenues decreased to 43.7% in 2009, compared with 64.1% for 2008, as a result of the greater economies of scale that we have achieved as our client base increased.

*Selling and Marketing Expenses*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Selling and Marketing Expenses	\$ 2,436,912	\$ 6,216,087	\$ (3,779,175)

Subsequent to our initial public offering at the end of 2007, we significantly increased our sales and marketing efforts, and the first half of 2008 includes the effect of this initiative. By the third quarter of 2008, we initiated plans to scale back our growth plans in order to reduce our operating expenses. These cost reductions were fully implemented by the first quarter of 2009, and resulted in the significant decrease in selling and marketing expenses for the year ended December 31, 2009. Despite this decrease in sales and marketing expenditures, we were able to achieve an increase in revenues, in large part because our smaller sales force was more experienced, fully trained and better focused.

Our sales force peaked to 23 at September 30, 2008, and was subsequently reduced to 10 at December 31, 2008 and 8 at December 31, 2009, resulting in a decrease in salaries and benefits of approximately \$1.7 million for the year ended December 31, 2009, as compared to 2008. In addition, we refocused our efforts on the North American market, resulting in a decrease in costs of our UK sales office of \$1.0 million. Other significant decreases included travel and entertainment (\$0.2 million), outside contractors (\$0.3 million), marketing salaries and wages (\$0.2 million) and other marketing costs (\$0.4 million).

*General and Administrative Expenses*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
G & A Expenses	\$ 3,944,363	\$ 5,418,747	\$ (1,474,384)
G & A Expenses, excluding share-based compensation	\$ 3,741,110	\$ 4,497,964	\$ (756,854)

The decrease in general and administrative expenses excluding share-based compensation includes a decrease in general and administrative expenses for our UK and New Zealand subsidiaries of \$0.1 million which is a result of the refocusing of our efforts on our North American operations. It also includes a decrease of \$0.3 million in travel, meals and directors' costs as we decreased the number of independent and compensated directors from five during most of 2008 to three at December 31, 2009, and decreases of \$0.4 million in rent, office and professional fees resulting from our cost reduction initiative. These decreases were offset by an increase in employee costs of \$0.1 million due to additional staffing requirements.

*Research and Development Expenses*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Research and Development Expenses	\$ 730,201	\$ 955,385	\$ (225,184)

Research and development expenses decreased 24% in 2009 as compared to 2008. Our research and development is performed primarily by our New Zealand subsidiary, whose expenses in NZD decreased by 13% as a result of a reduction in R&D staffing after the achievement of certain key product enhancements. The remainder of the decrease in R&D expense is due to the decline in the average NZD/US\$ exchange rate by 13% for the first nine months of 2009 when compared with the average exchange rate for the first nine months of 2008.

*Depreciation and Amortization*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Depreciation and Amortization	\$ 418,644	\$ 278,295	\$ 140,349

The increase in depreciation and amortization is attributable to the net increase in property and equipment, consisting principally of computer equipment and computer software.

*Impairment recovery (loss) on note receivable from affiliate*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Impairment recovery (loss) on note receivable from affiliate	\$ 300,000	\$ (5,800,000)	\$ 6,100,000

At December 31, 2008, the Company recorded a \$5.8 million valuation allowance and a corresponding charge to impairment loss in order to write down the Note to the estimated fair value of the underlying collateral. At December 31, 2009, the Company reduced the valuation allowance to \$5.5 million and recorded a corresponding recovery of \$300,000. This recovery was based on the greater than expected number of shares held as collateral at December 31, 2009, due to the ability of SSH LLC to sell shares to meet the interest payments at higher than anticipated prices.

*Interest Income, net*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Interest Income, net	\$ 358,446	\$ 601,280	\$ (242,834)

Interest income, net, includes interest income on the Note receivable from our affiliate, as well as interest on the Company's cash and cash equivalents and term deposits which are interest-bearing. The decrease in interest income is attributable to the decrease in our average cash balances from \$6.4 million for the year ended December 31, 2008 to \$1.6 million for the year ended December 31, 2009.

*Foreign Exchange Transaction Gain(Loss)*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Foreign Exchange Gain/(Loss)	\$ 60,893	\$ (601,245)	\$ 662,138

The parent Company maintains a portion of its cash balances in NZD and GBP. The foreign exchange gain of \$61 thousand for the year ended December 31, 2009 is a result of the Company holding less cash in foreign currency accounts during 2009 while the US dollar has weakened. The loss in 2008 was a result of the Company holding significantly higher cash balances in NZD and the strengthening of the US dollar.

*Other Income*

	Year ended December 31,		Increase/(Decrease)
	2009	2008	
Other Income	\$ 171,339	\$ -	\$ 171,339

Other income consists primarily of a recovery of UK Value Added Tax (VAT).

## Liquidity and Capital Resources

As of December 31, 2009, our principal sources of liquidity were cash and cash equivalents and term deposits totaling approximately \$1.2 million, and accounts receivable of approximately \$0.3 million. The primary source of our liquidity for the past year has come from the financing secured in March, 2009.

On March 11, 2009, the Company secured \$3 million of financing from Spring Street Partners, L.P. and Carroll Capital Holdings, LLC, who collectively purchased 30 million shares of newly-created Series A Preferred Stock for \$0.10 per share. As discussed in the following paragraph, at the current level of reduced expenses, coupled with current sales growth forecasts, management believes this funding will be sufficient to support sales growth and achieve cash flow breakeven by around the end of the third quarter of 2010.

In February 2010, the Company entered into an agreement with SSH LLC, which is conditioned upon stockholder approval at our annual stockholders' meeting in June 2010, in accordance with NZX rules. The agreement provides for the repayment of approximately \$1.0 million in cash to the Company in partial prepayment of the outstanding Note. The agreement also calls for partial prepayment of an additional \$3.1 million by the surrender and cancellation of 11,650,000 Diligent shares which are held as collateral for the Note. The repayment of the remaining outstanding principal of \$3.1 million (which, subsequent to the surrender of the 11,650,000 shares, will be secured by 5,205,597 shares of Diligent stock) will be extended by two years to October 2012 and the interest rate will be increased from 5% to 6.5% and payments will be due annually, as opposed to quarterly. If approved by our stockholders, the additional cash of \$1.0 million will provide us with further liquidity.

In March 2010, the Company entered into an agreement with Spring Street Partners, L.P. ("the Lender") pursuant to which the Lender extended a \$1 million revolving line of credit facility to the Company. The line of credit bears interest at a fixed rate of 9.50%. Upon the event of default, the Lender has the option to increase the interest rate on all outstanding obligations to 14.50%. The line of credit is subject to a 0.5% per annum commitment fee on the unused portion of the line of credit. The Lender has a first priority lien on all of the Company's accounts receivable. The line of credit agreement includes restrictive covenants regarding liens, additional indebtedness, sales of assets and dividend payments. Additionally, the line of credit includes financial covenants with respect to the achievement of budgeted revenues and expenses. To date, no credit has been extended. As stated above, management believes our current funding will be sufficient to support sales growth and achieve cash flow breakeven by around the end of the third quarter of 2010. However, this line of credit offers the Company additional cash flow support if needed.

The Company continues to consider and evaluate strategic growth opportunities that could result in additional capital requirements which are not currently within the budget. Our current operating expenses and expected capital expenditures are fixed, predictable and adequate to support our budgeted growth. We anticipate our professional fees for the year ended December 31, 2010, including fees associated with reporting obligation compliance, and general and administrative costs to be consistent with those incurred for the year ended December 31, 2009.

### Cash flows

	Year ended December 31,	
	2009	2008
Cash provided by (used in):		
Operating activities	\$ (2,473,837)	\$ (11,401,441)
Investing activities	\$ (377,858)	\$ (782,891)
Financing activities	\$ 2,720,789	\$ (205,356)

#### *Net Cash Flows from Operating Activities*

Cash used in operating activities for the year ended December 31, 2009 was \$2.5 million, compared with \$11.4 million for 2008. This reduction in cash used in operations resulted from an increase in revenues of \$2.1 million and a decrease in operating expenses of \$5.4 million. During 2008, the Company incurred significant expenses to expand our sales and marketing efforts. By the end of 2008, we had scaled back expenses, which are reflected in the results for 2009. Additionally, there is an increase of approximately \$1.0 million in cash attributable to deferred revenue from license agreements which have not yet been fully recognized as revenue.

#### *Net Cash Flows from Investing Activities*

Cash used in investing activities decreased to \$0.4 million in 2009 from \$0.8 million in 2008, predominantly used for purchases of property and equipment. Subsequent to the IPO in December 2007, the Company invested significant amounts in our infrastructure, which resulted in additions to property and equipment of over \$0.8 million during 2008.

#### *Net Cash Flows from Financing Activities*

For the year ended December 31, 2009, cash provided by financing activities was \$2.7 million, compared with \$0.2 million used in financing activities in 2008. During the first quarter of 2009, the Company secured \$2.9 million in financing, net of issuance costs, from the issuance of Series A preferred stock.

#### **Off-Balance Sheet Arrangements**

We have no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, results of operations, liquidity, capital expenditures or capital resources that is material to stockholders.

#### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

##### **Quantitative and Qualitative Disclosures about Market Risk**

Because the Company qualifies as a smaller reporting company, as defined by §229.10(f)(1) it is not required to provide the information required by this Item.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA  
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## **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of  
Diligent Board Member Services, Inc.

We have audited the accompanying consolidated balance sheets of Diligent Board Member Services, Inc. as of December 31, 2009 and 2008, and the related consolidated statements of operations, changes in stockholders' equity (deficiency) and comprehensive loss, and cash flows for each of the years ended December 31, 2009 and 2008. Diligent Board Member Services, Inc.'s management is responsible for these consolidated financial statements. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements and assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Diligent Board Member Services, Inc. as of December 31, 2009 and 2008 and the results of their operations and their cash flows for each of the years ended December 31, 2009 and 2008, in conformity with accounting principles generally accepted in the United States of America.

/s/ Holtz Rubenstein Reminick LLP

New York, New York  
March 18, 2010

**Diligent Board Member Services, Inc.**  
**Consolidated Balance Sheets**

	December 31, 2009	December 31, 2008
<b><u>ASSETS</u></b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 1,129,591	\$ 1,265,347
Term deposit	72,530	58,150
Accounts receivable, net	303,331	390,180
Prepaid expenses and other current assets	183,368	222,617
<b>Total current assets</b>	<b>1,688,820</b>	<b>1,936,294</b>
Property and equipment, net	1,312,959	1,116,007
Note receivable from affiliate, net of valuation allowance	1,661,791	1,361,791
Restricted cash - security deposits	221,886	246,685
<b>Total assets</b>	<b>\$ 4,885,456</b>	<b>\$ 4,660,777</b>
<b><u>LIABILITIES AND STOCKHOLDERS' (DEFICIENCY) EQUITY</u></b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 144,751	\$ 256,319
Accrued expenses and other liabilities	253,089	218,541
Deferred revenue	1,593,351	601,408
Current portion of obligations under capital leases	113,418	114,308
Payables to affiliates	5,762	49,578
<b>Total current liabilities</b>	<b>2,110,371</b>	<b>1,240,154</b>
<b>Non-current liabilities:</b>		
Obligations under capital leases, less current portion	147,091	50,816
Other noncurrent liabilities	44,252	-
<b>Total non-current liabilities</b>	<b>191,343</b>	<b>50,816</b>
<b>Total liabilities</b>	<b>2,301,714</b>	<b>1,290,970</b>
<b>Commitments and contingencies</b>		
<b>Redeemable preferred stock:</b>		
Series A convertible redeemable preferred stock, \$.001 par value, 50,000,000 shares authorized, 30,000,000 and 0 shares issued and outstanding (liquidation value \$4,766,712)	3,149,851	-
<b>Stockholders' (deficiency) equity:</b>		
Common Stock, \$.001 par value, 250,000,000 shares authorized, 90,440,000 shares issued and outstanding	90,440	90,440
Additional paid-in capital	24,532,622	24,618,070
Accumulated deficit	(25,180,648)	(21,318,658)
Accumulated other comprehensive loss	(8,523)	(20,045)
<b>Total stockholders' (deficiency) equity</b>	<b>(566,109)</b>	<b>3,369,807</b>
<b>Total liabilities, redeemable preferred stock and stockholders' (deficiency) equity</b>	<b>\$ 4,885,456</b>	<b>\$ 4,660,777</b>

See accompanying notes to consolidated financial statements

**Diligent Board Member Services, Inc.**  
**Consolidated Statements of Operations**

	Year	Year		
	ended	ended		
	December 31,	December 31,		
	2009	2008		
Revenues	\$ 5,000,639	\$ 2,930,702		
Cost of revenues	2,186,850	1,878,027		
<b>Gross profit</b>	<b>2,813,789</b>	<b>1,052,675</b>		
<b>Operating expenses:</b>				
Selling and marketing expenses	2,436,912	6,216,087		
General and administrative expenses	3,944,363	5,418,747		
Research and development expenses	730,201	955,385		
Depreciation and amortization	418,644	278,295		
<b>Total operating expenses</b>	<b>7,530,120</b>	<b>12,868,514</b>		
<b>Operating loss</b>	<b>(4,716,331)</b>	<b>(11,815,839)</b>		
<b>Other income (expenses):</b>				
Impairment recovery (loss) on note receivable from affiliate	300,000	(5,800,000)		
Interest income, net	358,446	601,280		
Foreign exchange transaction gain (loss)	60,893	(601,245)		
Other	171,339	-		
<b>Total other income (expenses)</b>	<b>890,678</b>	<b>(5,799,965)</b>		
<b>Loss before provision for income taxes</b>	<b>(3,825,653)</b>	<b>(17,615,804)</b>		
Provision for income taxes	36,337	32,798		
<b>Net loss</b>	<b>\$ (3,861,990)</b>	<b>\$ (17,648,602)</b>		
Net loss per share (basic and diluted)	\$ (0.04)	\$ (0.17)		
Weighted average shares outstanding (basic and diluted)	90,371,507	102,397,907		

See accompanying notes to consolidated financial statements

**Diligent Board Member Services, Inc.**  
**Consolidated Statements of Changes in Stockholders' Equity (Deficiency)**  
**and Comprehensive Loss**

					Accumulated	
		Common	Additional		Other	Total
	Common	Stock	Paid-in-	Accumulated	Comprehensive	Stockholders'
	Shares	\$.001 Par Value	Capital	Deficit	Income (Loss)	Equity(Deficiency)
<b>Balance at</b>						
<b>January 1, 2008</b>	<b>104,000,000</b>	<b>\$ 104,000</b>	<b>\$ 23,754,427</b>	<b>\$ (3,670,056)</b>	<b>\$ -</b>	<b>\$ 20,188,371</b>
Net loss	-	-	-	(17,648,602)	-	(17,648,602)
Foreign exchange translation adjustment	-	-	-	-	(20,045)	(20,045)
<b>Total comprehensive loss</b>	-	-	-	-	-	(17,668,647)
Write off related party receivable	-	-	(70,700)	-	-	(70,700)
Share-based compensation, net of forfeitures	440,000	440	920,343	-	-	920,783
Cancellation of shares	(14,000,000)	(14,000)	14,000	-	-	-
<b>Balance at</b>						
<b>December 31, 2008</b>	<b>90,440,000</b>	<b>\$ 90,440</b>	<b>\$ 24,618,070</b>	<b>\$ (21,318,658)</b>	<b>\$ (20,045)</b>	<b>\$ 3,369,807</b>
Net loss	-	-	-	(3,861,990)	-	(3,861,990)
Foreign exchange translation adjustment	-	-	-	-	11,522	11,522
<b>Total comprehensive loss</b>	-	-	-	-	-	(3,850,468)
Share-based compensation, net of forfeitures	-	-	203,253	-	-	203,253
Amortization of offering costs	-	-	(21,989)	-	-	(21,989)
Accrual of in-kind dividend	-	-	(266,712)	-	-	(266,712)
<b>Balance at</b>						
<b>December 31, 2009</b>	<b>90,440,000</b>	<b>\$ 90,440</b>	<b>\$ 24,532,622</b>	<b>\$ (25,180,648)</b>	<b>\$ (8,523)</b>	<b>\$ (566,109)</b>

See accompanying notes to consolidated financial statements

**Diligent Board Member Services, Inc.**  
**Consolidated Statements of Cash Flows**

	Year ended December 31, 2009	Year ended December 31, 2008		
<b>Cash flows from operating activities:</b>				
Net loss	\$ (3,861,990)	\$ (17,648,602)		
<b>Adjustments to reconcile net loss to cash used in operating activities:</b>				
Impairment (recovery) loss on note receivable from affiliate	(300,000)	5,800,000		
Depreciation and amortization	418,644	278,295		
Share-based compensation	203,253	920,783		
Accrued interest receivable	-	(346,559)		
Allowance for doubtful accounts	(7,125)	7,125		
Straight-line rent adjustment	44,252	-		
<b>Changes in operating assets and liabilities:</b>				
Accounts receivable	93,974	(105,520)		
Prepaid expenses and other current assets	39,249	(110,965)		
Restricted cash - security deposits	24,799	(202,944)		
Accounts payable and accrued expenses	(77,020)	(264,465)		
Deferred revenue	991,943	374,730		
Payable to affiliates	(43,816)	(103,319)		
<b>Net cash used in operating activities</b>	<b>(2,473,837)</b>	<b>(11,401,441)</b>		
<b>Cash flows from investing activities:</b>				
Redemption of investment in term deposit, net	-	18,630		
Cash acquired in acquisition, net of purchase price	-	83,593		
Purchase of property and equipment	(377,858)	(885,114)		
<b>Net cash used in investing activities</b>	<b>(377,858)</b>	<b>(782,891)</b>		
<b>Cash flows from financing activities:</b>				
Net proceeds from preferred stock issuance	2,861,150	-		
Cash paid for note receivable from affiliate	-	(100,000)		
Payments of obligations under capital leases	(140,361)	(105,356)		
<b>Net cash provided by (used in) financing activities</b>	<b>2,720,789</b>	<b>(205,356)</b>		
Effect of exchange rates on cash and cash equivalents	(4,850)	(20,045)		
<b>Net (decrease) in cash and cash equivalents</b>	<b>(135,756)</b>	<b>(12,409,733)</b>		
<b>Cash and cash equivalents at beginning of year</b>	<b>1,265,347</b>	<b>13,675,080</b>		
<b>Cash and cash equivalents at end of year</b>	<b>\$ 1,129,591</b>	<b>\$ 1,265,347</b>		

See accompanying notes to consolidated financial statements

**Diligent Board Member Services, Inc.**  
**Consolidated Statements of Cash Flows (Continued)**

	Year ended December 31, 2009	Year ended December 31, 2008		
<b>Supplemental disclosure of cash flow information:</b>				
Cash paid during the year for :				
Interest	\$ 32,256	\$ 38,356		
Income taxes	\$ 20,457	\$ 24,750		
Supplemental disclosure of noncash investing and financing activities:				
Property and equipment acquired under capital leases	\$ 235,747	\$ -		
Conversion of interest to loan principal	\$ -	\$ 346,559		
Cashless repayment of loans by officers from bonus awards	\$ -	\$ 126,767		
Write off of related party receivable charged to equity	\$ -	\$ 70,700		

See accompanying notes to consolidated financial statements

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
**Years Ended December 31, 2009 and 2008**

**1) Organization and nature of the business**

Diligent Board Member Services, Inc. (“Diligent” or the “Company”) is a global leader in web-based portals for Boards of Directors. The Company develops and sells an online software application called Diligent Boardbooks, a web based portal that board members, management and administrative staff use to compile, update, review and archive board materials during and after board meetings. Diligent provides clients with subscription-based access to the software and also provides associated services including securely hosting the clients’ data and customer service and support for the application.

The Company was incorporated in the State of Delaware on September 27, 2007 and is listed on the New Zealand Stock Exchange (“NZSX”). On December 12, 2007, the Company completed its initial public offering on the NZSX. In April 2008, the Company filed a Form 10 registration statement with the United States Securities and Exchange Commission (“SEC”), which became effective on June 30, 2008. The Company’s corporate headquarters are located in New York and New Zealand.

The Company has a wholly-owned subsidiary located in New Zealand, Diligent Board Member Services NZ Limited (“DBMS NZ”), which was acquired on January 1, 2008. DBMS NZ provides research and development services to the Company. The Company also has a wholly-owned subsidiary, Diligent Boardbooks Limited (“DBL”), an England and Wales limited liability company which was formed on December 14, 2006, to provide European sales and marketing services. DBL was inactive until April 2008. Diligent, together with its subsidiaries, are hereinafter referred to as “the Company”.

The Company’s consolidated financial statements are presented in US dollars, rounded to the nearest dollar, which is the Company’s functional and presentational currency.

The Company has evaluated all subsequent events through the filing date of this Form 10-K with the SEC, to ensure that this Form 10-K includes subsequent events that should be recognized in the financial statements as of December 31, 2009, and appropriate disclosure of subsequent events which were not recognized in the financial statements.

**2) Liquidity**

Despite growth in net sales during 2008, the Company’s growth rate lagged behind its projections. Amid liquidity concerns, the Company initiated plans to scale back its growth plans in order to reduce operating expenses. During the fourth quarter of 2008, the Company significantly reduced its sales force, reduced salaries for some of its more highly compensated employees and reduced the number of members of the board of directors. This resulted in a significant reduction in operating expenses in 2009, while still achieving growth in revenues. The Company also actively sought additional sources of financing and, in March 2009, issued 30,000,000 shares of newly-created Series A Preferred Stock for \$0.10 per share, providing additional capital of \$2,861,150, net of issuance costs (See Note 12). The primary source of our liquidity for the past year has been this financing. At the current level of reduced expenses, coupled with current sales growth forecasts, management believes this funding will be sufficient to support sales growth and achieve cash flow breakeven by around the end of the third quarter of 2010.

In February 2010, the Company entered into an agreement with Services Share Holding, LLC (“SSH LLC”), which is conditioned upon stockholder approval at our annual stockholders’ meeting in June 2010, in accordance with NZX rules. The agreement provides for the repayment of approximately \$1.0 million in cash to the Company in partial prepayment of the outstanding note receivable from affiliate (See Note 17). If approved by our stockholders, the additional cash of \$1.0 million will provide us with further liquidity. With the exception of scheduled interest payments, the Company had not included the collection of the note receivable in its liquidity planning.

In March 2010, the Company entered into an agreement with Spring Street Partners, L.P. (“the Lender”) pursuant to which the Lender extended a \$1 million revolving line of credit facility to the Company (See Note 17). This line of credit offers the Company additional cash flow support if needed.

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
**Years Ended December 31, 2009 and 2008**

The Company continues to consider and evaluate strategic growth opportunities that could result in additional capital requirements which are not currently within the budget. Our current operating expenses and expected capital expenditures are fixed, predictable and adequate to support our budgeted growth. The primary uncertainty concerning the Company's capital needs pertains to its ability to achieve the expected sales growth in a timely manner.

**3) Significant accounting policies**

**Basis of presentation** – The Company's consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America.

**Principles of consolidation** – The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All material intercompany balances and transactions have been eliminated in consolidation.

**Use of estimates** – The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Cash and cash equivalents** – The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents. The Company invests its excess cash primarily in bank and money market funds of major financial institutions. Accordingly, its cash equivalents are subject to minimal credit and market risk. At December 31, 2009 and 2008, cash equivalents include investments in money market funds of \$102,409 and \$1,144,312, respectively, which are carried at cost which approximates fair value.

**Term deposits** – Term deposits are short-term investments with banks, with maturities greater than three months at inception.

**Accounts receivable** – Accounts receivable are recorded at estimated net realizable value. A provision for doubtful accounts is recorded based on management's assessment of amounts considered uncollectable for specific customers based on age of the receivable, history of payments and other relevant information. An allowance for doubtful accounts is provided for accounts receivable which management determines will not be collectable in full.

**Property and equipment** – Property and equipment consists of computer and office equipment, leasehold improvements and internal-use computer software. Property and equipment are carried at cost, less accumulated depreciation and amortization and any impairment losses.

**Internal-use software** – The Company capitalizes certain costs incurred after the preliminary project stage in connection with developing or obtaining software for internal use. Internal use software is included in property and equipment.

**Depreciation and amortization** – Depreciation on property and equipment is computed on a straight line basis at rates adequate to recover the cost of the assets over their estimated useful lives, which range from three to five years. Leasehold improvements are depreciated over estimated useful lives of the assets or the term of the underlying lease, whichever is shorter. Amortization of computer software is computed on the straight-line method over its estimated useful life, which is three years. Expenditures for repair and maintenance costs are expensed as incurred.

**Impairment of long-lived assets** – The Company periodically reviews the carrying amounts of its tangible and intangible assets to determine whether events or changes in circumstances indicate the carrying amount

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
**Years Ended December 31, 2009 and 2008**

of an asset may not be fully recoverable. The carrying amount of a long-lived asset is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. Measurement of an impairment loss for long-lived assets and certain identifiable intangible assets that management expects to hold and use is based on the fair value of the asset. An impairment loss is measured as the amount by which the carrying amount of the long-lived asset exceeds its fair value.

**Revenue recognition** – The Company recognizes revenue when all of the following criteria are met: (a) persuasive evidence of the arrangement exists, (b) delivery has occurred or services have been rendered, (c) the seller's price to the buyer is fixed and determinable and (d) collectability is reasonably assured. Revenue from the Boardbooks licenses is recorded ratably over the contract period, which is generally twelve months. License fees paid in advance are recorded as deferred revenue until recognized. The Company generally invoices its customers in annual installments. Accordingly, the deferred revenue balance does not represent the total contract value of annual or multi-year, noncancelable subscription agreements. The Company also earns fees for set-up and training ("installation fees") of the Boardbooks system. Historically, installation fees were recognized upon completion of the installation. Effective October 1, 2008, installation fees are recorded ratably over the contract period. The effect of this change is not material to the Company's consolidated financial condition, results of operations or cash flows.

**Research and development** – Software development costs are expensed as they are incurred until technological feasibility has been established, at which time those costs are capitalized until the product is available for general release to customers. To date, software has been available for general release concurrent with the establishment of technological feasibility and, accordingly, the Company has not capitalized any development costs. Costs incurred to enhance products after the general release of the service using the product are expensed in the period they are incurred and included in research and development costs in our consolidated statements of operations.

**Operating leases** – The Company records rental costs, including costs related to fixed rent escalation clauses and rent holidays, on a straight-line basis over the lease term.

**Income taxes** – Diligent files U.S. federal and state income tax returns. Foreign operations file income tax returns in their respective foreign jurisdictions. The Company accounts for deferred income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

**Foreign exchange** – The Company's wholly-owned subsidiaries, DBL and DBMS NZ, utilize the British Pound Sterling and the New Zealand Dollar (NZD), respectively, as their functional currencies. Assets and liabilities of these subsidiaries are translated to US dollars at exchange rates in effect at the balance sheet dates, with the resulting translation adjustments directly recorded to a separate component of accumulated other comprehensive income.

Transactions in foreign currencies are reported at the approximate rates of exchange at the transaction date. Assets and liabilities are translated at the rates of exchange in effect at the balance sheet date. All differences are recorded in results of operations. The foreign exchange gain (loss) is primarily attributable to movement in exchange rates on certain of the Company's cash accounts held in foreign currencies.

The Company does not use forward exchange contracts to hedge exposures to foreign currency denominated transactions.

**Share-based compensation** – The Company measures the cost of employee services received in exchange for an equity-based award using the fair value of the award on the date of the grant, and recognizes the cost

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
**Years Ended December 31, 2009 and 2008**

over the period that the award recipient is required to provide services to the Company in exchange for the award.

The Company measures compensation cost for awards granted to non-employees based on the fair value of the award at the measurement date, which is the date performance is satisfied or services are rendered by the non-employee.

**Fair value of financial instruments** – The Company’s financial instruments include cash and cash equivalents, term deposits, accounts receivable, accounts payable and accrued expenses. The fair value of these financial instruments approximates book value due to their short term settlements.

**Note receivable from affiliate** – The note receivable from affiliate is recorded at estimated net realizable value, adjusted for any valuation allowance for amounts considered uncollectable. The valuation allowance is reviewed for adjustment each reporting period.

**Segment reporting** – Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated on a regular basis by the chief operating decision-maker, or decision making group, in deciding how to allocate resources to an individual segment and in assessing performance of the segment. In light of the Company’s current product offering, management believes that the Company operates in one segment.

**Net loss and and diluted net loss per share** – Basic net loss per share is computed by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding for the period, excluding unvested restricted common shares. Diluted net loss per share is computed using the weighted average number of common shares outstanding and, when dilutive, unvested restricted common shares. Because the Company reported a net loss for all periods presented, all potential common shares attributable to unvested restricted stock have been excluded from the computation of the diluted net loss per share because the effect would have been anti-dilutive.

**Recent accounting pronouncements** – In April 2009, the Financial Accounting Standards Board (“FASB”) issued new accounting guidance intended to provide additional application guidance and enhance disclosures regarding fair value measurements and impairments of securities. The guidance was effective for interim and annual periods ending after June 15, 2009. The Company adopted this guidance upon its issuance and it had no material impact on the Company’s consolidated financial statements.

In May 2009, the FASB issued new guidance on management’s assessment of subsequent events, which establishes the accounting and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. It required the disclosure of the date through which an entity evaluated subsequent events and the basis for that date. In February 2010, the FASB issued an update to this guidance which requires that SEC filers evaluate subsequent events through the date financial statements are available to be issued, but removed the requirement to disclose that date. The updated guidance was effective upon issuance, and did not have a material impact on the Company’s consolidated financial statements.

In July 2009, the FASB issued the Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles (“Codification”), which is the single source of authoritative U.S. nongovernmental GAAP. The Codification does not change GAAP, but is intended to make it easier to find and research issues and changes the way GAAP is referenced. The Codification was effective for interim and annual periods ending after September 15, 2009. The Company began to use the new Codification when referring to GAAP in its financial statements for the third quarter of 2009. The Codification does not affect our consolidated financial position, cash flows or results of operations.

In August 2009, the FASB issued new guidance which clarifies measurement and disclosures of the fair value of liabilities. The update is effective in the first reporting period after issuance. This guidance did not have a material effect on the Company’s consolidated financial statements.

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
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In October 2009, the FASB issued new guidance for revenue recognition with multiple deliverables. This new guidance impacts the determination of when the individual deliverables included in a multiple-element arrangement may be treated as separate units of accounting. Additionally, it modifies the manner in which the transaction consideration is allocated across the separately identified deliverables by no longer permitting the residual method of allocating arrangement consideration. This new guidance is effective for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010, however early adoption is permitted. The Company does not expect this new guidance to have a material effect on the consolidated financial statements.

In January 2010, the FASB issued new guidance which improves disclosures about fair value measurements. The new standard is effective for interim and annual periods beginning after December 15, 2009, except for certain disclosures regarding Level 3 measurements which are effective for fiscal years beginning after December 15, 2010. The Company is evaluating the impact of this guidance on its consolidated financial statements.

**4) Acquisition of DBMS NZ**

On January 1, 2008, the Company acquired all the outstanding shares of DBMS NZ, for NZD 5,000 (US\$3,804). Prior to the acquisition, DBMS NZ provided research and development services for the Company. The purchase price was allocated to the assets and liabilities as follows:

<u>Assets</u>	
Cash	\$ 87,397
Accounts receivable	24,809
Other current assets	24,300
Property and equipment, net	<u>4,688</u>
	141,194
<u>Liabilities</u>	
Accounts payable	52,271
Accrued vacation pay	<u>85,119</u>
	137,390
Net assets acquired	<u><u>\$ 3,804</u></u>

**5) Term deposit**

At December 31, 2009, the Company has a term deposit with a New Zealand bank with a term of 365 days. The term deposit in the amount of NZD 100,000 (US\$72,530 at December 31, 2009) bears interest at 4.50% and matures in March 2010.

At December 31, 2008, the Company had a term deposit with a New Zealand bank with a term of 100 days. The term deposit in the amount of NZD 100,000 (US\$58,150 at December 31, 2008) bore interest at 6.00% and matured in March 2009.

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
**Years Ended December 31, 2009 and 2008**

**6) Accounts receivable**

Accounts receivable consists of the following:

	December 31, 2009	December 31, 2008
Trade receivables	\$ 303,331	\$ 397,305
Allowance for doubtful accounts	-	(7,125)
	<u>\$ 303,331</u>	<u>\$ 390,180</u>

**7) Property and equipment and obligations under capital leases**

Property and equipment is comprised of the following:

	December 31, 2009	December 31, 2008
Equipment	\$ 1,416,470	\$ 960,259
Computer software	479,370	326,760
Leasehold improvements	140,653	130,553
	<u>2,036,493</u>	<u>1,417,572</u>
Less: accumulated depreciation/amortization	723,534	301,565
Net property and equipment	<u>\$ 1,312,959</u>	<u>\$ 1,116,007</u>

Obligations under capital leases consist of various financing arrangements entered into by the Company to acquire computer equipment and software. The leases bear interest at rates ranging from 10.96% to 30.96% per annum, with monthly payments ranging from \$130 to \$2,528, and maturities from January 2010 to October 2012.

Each lease is secured by the underlying leased asset. Amortization of assets recorded under capital leases is included in depreciation expense. The equipment relating to capital leases, included in property and equipment on the balance sheet, is as follows:

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
**Years Ended December 31, 2009 and 2008**

	December 31, 2009	December 31, 2008
Capital lease assets included in		
property and equipment	\$ 475,628	\$ 246,679
Accumulated depreciation	<u>192,727</u>	<u>96,284</u>
	<u>\$ 282,901</u>	<u>\$ 150,395</u>
	Year	Year
	ended	ended
	December 31,	December 31,
	2009	2008
Depreciation expense relating		
to capital lease assets	<u>\$ 96,443</u>	<u>\$ 80,212</u>

The following is a schedule of future minimum lease payments due under capital leases as of December 31, 2009:

Year ending	
<u>December 31,</u>	
2010	\$ 157,103
2011	110,787
2012	<u>67,724</u>
Total minimum lease payments	335,614
Less interest portion of payments	<u>(75,105)</u>
Present value of minimum lease payments	<u>\$ 260,509</u>

**8) Note receivable from affiliate** - The note receivable from affiliate represents amounts due from SSH LLC, the Company's predecessor entity, under a Promissory Note and Security Agreement dated October 1, 2007 (the "Note").

The Note bears interest at 5% per annum, which is payable in arrears on the first day of each calendar quarter, commencing April 1, 2008. SSH LLC elected, under the terms of the Note, to defer each of the first four quarterly interest payments through January 1, 2009, which were added to the principal balance and bear interest from the date the payment was due. The loan matures on October 1, 2010, when the entire principal balance and all accrued interest will be due and payable. It was originally secured by 25,000,000 shares of the Company's stock which were pledged as collateral by members of SSH LLC. At December 31, 2009 the number of shares securing the Note is 21,678,597

At December 31, 2009 and 2008, the contractual outstanding loan balance was \$7,161,791. At December 31, 2008, the Company recorded a \$5.8 million valuation allowance and a corresponding charge to impairment loss in order to write down the Note to the estimated fair value of the underlying collateral.

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
**Years Ended December 31, 2009 and 2008**

In the absence of an active market for the Company's stock, or other observable inputs for similar instruments, the Company based its valuation principally on the value of the March 2009 issuance of preferred stock, adjusted using an assumed discount rate of 20%, which is management's estimate based on the value of the preferred features of the Series A Preferred Stock. In addition, management assumed that SSH LLC and/or its members would sell a portion of the underlying collateral to meet their quarterly interest payments, thereby reducing the amount of collateral expected to be available when the Note matures in 2010. These are considered unobservable inputs falling within the definition of Level 3 inputs.

On March 30, 2009, SSH LLC sold 2,387,263 pledged shares to Spring Street Partners, L.P. in a private transaction valued at \$0.075 per share, or \$179,045 in the aggregate. The proceeds were applied against the Note interest payments due April 1 and July 1, 2009. In September 2009, SSH LLC sold an additional 620,140 shares to Spring Street Partners, L.P. in a private transaction valued at \$0.144 per share. The proceeds of \$89,523 were used to pay the interest due October 1, 2009. In November 2009, SSH LLC sold an additional 314,000 shares to a third party for \$0.285 per share and used the proceeds to pay the interest due January 1, 2010.

At December 31, 2009, the Company reduced the valuation allowance to \$5.5 million and recorded a corresponding recovery of \$300,000. This recovery was based on the greater than expected number of shares held as collateral at December 31, 2009, due to the ability of SSH LLC to sell shares to meet the interest payments at higher than anticipated prices.

In February 2010, the Company reached an agreement with SSH LLC, subject to shareholder approval, to buy back some of the underlying collateral in exchange for a partial prepayment of the Note and an amendment to its terms (See Note 17).

The Note is the only financial instrument held by the Company for which a fair value measurement is made using significant unobservable inputs (Level 3). A reconciliation of the beginning and ending balances of the Note follows:

	Year ended December 31, 2009	Year ended December 31, 2008
Balance at beginning of period	\$ 1,361,791	\$ 6,715,232
Total gains or losses (unrealized/realized)		
Included in earnings (or changes in net assets)	300,000	(5,800,000)
Included in other comprehensive income	-	-
Purchases, issuances and settlements	-	446,559
Transfers in and/or out of Level 3	-	-
Ending balance	<u>\$ 1,661,791</u>	<u>\$ 1,361,791</u>
The amount of total gains or losses for the period included in earnings (or changes in net assets) attributable to the change in unrealized gains or losses relating to assets still held at the reporting date	<u>\$ 300,000</u>	<u>\$ (5,800,000)</u>

**Diligent Board Member Services, Inc.**  
**Notes to Consolidated Financial Statements**  
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**9) Related party transactions**

**Loans to director and officer** – In April 2008, the Company made loans to two officers, one of whom was also a Director, in the amount of NZD218,000 (US\$145,843), which were non-interest bearing. These loans were made prior to the time that the Company was subject to the requirements of Sarbanes Oxley §402, which prohibits such loans to officers, but were outstanding at the time the Company filed its initial registration statement on Form 10 with the SEC; therefore the Company was in violation of Sarbanes Oxley §402 at that time. These loans were repaid with officers’ bonuses in October 2008 when the Company became aware of the prohibition.

**Marketing expense** – During the years ended December 31, 2009 and 2008, the Company incurred marketing expenses of approximately \$147,000 and \$217,000, respectively, for services rendered by Yankee Hill Company, LLC, an entity owned by a stockholder of the Company.

**Consulting agreement with Sugar International** – From April 2008 through January 2009, the Company incurred expenses for sales training provided by a consultant from Sugar International. A director and stockholder of the Company is a director and stockholder of Sugar International. For the years ended December 31, 2009 and 2008, the Company recorded sales training expenses of approximately \$15,000 and \$184,500, respectively, for such services, of which \$0 and \$38,500 is included in payables to affiliates at December 31, 2009 and 2008, respectively.

**Legal services** – A director is a partner of Buddle Findlay, a law firm which provides legal services to the Company in New Zealand. Fees paid to Buddle Findlay for the years ended December 31, 2009 and 2008 were approximately \$86,000 and \$83,000, respectively. Payables to affiliates include approximately \$5,800 and \$11,000 at December 31, 2009 and 2008, respectively, payable to Buddle Findlay.

**Rent expense** – The Company subleased its New Jersey office from an affiliate through August 2009. Additionally, the Company subleased office space in New York City from an affiliate through April 2008. Rent expense paid to affiliates for the years ended December 31, 2009 and 2008, was approximately \$29,000 and \$77,000, respectively.

**10) Geographic information**

The Company’s revenue, by geographic location of the customer, and long-lived assets located outside the United States are as follows:

	Year ended December 31, 2009	Year ended December 31, 2008			
Revenues:					
United States	\$ 4,193,354	\$ 2,514,790			
Foreign	807,285	415,912			
Total	<u>\$ 5,000,639</u>	<u>\$ 2,930,702</u>			
	December 31, 2009	December 31, 2008			
Long-lived assets outside the United States, net	<u>\$ 507,794</u>	<u>\$ 405,534</u>			

**Diligent Board Member Services, Inc.**  
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**11) Income taxes**

No provision (benefit) for U.S. income taxes has been recorded in the accompanying consolidated financial statements for the periods ended December 31, 2009 and December 31, 2008 as a result of the Company's net operating losses. At December 31, 2009, the Company has net operating loss carryforwards of U.S. income taxes of \$16.0 million, which expire from 2027 through 2029.

The significant components of loss before provision for income taxes and the consolidated income tax provision are as follows:

		Year ended December 31, 2009	Year ended December 31, 2008
Loss before provision for income taxes:			
	Domestic	\$ (4,098,429)	\$ (16,543,217)
	Foreign	<u>272,776</u>	<u>(1,072,587)</u>
	<b>Total</b>	<u>\$ (3,825,653)</u>	<u>\$ (17,615,804)</u>
Provision for income taxes:			
	Domestic	\$ -	\$ -
	Foreign	<u>36,337</u>	<u>32,798</u>
	<b>Total</b>	<u>\$ 36,337</u>	<u>\$ 32,798</u>

The income tax provision differs from the amount of tax determined by applying the federal statutory rate as follows:

	Year ended December 31, 2009	Year ended December 31, 2008
	%	%
Federal income tax statutory rate	(34.0)	(34.0)
State income taxes, net of federal benefit	(10.6)	(10.6)
Foreign income taxes	0.9	0.2
Tax effect of:		
Share-based compensation	13.8	-
Meals and entertainment	0.1	0.1
Other	0.1	-
Valuation allowance	<u>30.6</u>	<u>44.5</u>
<b>Income tax provision</b>	<u>0.9</u>	<u>0.2</u>

**Diligent Board Member Services, Inc.**  
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Deferred taxes are as follows:

		Year Ended December 31, 2009	Year Ended December 31, 2008
Deferred tax asset (liability)		(In thousands)	(In thousands)
	Share-based compensation	\$ -	\$ 73
	Bad debt expense	-	3
	Note impairment loss	2,451	2,610
	Depreciation	(38)	-
	Accruals	19	-
	Other	(1)	-
	Net Operating Loss Carryforwards	7,115	5,293
	Valuation Allowance	<u>(9,546)</u>	<u>(7,979)</u>
	Total	<u>\$ -</u>	<u>\$ -</u>

Management has provided a valuation allowance of approximately \$9,546,000 and \$7,979,000 as of December 31, 2009 and 2008, respectively, for all U.S. net deferred tax assets since it is more likely than not that the related deferred tax assets will not be realized. The Company has an insignificant amount of deferred tax assets related to DBMS NZ, which are offset against accrued expenses and other liabilities in the balance sheet.

The Company has evaluated its uncertain tax positions and determined that any required adjustments would not have a material impact on the Company's financial statements. The Company classifies interest and penalties on uncertain tax positions as interest expense and general and administrative expenses, respectively. Interest and penalties recorded in 2009 were approximately \$2,000 and \$10,000, respectively.

The Company and its subsidiaries are subject to regular audits by federal, state and foreign tax authorities. These audits may result in additional tax liabilities. The Company's federal, state and foreign income tax returns for the tax years 2007 through 2009 are open for examination by the federal, state and foreign taxing jurisdictions.

**12) Redeemable Preferred Stock** – On March 11, 2009, the Company issued 30,000,000 shares of newly-created Series A Preferred Stock for \$0.10 per share in a private offering, for an aggregate of \$3,000,000 in additional capital. Expenses relating to the share issuance were \$138,850. The principal terms of the Preferred Shares are as follows:

**Dividend rights** – The Preferred Shares carry a fixed, cumulative, dividend of 11% per annum (adjusted for stock splits, consolidation, etc). The dividend, which is due on the first business day of each calendar year for the prior year, may (at the Company's option) be paid either in cash or in kind by the issuance of additional Preferred Shares (PIK Shares), to be issued at the same issue price as the Series A Preferred Stock of \$0.10 per share. The 11% annual dividend on the Preferred Shares will have preference over the declaration or payment of any dividends on the Company's common stock (ordinary shares). In addition to the 11% preferred dividend, the holders of the Preferred Shares will also be entitled to participate pro rata in any dividend paid on the Company's common stock.

**Conversion rights** – The Preferred Shares are convertible at any time at the option of the holders into the Company's common stock on a one-for-one basis at a conversion price of \$0.10 per share. In addition, Preferred Shares will automatically be converted into common stock upon the closing of an

**Diligent Board Member Services, Inc.**  
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underwritten share offering by the Company on a registered stock exchange which realizes at least \$40,000,000 of gross proceeds.

Redemption rights – The holders of the Preferred Shares have the option to require the Preferred Shares (including any PIK shares) to be redeemed in cash, at \$0.10 per share plus accrued and unpaid dividends, at any time after 60 months from the date of issue of the Preferred Shares.

Anti-Dilution Provision – In the event of a future offering of the Company’s stock at a price per common share which is less than the Preferred Share conversion price immediately before such offering, the conversion price for the Preferred Shares is adjusted according to a weighted average formula.

Liquidation entitlement – In the event of any voluntary or involuntary liquidation of the Company, the holders of Preferred Shares are entitled to an amount per Preferred Share equal to 1.5 times the original issue price of \$0.10 plus any dividends which have become due but have not been paid.

Voting rights – Preferred Shares have equal voting rights (one vote per share) to common stock, except that Preferred Shares do not vote in the general election of directors.

Other provisions – For as long as not less than 15,000,000 Preferred Shares are outstanding, the holders of the Preferred Shares have the right between them to appoint one director, and the Company may not take action relating to certain major transactions without obtaining the consent of not less than 60% of the Preferred Shares or without obtaining the approval of the director appointed by the holder of the Preferred Shares (for matters requiring Board of Directors approval).

Accounting for Preferred Shares – If certain criteria are met, companies must bifurcate conversion options from their host instruments and account for them as free standing derivative instruments. The Company has evaluated the conversion option on the Preferred Shares and determined that the embedded conversion option should not be bifurcated. Additionally, the Company analyzed the conversion feature and determined that the effective conversion price was higher than the market price at date of issuance; therefore no beneficial conversion feature was recorded. The Company has classified the Preferred Shares as temporary equity because they are redeemable upon the occurrence of an event that is not solely within the control of the issuer. As noted above, the holders of the Preferred Shares may demand redemption any time after 60 months from the date of issue. The securities are carried at their face value net of issuance costs plus accrued dividends (representing fair value) because the contingency has not been met and it is not probable that it will be met. If the redemption were considered likely to occur, the carrying value would be adjusted to its liquidation value.

The carrying value of the Preferred Shares at December 31, 2009 is as follows:

	Gross proceeds	\$	3,000,000		
	Less: Issuance costs		(138,850)		
			2,861,150		
	Cumulative amortization of offering costs		21,989		
	Cumulative in kind dividend		266,712		
	Balance at December 31, 2009	\$	3,149,851		

For the year 2009, the Board of Directors of the Company approved the issuance of PIK Shares in lieu of cash, which dividend was effective January 4, 2010. Accordingly, the holders of the Series A Preferred Stock received an aggregate of 2,667,123 PIK Shares on January 4, 2010.

**Diligent Board Member Services, Inc.**  
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**13) Stockholders' equity (deficiency)**

**Cancellation of shares** – Pursuant to the Company's initial public offering, SSH LLC was required to place 14,000,000 of the Company's common shares into escrow through December 31, 2008, at which time these shares would be delivered to the Company for cancellation if certain sales milestones were not met. The Company did not meet these sales milestones, and accordingly, the 14,000,000 shares were cancelled at December 31, 2008.

**Increase in authorized shares** – In March 2009, the stockholders of the Company approved an increase in the number of authorized shares of common stock from 200,000,000 to 250,000,000.

**Issuance of preferred stock** – On March 11, 2009, the Company issued 30,000,000 shares of newly created Series A preferred stock for US\$0.10 per share (see Note 12).

**14) Stock option and incentive plan**

In November 2007, the Company adopted the 2007 Stock Option and Incentive Plan (“the Plan”) authorizing the granting of awards to selected employees, directors and consultants of the Company, and its affiliates in the form of incentive stock options, non-qualified stock options, and stock awards. The Plan is administrated by the Company's Board of Directors. Pursuant to delegation by the Company's Board of Directors, the Remunerations and Nominations Committee determines the number of shares, the term, the frequency and date, the type, the exercise periods, any performance criteria pursuant to which stock option awards may be granted and the restrictions and other terms and conditions of each grant of restricted shares in accordance with the terms of the Plan. The Plan authorizes the issuance of up to 10,000,000 shares of the Company's common stock.

**Restricted Stock Awards** – On November 8, 2007, the Company granted 4,000,000 shares of common stock to selected employees (3,064,000 shares), directors (200,000 shares) and consultants (736,000 shares) of the Company, and its affiliates. Of these shares, 2,071,000 shares were fully vested upon issuance on December 12, 2007, 160,000 shares were forfeited during 2008 and 1,769,000 shares vested on January 1, 2009, based on continued employment through that date. The fair value of the awards to employees was estimated to be NZD0.90(US\$0.69) per share, which was the closing price of the Company's stock on December 12, 2007. The fair values of the awards to non-employees were closing prices on various measurement dates.

On October 23, 2008, the Company granted 600,000 shares of restricted stock to two officers in accordance with the terms of their employment agreements, which included 250,000 shares which vested immediately, 250,000 shares which vested on February 15, 2009, and 100,000 shares which vested on May 15, 2009, based on continued employment through those dates. The estimated fair value of the shares at the award date was measured using the closing price of NZD0.25 (US\$0.14) per share on the date of grant.

During the years ended December 31, 2009 and 2008, the Company recognized share-based compensation costs related to restricted stock awards of \$23,099 and \$920,783, respectively.

At December 31, 2009 all restricted stock is fully vested and there is no unrecognized compensation cost.

**Stock Option Awards** – On August 20, 2009 the Board of Directors approved the Stock Option Agreement, which contains the terms and conditions with respect to stock options granted by the Company under the Plan. On that date, the Board of Directors awarded 3,650,000 stock options to officers and an additional 100,000 options to two former outside directors of the Company. On October 9, 2009, the Company granted an additional 910,003 shares to employees.

The exercise price of each option is the market price of the Company's stock for the last sale prior to the grant date, converted to U.S. dollars using the exchange rate in effect on the grant date. The options

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generally expire after a period not to exceed ten years, except in the event of termination, whereupon vested options must be exercised generally within three months, or upon death or disability, in which cases the vested options may be exercised within twelve months, but in all cases the exercise date may not exceed the expiration date.

The fair value of each option grant was estimated on the date of grant using the Black-Scholes option pricing model and the resulting fair value is recorded as share-based compensation expense on a straight line basis over the option vesting period for employee stock options, ranging from six months to three years. The value of the options granted to former directors was charged to expense as of the grant date.

The fair values of the options granted were estimated based on the following assumptions:

Expected volatility (1)	183.98 - 186.94%
Expected term (2)	5.35 – 6.00 years
Risk-free interest rate (3)	2.36 - 2.75%
Dividend yield	-

- (1) The expected volatility was determined using historical volatility data for comparable companies.
- (2) The expected term of the options has been estimated using the simplified method allowed by the SEC, which calculates the average of the vesting period and the contractual term of the options.
- (3) The risk free interest rate is based on the U.S. Treasury constant maturity nominal yield with a term approximately equal to the expected terms of the options.

The weighted average grant-date fair value of the options granted was \$0.1406.

A summary of stock option activity for the year ended December 31, 2009 is as follows:

	Options	Weighted average exercise price	Weighted average remaining contractual term
Outstanding at January 1, 2009	-	\$ -	
Granted	4,660,003	.1439	
Exercised	-	-	
Forfeited	-	-	
Outstanding at December 31, 2009	4,660,003	.1439	9.66 years
Exercisable at December 31, 2009	-	.1439	

During the year ended December 31, 2009, the Company recognized share-based compensation costs related to stock options of \$180,154. At December 31, 2009 there was \$467,781 of unrecognized share-based compensation expense related to options granted that will be recognized over the next 2.75 years.

**15) Commitments and contingencies**

**Operating leases** – In April 2008, the Company entered into an operating lease agreement for its office space in New York City for seven years, which requires an annual base rent of \$210,000, with an escalation clause. The rental expense for the years ended December 31, 2009 and 2008 was approximately \$227,000 and \$189,000, respectively.

In June 2009, DBMS NZ entered into a three-year operating lease for office space in Christchurch, New Zealand. The terms of the lease require an annual rent of NZD42,000 (US\$30,463 at December 31,

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2009). The total rental expense under the new and expiring leases for the year ended December 31, 2009 was NZD76,028 (US\$47,062) and NZD84,233 (US\$60,032), respectively.

The Company or its consolidated subsidiaries have entered into several other short-term property leases requiring monthly rentals of approximately \$3,000, for terms expiring through June 2010.

The lease agreements require security deposits in the amount of \$221,886 at December 31, 2009.

The following is a schedule of future minimum lease payments as of December 31, 2009:

Year ending December 31	2010	\$ 265,688
	2011	258,264
	2012	249,867
	2013	241,675
	2014	248,925
	2015 and thereafter	62,688
		\$ 1,327,107

**Employment contract** – In June 2009, the Company entered into an employment contract with an officer which provides for annual compensation of \$210,000. The contract also provides for grants of stock, subject to Board of Director approval and continued employment, of 250,000 shares each in August 2009, 2010, and 2011. The first of these grants was included in the stock options issued in August 2009 (See Note 14). The contract may be terminated at any time with ninety days written notice.

**401(k) plan** – On January 1, 2008 the Company adopted a defined contribution plan in the form of a qualified 401(k) plan (“the 401(k) Plan”), in which substantially all US employees are eligible to participate. The Company makes no matching contributions under the 401(k) Plan.

**Warranties and indemnification** – The Company’s service is warranted to perform in a manner materially consistent with its marketing and training materials, specifications and technical information provided to users. The Company’s arrangements generally include certain provisions for indemnifying customers against liabilities if its products or services infringe a third-party’s intellectual property rights. To date, the Company has not incurred any material costs as a result of such indemnifications and has not accrued any liabilities related to such obligations.

The Company has also agreed to indemnify its directors and officers to the fullest extent allowed under Delaware law for costs associated with any fees, expenses, judgments, fines and settlement amounts incurred by any of these persons in any action or proceeding to which any of those persons is, or is threatened to be, made a party by reason of the person’s services as a director or officer of the Company, or arising as a result of that person serving at the request of the Company as a director, officer, employee or agent of another enterprise. The Company maintains director and officer insurance coverage that should enable the Company to recover a portion of any future amounts paid.

**16) Financial instruments**

**Interest rate risk** - Interest rate risk is the risk that market interest rates will change and impact Diligent’s financial results by affecting the rate of interest charged or received by the Company. It is not expected that changes in interest rates will materially affect the Company’s results of operations.

**Currency rate risk** - The Company is subject to currency rate risk primarily from export sales to Canada, Europe, Australia and New Zealand, and from cash balances maintained in foreign currencies. The Company has not entered into forward contracts or other currency hedges.

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**Liquidity risk** – The Company expects that its cash and cash equivalents will be adequate to support sales growth and achieve cash flow breakeven by around the end of the third quarter of 2010. Particularly in light of current economic conditions, the Company intends to manage liquidity risk by continuously monitoring forecasted and actual cash flows and matching the maturity profiles of financial assets and liabilities. Additionally, in March 2010, the Company secured a \$1 million revolving line of credit facility, which provides the Company cash flow protection if needed (see Note 17). The primary uncertainty concerning our capital needs pertains to our ability to achieve the expected sales growth in a timely manner such that recurring revenues exceed operating expenditures.

**Concentrations of credit and other risks** - The Company sells its service to a diverse number of customers and performs ongoing credit evaluations of its customers' financial condition as part of its accounts receivable monitoring procedures. Financial instruments which potentially subject the Company to concentrations of credit risk consist primarily of trade accounts receivable. One customer accounted for 14.2% of the accounts receivable balance at December 31, 2009 and 10.5% of the accounts receivable balance at December 31, 2008. No single customer generated more than 10% of revenue in 2009 and 2008.

Financial instruments which potentially subject the Company to significant concentration of credit risk include money market funds, time deposits and a term deposit. These financial instruments are classified as either cash and cash equivalents or term deposit and are maintained with high credit quality banking institutions in the United States, New Zealand and Great Britain. At times the cash balances may be in excess of the insurance limits at a particular bank.

**17) Subsequent events**

**Repayment and Amendment of Note Receivable** - In February 2010, the Company entered into an agreement with SSH LLC, which is conditioned upon stockholder approval at our annual stockholders' meeting in June 2010, in accordance with NZX rules. The agreement provides for the repayment of approximately \$1.0 million in cash to the Company in partial prepayment of the outstanding Note. The agreement also calls for partial prepayment of an additional \$3.1 million by the surrender and cancellation of 11,650,000 Diligent shares which are held as collateral for the Note. The repayment of the remaining outstanding principal of \$3.1 million (which, subsequent to the surrender of the 11,650,000 shares, will be secured by 5,205,597 shares of Diligent stock) will be extended by two years to October 2012 and the interest rate will be increased from 5% to 6.5% and payments will be due annually, as opposed to quarterly. If approved by our stockholders, the additional cash of \$1.0 million will provide us with further liquidity.

**Line of Credit Facility** - In March 2010, the Company entered into an agreement with Spring Street Partners, L.P. ("the Lender") pursuant to which the Lender extended a \$1 million revolving line of credit facility to the Company. The Lender is the holder of 20 million shares of the Company's Series A preferred stock and approximately 5 million shares of the Company's common stock, and the founder and managing partner of the Lender is the chairman of the board of directors of the Company.

The line of credit bears interest at a fixed rate of 9.50% per annum. Upon the event of default, the Lender has the option to increase the interest rate on all outstanding obligations to 14.50%. The line of credit is subject to a 0.5% per annum commitment fee on the unused portion of the line of credit, paid quarterly in arrears. Accrued interest and accrued commitment fees must be paid quarterly on the last business day of each quarter. The line of credit matures in September 2011, at which time all outstanding principal and unpaid interest and commitment fees are due in full.

The Lender has a first priority lien on all of the Company's accounts receivable. The line of credit agreement includes restrictive covenants regarding liens, additional indebtedness, sales of assets and dividend payments. Additionally, the line of credit includes financial covenants with respect to the achievement of budgeted revenues and expenses.

## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None

## **ITEM 9A. CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934) as of the end of the period covered by this Form 10-K. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures, as of the end of the period covered by this Form 10-K, were effective in ensuring that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in SEC's rules and forms, and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

### **Management's Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control—Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2009.

This annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the Company to provide only management's report in this annual report.

### **Changes in Internal Control Over Financial Reporting**

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934) that occurred during the year ended December 31, 2009 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **ITEM 9B. OTHER INFORMATION**

Not applicable

## **PART III**

### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this Item is incorporated by reference from the information to be contained in our Proxy Statement.

### **ITEM 11. EXECUTIVE COMPENSATION**

The information required by this Item is incorporated by reference from the information to be contained in our Proxy Statement.

### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this Item is incorporated by reference from the information to be contained in our Proxy Statement.

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this Item is incorporated by reference from the information to be contained in our Proxy Statement.

### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this Item is incorporated by reference from the information to be contained in our Proxy Statement.

## PART IV

### ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

- a. The following documents are filed as a part of this Report:
- 1) *Financial Statements*: The information concerning our financial statements, and Report of Independent Registered Public Accounting Firm required by this Item is incorporated by reference herein to the section of this Report in Item 8, entitled “Consolidated Financial Statements and Supplementary Data.”
  - 2) *Financial Statement Schedules*:  
  
*The Financial Statement Schedules* not listed have been omitted because they are not applicable or are not required or the information required to be set forth herein is included in the Consolidated Financial Statements or Notes thereto.
  - 3) *Exhibits*: See “Index to Exhibits.”
- b. *Exhibits*. The exhibits listed below in the accompanying “Index to Exhibits” are filed or incorporated by reference as part of this Annual Report on Form 10-K.
- c. *Financial Statement Schedules*.

## **SIGNATURES**

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: March 18, 2010

**DILIGENT BOARD MEMBER SERVICES, INC.**

By: /s/ Steven P. Ruse  
Steven P. Ruse, Chief Financial Officer (Principal  
Financial Officer )

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Steven P. Ruse and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and re-substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all reports of the Registrant on Form 10-K and to sign any and all amendments to such reports and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities & Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant in the capacities indicated on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Alessandro Sodi</u> Alessandro Sodi	Chief Executive Officer, President, Director (Principal Executive Officer)	<u>March 18, 2010</u>
<u>/s/ Steven P. Ruse</u> Steven P. Ruse	Chief Financial Officer (Principal Financial Officer)	<u>March 18, 2010</u>
<u>/s/ Donald Meisner</u> Donald Meisner	Treasurer (Principal Accounting Officer)	<u>March 18, 2010</u>
<u>/s/ Sharon Daniels</u> Sharon Daniels	Chief Marketing Officer, Director	<u>March 18, 2010</u>
<u>/s/ David Liptak</u> David Liptak	Director	<u>March 18, 2010</u>
<u>/s/ Peter Huljich</u> Peter Huljich	Director	<u>March 18, 2010</u>
<u>/s/ Rick Bettle</u> Rick Bettle	Director	<u>March 18, 2010</u>
<u>/s/ Mark Russell</u> Mark Russell	Director	<u>March 18, 2010</u>

## INDEX TO EXHIBITS

<b>Exhibit Numbers</b>	<b>Exhibits</b>
3.1 <sup>3</sup>	Amended and Restated Certificate of Incorporation
3.2 <sup>1</sup>	Amended and Restated Bylaws
4.1 <sup>1</sup>	Form of common stock certificate
10.1 <sup>1</sup>	Contribution Agreement dated October 1, 2007 between Diligent Board Member Services, LLC and Diligent Board Member Services, Inc.
10.2 <sup>1</sup>	Shareholder Restriction Deed dated November 1, 2007 among Diligent Board Member Services, Inc., Diligent Board Member Services, LLC and McDouall Stuart Securities Limited
10.3 <sup>1</sup>	Escrow Agreement dated November 7, 2007 among UMB Bank, N.A., Diligent Board Member Services, Inc. and Diligent Board Member Services, LLC
10.4.1 <sup>1</sup>	Promissory Note and Security Agreement dated October 1, 2007 in the principal amount of \$6,800,000 given by Diligent Board Member Services, LLC to the order of Diligent Board Member Services, Inc.
10.4.2	Prepayment and Amendment Agreement dated February 9, 2010 between Diligent Board Member Services, Inc. and Services Share Holding, LLC
10.5.1 <sup>1</sup>	Limited Pledge of Collateral for Loan dated February 18, 2008 given by Services Share Holding, LLC (f/k/a Diligent Board Member Services, LLC) to Diligent Board Member Services, Inc.
10.5.2 <sup>4</sup>	Amendment to Limited Pledge of Collateral for Loan dated January 14, 2009 given by Services Share Holding, LLC to Diligent Board Member Services, Inc.
10.5.3 <sup>4</sup>	Limited Pledge of Collateral for Loan dated January 14, 2009 given by Corcoran Consulting, LLC to Diligent Board Member Services, Inc.
10.6 <sup>1</sup>	2007 Stock Option and Incentive Plan of Diligent Board Member Services, Inc.
10.7 <sup>1</sup>	Form of Restricted Stock Award Agreement for restricted stock awards under the 2007 Stock Option and Incentive Plan
10.8 <sup>2</sup>	Service Agreement dated May 29, 2008 between Diligent Board Member Services, Inc. and Sugar International Limited
10.9 <sup>3</sup>	Stock Purchase Agreement dated February 13, 2009 among Diligent Board Member Services, Inc., Spring Street Partners, L.P. and Carroll Capital Holdings, LLC
10.10 <sup>3</sup>	Investor Rights Agreement dated March 11, 2009 among Diligent Board Member Services, Inc., Spring Street Partners, L.P. and Carroll Capital Holdings, LLC
10.11 <sup>5</sup>	Employment agreement of CFO Steven P. Ruse

10.12	Credit Facility established by Spring Street Partners, L.P. as Lender in favor of Diligent Board Member Services, Inc. as Borrower
21	Subsidiaries
25	Powers of Attorney executed by all officers and directors of the Company who have signed this report on Form 10-K
31.1	CEO Certification pursuant to Rule 13a-14(a)
31.2	CFO Certification pursuant to Rule 13a-14(a)
32.1	CEO Certification furnished pursuant to Rule 13a-14(b) and 18 U.S.C. 1350
32.2	CFO Certification furnished pursuant to Rule 13a-14(b)

<sup>1</sup> Filed with the Original Form 10 Filing on April 30, 2008.

<sup>2</sup> Filed with Amendment No. 3 to Form 10 Filing on February 12, 2009.

<sup>3</sup> Filed with Form 8-K Filing on March 13, 2009.

<sup>4</sup> Filed with Form 10-K Filing on March 30, 2009.

<sup>5</sup> Filed with Form 10-Q Filing on November 9, 2009.

**PREPAYMENT AND AMENDMENT AGREEMENT**

This Agreement, made as of this 9<sup>th</sup> day of February, 2010, by and between **Diligent Board Member Services, Inc.** (“Diligent”) located at 39 West 37<sup>th</sup> Street, 8<sup>th</sup> Floor, New York, NY 10018 and **Services Share Holding LLC** (“LLC”) located at 39 West 37<sup>th</sup> Street, 8<sup>th</sup> Floor, New York, NY 10018:

WHEREAS, LLC executed a promissory note for amounts loaned by Diligent to LLC, dated October 1, 2007, which Note currently has an outstanding balance of US\$7,167,791 (hereinafter the “Note”); and

WHEREAS, the Note is secured by the pledge by LLC of 21,667,597 shares of the common stock of Diligent owned by LLC (the “Pledged Stock”); and

WHEREAS, the parties hereto desire to agree upon certain prepayments on the principal balance of the Note and certain amendments to the terms of the Note as provided below.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **Cash Prepayment.**

Contemporaneous with the execution of this Agreement, the parties have entered into an Escrow Agreement with UMB Bank (the “Escrow Agreement”). LLC has deposited \$1,164,133 less brokerage commissions, if any, paid to McDouall Stuart, into the escrow account (the “Escrow Account”) created pursuant to the Escrow Agreement. The amount deposited represents the proceeds of the sale by LLC of 4,823,000 shares of the Pledged Stock. The final amount deposited may differ from the above based on the total number of shares sold by LLC. The amount deposited in the Escrow Account shall be distributed to Diligent as follows:

- a. \$89,522.39 shall be paid by Escrow Agent to Diligent on April 1, 2010 as payment of the interest payment due on April 1 under the Note.
- b. \$57,058.22 shall be paid to Diligent by Escrow Agent on May 28, 2010 as payment of the accrued interest due on the Note through that date.
- c. The remaining balance in the Escrow Account shall be paid to Diligent by Escrow Agent immediately following the consummation of the transaction in paragraph 2 and the amendment becoming effective pursuant to paragraph 3 below. This amount shall be applied to reduce the outstanding balance of principal due on the Note as of May 28, 2010 by the amount paid.
- d. Alternatively, the remaining balance in the Escrow Account shall be distributed to Diligent upon execution and delivery to Escrow Agent of written instructions to do so signed by representatives of Diligent and LLC.

- e. In the event that the cash prepayment is not made to Diligent as contemplated in 1c or d above, the remaining balance in the Escrow Account shall be distributed to Diligent by the Escrow Agent on October 1, 2010.

The provisions of this paragraph (1) shall survive any termination of this Agreement and shall continue in effect until the actions described in this paragraph 1 have been fully completed.

2. **Prepayment.**

At the Closing as defined in paragraph 3 below, LLC shall transfer all of its right, title and interest in 11,650,000 shares of the Pledged Stock to Diligent (hereinafter referred to as the "Transferred Shares"). In consideration of such transfer, Diligent shall credit LLC with a payment of US\$3,075,676 against the outstanding balance of principal due on the Note. This reflects a per share value of US\$0.264 being allocated as the value of each of the Transferred Shares. Attached as Exhibit A is the Off-Market Transfer Form to record the aforementioned transfer on Link Market Services' register. This form shall be executed and delivered by LLC and Diligent at the Closing, and filed by Diligent after the Closing. LLC agrees to execute any additional documents and do any other acts necessary to complete the transaction and record the transfer of the Transferred Shares to Diligent on Link Market Services' register. At the Closing, Diligent shall deliver to LLC a statement of the balance due on the Note as set forth in Exhibit B.

3. **Amendment of Note.**

Effective immediately following successful completion of the Closing, the Note shall be amended, without further action, as follows:

- a. Paragraph 1 shall be amended by inserting "Effective May 29, 2010," at the beginning of the paragraph and deleting "five percent (5%)" and inserting "six and one-half percent (6.5%)" in its place.
- b. Paragraph 2 of the Note is deleted in its entirety and is replaced with the following new paragraph 2:
  - "2. Maturity Date. This Note matures and shall be due and payable in full on October 1, 2012 (the "Maturity Date")."
- c. The first sentence of paragraph 3 of the Note is deleted in its entirety and replaced with the following new sentence: "Effective May 29, 2010, accrued and unpaid interest shall be payable, in arrears, on the first day of January of each calendar year until the Maturity Date."
- d. Paragraph 12 (b) of the Note shall be deleted in its entirety.

A signed copy of this Agreement shall be attached to the Note.

4. **Closing.**

The 2010 Annual Meeting of Diligent is scheduled for May 28, 2010 (the “Annual Meeting”). The holding of the Closing and the consummation of the transaction in paragraph 2 above, and the effectiveness of the amendment in paragraph 3 above, are conditioned upon the actions contemplated in these two paragraphs being approved at the Annual Meeting by a vote of the shareholders of Diligent eligible to vote on these matters. The Closing to consummate the prepayment transaction shall be held on the next business day in the U.S. following the vote by the shareholders at the 2010 Annual Meeting of Diligent approving the proposed prepayment and amendment (referred to herein as the “Closing”). The Closing shall be held in the headquarters offices of Diligent in New York City. If the shareholders do not approve the actions proposed in paragraphs 2 and 3 above, then this Agreement shall terminate and neither party shall have any further obligation to the other with respect to the subject matter hereof.

5. **Representations and Warranties.**

LLC hereby represents and warrants as follows:

- a. **No Conflicts.** The execution, delivery and performance of this Agreement will not breach, violate, require any consent, or constitute a default under any contract, agreement, instrument, or other commitment or any order, decree, judgment, or other edict to which the LLC is a party or any of its property is subject.
- b. **Ownership of the Shares.** The **LLC** is the lawful and sole owner of all of the Transferred Shares.
- c. **No Options, Warrants, Contract Rights Etc.** Other than the Pledge, (i) the LLC is not a party to any agreement, written or oral, creating rights in respect of the Transferred Shares in any third person or relating to the voting or disposition of the Transferred Shares, (ii) the LLC has the full power and legal right to sell, assign, transfer and deliver the Transferred Shares, (iii) there are no existing warrants, options, stock purchase agreements, redemption agreements, restrictions of any nature, calls or rights to subscribe of any character relating to the Transferred Shares.
- d. **Authority.** The LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The transactions contemplated by this Agreement have been duly authorized and approved by all necessary and appropriate action by the LLC.

6. **Entire Agreement.**

This Agreement contains the entire understanding and agreement between Diligent and LLC with respect to the subject matter hereof, and supersedes all other prior and contemporaneous proposals, representations, agreements, understandings and commitments between the parties with respect to the subject matter hereof.

**7. Variation or Amendment.**

No amendment or modification or variation of this Agreement will be effective unless the parties execute a written agreement signed by an authorized representative of each of them effecting such amendment, modification, or variation.

**8. Governing Law.**

The interpretation of this Agreement, and all matters related to this Agreement, will be governed and construed in accordance with the laws of the State of New York, USA, without reference to the choice of law provisions of New York law.

**9. No Assignment or Delegation.**

Neither Diligent nor LLC may assign this Agreement, in whole or in part, nor assign any of its rights hereunder or delegate any of its duties hereunder, to any third party without the prior written consent of the other party.

**10. Board Approval.**

This Agreement is subject to approval by the Diligent Board of Directors.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first above written.

**DILIGENT BOARD MEMBER SERVICES, INC.**

**BY:**

/s/ Alessandro Sodi \_\_\_\_\_

**Name:**     Alessandro Sodi    

**Title:**     President and Chief Executive Officer    

**SERVICES SHARE HOLDING LLC**

**BY:**

/s/ Sharon Daniels \_\_\_\_\_

**Name:**     Sharon Daniels    

**Title:**     Member

**CREDIT FACILITY  
ESTABLISHED  
BY  
SPRING STREET PARTNERS, L.P.  
AS LENDER  
IN FAVOR  
OF  
DILIGENT BOARD MEMBER SERVICES, INC.  
  
AS BORROWER**

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## CREDIT AGREEMENT

**THIS AGREEMENT** dated as of the 12th day of March, 2010.

**B E T W E E N :**

**DILIGENT BOARD MEMBER SERVICES, INC.**

(the “**Borrower**”)

– and –

**SPRING STREET PARTNERS, L.P.**

(the “**Lender**”)

**WITNESSES THAT** in consideration of the establishment of the Credit Facility by the Lender in favor of the Borrower and for good and valuable consideration (the receipt and sufficiency of which are hereby mutually acknowledged), the parties agree as follows:

### Interpretation

#### Definitions

For the purposes of this Agreement and where the context does not otherwise require, the following terms shall have the following meanings:

“**Affiliate**” of a Person means any other Person which, directly or indirectly, controls or is controlled by or is under common control with the first Person, and for purposes of this definition, “**control**” (including with correlative meanings the terms “**controlled by**” and “**under common control with**”) means the power to direct or cause the direction of the management and policies of any Person, through the ownership of shares or similar equity interests.

“**Agreement**” means this agreement and the schedules hereto and any amendments, restatements, modifications or supplements to this agreement or the schedules at any time and from time to time.

“**Applicable Law**” means, at any time, with respect to any Person, property, transaction or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (insofar as they have the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of any Governmental Authority or Persons having authority over any of the parties hereto.

“**Average Daily Balance**” means, over any given period of time, the sum of the daily principal balances of the Outstanding Borrowings as of 5:00 p.m. New York time for each day during such time period, divided by the number of days in such time period.

“**Books and Records**” mean all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the

collateral charged by the Security which are at any time owned by the Borrower or to which the Borrower (or any Person on the Borrower's behalf) has access.

**"Borrower"** means Diligent Board Member Services, Inc.

**"Borrowings"** means advances of money under the Credit Facility.

**"Business Day"** means a day on which banks are open for business in New York City, New York, other than a Saturday, Sunday, statutory or legal holiday.

**"Capitalized Lease Obligations"** means monetary obligations under any agreements for the lease or rental of real or personal property that in accordance with GAAP are required to be classified and accounted for as capital leases.

**"Closing Date"** means March 12, 2010 or such earlier or later date as may be mutually agreed upon by the Lender and the Borrower.

**"Commitment"** means the commitment of the Lender to advance to the Borrower the principal amount of up to US\$1,000,000 pursuant to the terms of this Agreement.

**"Commitment Fee"** means a fee of 0.5% per annum of the unused portion of the Commitment. For any given time period, the Commitment Fee shall be calculated by taking the product of (x) 0.5%, (y) [the number of days in such time period divided by 360], and (z) [\$1,000,000 minus the Average Daily Balance during such time period]. The Commitment Fee shall accrue daily in arrears.

**"Consolidated"** means when used to describe the calculation of any amount relating to the Borrower, consolidated, in accordance with GAAP.

**"Contaminant"** includes, but is not limited to, any pollutant, dangerous, toxic or hazardous substance or waste of any description whatsoever, hazardous materials or contaminants including any of the foregoing as defined in any Environmental Law.

**"Credit Facility"** means the Credit Facility made available by the Lender to the Borrower pursuant to the terms of this Agreement.

**"Default"** means any of the events described in 0 regardless of whether any requirement in connection with such event for the giving of notice, the lapse of time, or both, has been satisfied or met.

**"Default Rate"** means the per annum rate of interest equal to the Interest Rate plus, to the extent permitted by law, 5.0% per annum, but in no event shall such rate exceed the maximum rate permitted by Applicable Law.

**"Demand"** means any communication of demand for payment of all or any portion of the Outstanding Obligations, made in writing by the Lender.

**"Drawdown"** means the Lender's advance of funds to the Borrower in accordance with this Agreement and a drawdown request (each, a **"Drawdown Request"**) made by the Borrower in the form of that set forth as Schedule "F" hereto.

**“Environmental Activity”** means any past, present or future activity, event or circumstance in respect of a Contaminant, including, without limitation, its storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation or its Release into the natural environment including the movement through or in the air, soil, subsoil, surface water or groundwater.

**“Environmental Laws”** means any and all federal, provincial, state, municipal, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, licenses, agreements or other governmental restrictions having the force of law relating to the environment, occupational health and safety, health protection or any Environmental Activity.

**“Event of Default”** means any of the events specified in 0, provided that any requirement in connection with such event for the giving of notice, the lapse of time or both, has been satisfied or met.

**“Financial Year”** of an entity means the 12-month period ending on the fiscal year end of that entity in each year.

**“GAAP”** means generally accepted accounting principles which are in effect in the United States from time to time and applied in a consistent manner from period to period.

**“Governmental Authority”** means any nation or government, any province, state, municipality, local or other political subdivision thereof and any agency, instrumentality or other entity thereof exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**“Guarantee”** means, with respect to a Person, any absolute or contingent liability of that Person under any guarantee, agreement, endorsement (other than for collection or deposit in the ordinary course of business), discount with recourse or other obligation to pay, purchase, repurchase or otherwise be or become liable or obligated upon or in respect of any Indebtedness of any other Person and including any absolute or contingent obligations to:

advance or supply funds for the payment or purchase of any Indebtedness of any other Person,

purchase, sell or lease (as lessee or lessor) any property, assets, goods, services, materials or supplies primarily for the purpose of enabling any other Person to make payment of Indebtedness or to assure the holder thereof against loss, or

indemnify or hold harmless any other Person from or against any losses, liabilities or damages, in circumstances intended to enable such other Person to incur or pay any Indebtedness or to comply with any agreement relating thereto or otherwise to assure or protect creditors against loss in respect of such Indebtedness.

Each Guarantee shall be deemed to be in an amount equal to the amount of the Indebtedness in respect of which the Guarantee is given, unless the Guarantee is limited to a determinable amount in which case the amount of the Guarantee shall be deemed to be the lesser of the amount of the Indebtedness in respect of which the Guarantee is given and such determinable amount.

“**Indebtedness**” of a Person means, without duplication,

all debts, liabilities and obligations, direct, indirect, liquidated, unliquidated, contingent and other, including principal, interest, charges and fees, which in accordance with GAAP would be classified upon the Person’s balance sheet as liabilities including, without limitation, all Capitalized Lease Obligations and all Guarantees of such debts, liabilities and obligations; and

all obligations secured by any Security Interest, including principal, interest, charges and fees, existing on property owned or acquired by the Person subject to such Security Interest whether or not the Person has assumed or otherwise become liable for the payment of such obligations.

“**Intellectual Property**” means for the Borrower and, if applicable, each of its Subsidiaries:

inventions, discoveries, methods, letters patent, applications for letters patent, renewals, reissues, extensions, divisions, continuations and continuations-in-part;

trademarks and service marks (and the goodwill pertaining thereto), trade names or corporate names and any application, registration, or renewal pertaining thereto;

copyright in works, including, but not limited to, computer software, documentation, source code, object code and all registrations and records thereof and any programmable media, paper or other media on which such works are fixed;

industrial designs, integrated circuit topographies and any registration thereof;

trade secrets, including know-how, ideas, plans, algorithms, hardware, firmware and architectures, whether in written, graphic or oral form;

applications or registrations set out in Schedule “I”;

any future developments or improvements relating to intellectual and industrial property set out in (i) to (vi) above;

the right to take action for any infringement of rights in intellectual and industrial property prior to execution of this Agreement; and

any option or right to make, use, sell, copy, modify, distribute, have made, create derivative works from or sublicense any intellectual or industrial property, including, without limitation, all rights acquired under any License Agreement

in New Zealand, the United States and all other countries worldwide.

“**Interest Payment Date**” means the first Business Day of each April, July, October and January during the Term.

“**Interest Rate**” means an interest rate of 9.50% per annum.

“**Interim Interest**” means the interest payable at the Interest Rate for the period, if any, between the Closing Date and the first Interest Payment Date.

“**Lender**” means Spring Street Partners, L.P.

“**License Agreements**” means all agreements pursuant to which the Borrower has obtained rights or an option to acquire rights or has granted to a Person rights or an option to acquire rights to use any Intellectual Property owned by a Person or the Borrower, respectively.

“**LLC Agreement**” means that certain Prepayment and Amendment Agreement, dated February 9, 2010, by and between the Borrower and Services Share Holding LLC.

“**Maturity Date**” means the date which is eighteen (18) months from the Closing Date.

“**Note**” means the promissory note of the Borrower substantially in the form set forth in Schedule “E”.

“**Outstanding Borrowings**” means, at the time of determination, the outstanding principal amount of the Credit Facility.

“**Outstanding Obligations**” means the aggregate of (i) Outstanding Borrowings, (ii) all unpaid interest and fees thereon as herein provided, (iii) all other indebtedness, liabilities and obligations (including without limitation under any indemnities) and all other fees (including Commitment Fees), charges and expenses required to be paid by the Borrower to the Lender hereunder or pursuant to the Security or any other written agreements now or hereafter entered into between the Borrower and the Lender pertaining to the Credit Facility.

“**Permitted Asset Sale**” means (a) any license of Intellectual Property in the ordinary course of the Borrower’s business or (b) a sale, transfer, lease, contribution or other conveyance by the Borrower of any asset, real or personal, excluding Intellectual Property, which satisfies any one of the following conditions:

such sale, transfer, lease, contribution or conveyance is in the ordinary course of its business;

such sale, transfer, lease, contribution or conveyance is between the Borrower and any Affiliate of the Borrower; or

the net proceeds from any sale, transfer, lease, contribution or conveyance are applied to acquire replacements of any assets which are the subject of such sale, transfer, lease, contribution or conveyance.

“**Permitted Encumbrances**” means:

inchoate or statutory priorities, liens or trust claims for taxes, assessments and other governmental charges or levies which are not delinquent or the validity of which are currently being contested in good faith by appropriate proceedings provided that there shall have been set aside a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto;

the right reserved to, or vested in, any municipality or Governmental Authority by the terms of any lease, license, franchise, grant, or permit, or by any statutory

provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition of the continuance thereof;

inchoate or statutory liens of contractors, subcontractors, mechanics, suppliers, material men and others in respect of construction, maintenance, repair or operation of assets or properties, or other like possessory liens and public utility liens provided the same are being contested by the Borrower in good faith by appropriate and timely proceedings;

security given to a public utility or other Governmental Authority or other public authority when required by such utility or Governmental Authority in connection with the operations of the Borrower in the ordinary course of business;

title defects which are of a minor nature and in the aggregate will not materially impair the value or use of the property for the purposes for which it is held;

the Security;

Security Interests securing Purchase Money Obligations up to a maximum aggregate amount of US\$300,000, provided the Security Interest charges only the asset which is the subject of the Purchase Money Obligations and no other asset;

Security Interests identified in Schedule "G" annexed hereto;

Security Interests, other than those described in this subsection 0, the existence of which have been disclosed in writing to the Lender and consented to by the Lender in writing; and

Security Interests securing Capitalized Lease Obligations.

**"Permitted Indebtedness"** means the following Indebtedness of the Borrower:

the Outstanding Obligations;

current accounts payable arising in the ordinary course of business from the purchase of goods and services;

any other Indebtedness specifically permitted hereunder;

Capitalized Lease Obligations and Purchase Money Obligations, including, without limitation, Indebtedness to non-vendor third parties incurred to finance the acquisition of new assets;

Subordinated Debt; and

Indebtedness in respect of which the Lender has given its prior written consent as to existence and ranking.

**"Person"** includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof and any other incorporated or unincorporated entity.

“**Property**” means any personal or real property owned, leased, occupied or under the charge, management or control of the Borrower.

“**Purchase Money Obligations**” means the outstanding balance of the purchase price of real and/or personal property, title to which has been acquired or will be acquired upon payment of such purchase price, or Indebtedness to non-vendor third parties incurred to finance the acquisition of such new or replacement real and/or personal property or any refinancing of such Indebtedness or outstanding balance.

“**Release**” includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, pour, emit, empty, throw, dump, place, escape, leach, disperse, migrate and exhaust, and when used as a noun (as applicable) has the same meaning.

“**Security**” means the security and agreements described in 0 and any additional security issued from time to time by any Person in support of the liabilities and obligations of the Borrower hereunder.

“**Security Interest**” includes a mortgage, charge, floating charge, pledge, hypothecation, assignment, lien, encumbrance, conditional sale agreement or other title retention agreement, subordination trust or other security interest or arrangement of any kind or character intended to create a security interest in substance regardless of whether the person creating the interest retains an equity of redemption, and any agreement to provide or enter into at any time or on the happening of any event such a security interest or arrangement.

“**Subordinated Debt**” means (i) Indebtedness (and any related Security Interest) which has been validly and absolutely postponed and subordinated in right of security, payment and collection and in all other respects to the repayment in full of the Outstanding Obligations and any refinancing thereof which is subordinated and postponed to the same extent and (ii) all other debt subordinated to the Outstanding Obligations which the Lender is prepared to include within the definition of “**Subordinated Debt**” in its sole and unfettered discretion.

“**Subsidiary**” means a body corporate which is a subsidiary of the Borrower or another body corporate.

“**Tax**” and “**Taxes**” include all present and future taxes, levies, imposts, stamp taxes, duties, charges to tax, fees, deductions, withholdings and any restrictions or conditions resulting in a charge to tax and all penalties, interest and other payments on or in respect thereof.

“**Term**” means a period of eighteen (18) months from and after the Closing Date.

“**United States Dollars**”, “**US Dollars**” and “**US\$**” each means lawful money of the United States of America.

“**Written**” and “**In Writing**” shall include printing, typewriting or any electronic means of communication capable of being visibly reproduced at the point of reception including telecopy.

## United States Currency

Unless otherwise specified herein, all amounts and values referred to in this Agreement shall be calculated in US Dollars.

## Interest Calculation

All annual rates of interest or other periodic fees referred to herein are based on a calendar year of 360 days (unless specifically stated otherwise). Interest on the Outstanding Borrowings shall accrue daily in arrears.

## Headings and Table of Contents

The division of this Agreement into Articles and Sections and the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

## References

All references to Sections, Articles and Schedules are to Sections and Articles of and Schedules to this Agreement. The words "hereto", "herein", "hereof", "hereunder", "this Agreement" and similar expressions mean and refer to this Agreement.

## Number and Gender

Where the context so requires, words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.

## Maximum Interest Rate

In the event that any provision of this Agreement would oblige the Borrower to make any payment of interest or any other payment which is construed by a court of competent jurisdiction to be interest in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lender of interest at a criminal rate, then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted *nunc pro tunc* to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows:

firstly, by reducing the amount or rate of interest required to be paid under 0 of this Agreement; and

thereafter, by reducing any fees, commissions, premiums and other amounts which would constitute interest for the purposes of the Applicable Law;

If, notwithstanding the provisions of clause (1) of this Section and after giving effect to all adjustments contemplated thereby, the Lender shall have received an amount in excess of the maximum permitted by such clause, then such excess shall be applied by the Lender to the reduction of the principal balance of the Outstanding Borrowings and not to the payment of interest or if such excessive interest exceeds such principal balance, such excess shall be refunded to the Borrower; and

Any amount or rate of interest referred to in this Section shall be determined in accordance with GAAP at an effective annual rate of interest over the term of this Agreement on the

assumption that any charges, fees or expenses that fall within the meaning of “interest” (as defined under Applicable Law) shall, if they relate to a specific period of time, be prorated over that period of time and otherwise be prorated over the Term of this Agreement and, in the event of dispute, a certificate of a nationally recognized independent auditor appointed by the Lender shall be conclusive for the purposes of such determination.

## Schedules

The Schedules forming part of this Agreement are as follows:

<b><u>Schedule</u></b>	<b><u>Description</u></b>
Schedule “A”	– Form of Opinion
Schedule “B”	– Litigation
Schedule “C”	– Owned Properties
Schedule “D”	– Leased Properties
Schedule “E”	– Form of Promissory Note
Schedule “F”	– Form of Drawdown Request
Schedule “G”	– Permitted Encumbrances
Schedule “H”	– Location of Assets
Schedule “I”	– Intellectual Property
Schedule “J”	– Licenses
Schedule “K”	– Subsidiaries
Schedule “L”	– Predecessor/Trade Names

## Credit Facility

### Credit Facility.

Subject to the provisions of this Agreement, and in reliance upon the representations and warranties made under this Agreement, the Lender agrees to make available to the Borrower a revolving term Credit Facility in the principal amount of US\$1,000,000 and allow Borrower to borrow, repay and re-borrow from the Lender in an amount up to, but not exceeding, the Commitment, with any such borrowed monies to be advanced to the Borrower by the Lender in one or more Borrowings during the Term.

### Illegality

If the introduction of or any change in any Applicable Law or in the interpretation or application thereof by any court or by any Governmental Authority charged with the administration thereof, makes it unlawful or prohibited for the Lender to make, to fund or to maintain its Commitment or to perform any of its obligations under this Agreement, the Lender may, by thirty (30) days written notice to the Borrower (unless the provision of the Applicable Law requires earlier prepayment in which case the notice period shall be such shorter period as required to comply with the Applicable Law), terminate its obligations under this Agreement and in such event, the Borrower shall prepay such Borrowing forthwith (or at the end of such period as the Lender in its discretion agrees), without notice or penalty, together with all accrued but unpaid interest and fees as may be applicable to the date of payment.

## Procedures Applicable to Borrowings

### Written Instructions

The Lender shall act upon the written instructions of the Chief Executive Officer or Chief Financial Officer of the Borrower or any Person whom the Chief Executive Officer or Chief Financial Officer has identified in writing as being a Person authorized to give instructions regarding matters contemplated by this Agreement, including, without limiting the generality of the foregoing, the Credit Facility. The Lender shall not be responsible for any error or omission relating to such instructions. The Borrower may revoke the authority of any authorized Person by notifying the Lender in writing, which notice shall be effective immediately.

### Drawdown Procedure

All requests for a Drawdown under the Credit Facility shall be made by the Borrower. The Borrower shall submit to the Lender a Drawdown Request, no later than 12:00 noon, New York time, no less than three (3) Business Days prior to the proposed Drawdown date. Each such Drawdown Request shall be given and signed by the Borrower and shall specify (i) the aggregate principal amount of the Drawdown requested from the Lender (which amount shall not be in excess of the unused portion of the Commitment), (ii) the proposed Drawdown date of such funds, (iii) the wire transfer instructions for payment and (iv) such other matters as are set forth on the form of Drawdown Request attached hereto as Schedule "F". Each Drawdown Request shall be in a minimum aggregate amount of \$100,000 or a higher integral multiple of \$100,000. The Lender shall conclusively be entitled to rely upon such Drawdown Request from the Borrower and shall have no liability to the Borrower for acting in accordance with any such Drawdown Request.

## Payments

### Repayment

Fees, interest and principal amounts due pursuant to Credit Facility shall be repaid as follows:

- if applicable, by way of a payment of Interim Interest on the Average Daily Balance at the Interest Rate in arrears, for the period commencing on the Closing Date, through and including the day preceding the first Interest Payment Date;
- by way of quarterly interest-only payments, made in arrears, each such payment to be made on the applicable Interest Payment Date and in the amount calculated by taking the product of (i) the Average Daily Balance since the prior Interest Payment Date and (ii) the Interest Rate, and dividing that number by 4; and
- by way of quarterly payments, made in arrears on each Interest Payment Date, of the Commitment Fee, in each case calculated over the period of time since the most recent payment of the Commitment Fee.

All Outstanding Obligations shall be repaid in full by the Borrower no later than the Maturity Date.

## Prepayment

Notwithstanding anything herein to the contrary, 100% of the net proceeds of the disposition of any asset of the Borrower, or any Subsidiary of the Borrower, other than proceeds generated by Permitted Asset Sales, shall be paid to the Lender forthwith upon receipt as a permanent reduction of the Credit Facility.

At any time, upon five (5) business days prior written notice to the Lender, the Borrower may prepay the Credit Facility, in whole or in part. Any partial prepayments shall go first to paying any accrued but unpaid interest and fees, with any remainder being used to reduce the amount of the Outstanding Borrowings. At any time, upon five (5) business days prior written notice to the Lender, the Borrower may terminate this Agreement and the Credit Facility by paying to the Lender (i) the entire amount of the Outstanding Obligations, (ii) an early termination fee in the amount of the Commitment Fee, as measured over the period of time from the date of prepayment until the Maturity Date and assuming that the Average Daily Balance during such time period is \$0, and (iii) any and all other monies owed to the Lender in connection with the Credit Facility.

## Payments Generally

Subject to 0, each payment under this Agreement shall be made at or before 1:00 p.m. (New York time) on the applicable Interest Payment Date, in arrears.

The Borrower shall make all payments required to be made hereunder electronically to Spring Street Partners, L.P. at:

**[REDACTED]**

## No Credit for Trust Funds

For greater certainty, payments of any nature whatsoever made by the Borrower to the Lender which the Lender is required to pay to any Person by reason of any trust imposed by law or by any Person upon amounts received by the recipient from the Borrower, shall not be credited against, or deemed to be payment on account of, all or any portion of the Outstanding Borrowings. All reasonable costs and expenses incurred by the Lender or its representatives and attorneys in connection with the repayment of such monies to any Person shall be for the account of the Borrower and payable on demand. Interest shall accrue on these costs and expenses, until paid, at the Default Rate.

## Payments of Principal and Interest

The Borrower shall make payments of the Outstanding Obligations as contemplated by 0 and 0, and in accordance with the terms and provisions of the Note, until the Credit Facility is paid in full.

## Use of Proceeds

The proceeds of the Credit Facility shall exclusively be used by the Borrower to fund working capital, including, without limitation, the purchase of equipment. For greater certainty, the

Borrower covenants and agrees that no part of the Credit Facility shall be used to redeem or pay dividends upon any issued and outstanding shares in the capital of the Borrower.

#### The Credit Facility and the Note

The obligation of the Borrower to repay the unpaid principal amount and interest on the Credit Facility shall be evidenced by the Note. The Lender may, and is hereby authorized by the Borrower to, endorse on the grid appended to the Note appropriate notations regarding the Credit Facility and the dates and amounts of any Drawdowns made hereunder; provided, however, that the failure to make, or an error in making, any such notation shall not limit or otherwise affect the obligations of the Borrower hereunder or under the Note.

#### Other Payment Terms

Notwithstanding any other provisions of this Agreement, the Borrower shall make all payments due to the Lender in US Dollars, which payments shall be made in immediately available funds, in the manner set forth in Section 4.03.

### Interest, Fees and Expenses

#### Interest on Overdue Amounts

Upon an Event of Default relating to the payment of principal, interest or any other amount due under this Agreement, the Borrower shall pay interest on such overdue amount both before and after judgment at the Default Rate, computed from the date such amount becomes overdue for so long as such amount remains overdue. Such interest shall be payable upon Demand by the Lender and shall be compounded on each Interest Payment Date.

#### Reimbursement of Expenses

All reasonable statements, reports, certificates, Security registrations, opinions and other documents or information required to be furnished to the Lender by the Borrower under this Agreement shall be supplied without cost to the Lender. The Borrower agrees to pay all of the Lender's reasonable legal, financial and other out-of-pocket transaction fees and expenses, including due diligence investigations incurred in connection with the preparation, negotiation, documentation and operation of this Agreement, and any and all other documents prepared on or before the date hereof in connection herewith, whether or not any amounts are advanced under this Agreement. In addition to the foregoing, the Borrower agrees to pay the reasonable legal fees, disbursements and other expenses incurred by the Lender subsequent to the date hereof in connection with the amendment, restatement, modification, enforcement or preservation of any rights under this Agreement and all documents delivered in connection herewith, including, without limitation, the Note. The Lender may, in its discretion, add any such amounts discussed in this 0 to the amount of the Outstanding Borrowings if any such amount is not reimbursed by the Borrower within thirty (30) days of the date such expense was incurred by Lender.

#### Reimbursement for Expenses

If, for any reason, the Borrower does not proceed with this transaction, fails to execute final documentation with the Lender or does not utilize the Credit Facility, then the Lender shall be entitled to reimbursement for all reasonable out-of-pocket disbursements and expenses incurred in connection herewith.

## Conditions Precedent

### Conditions - Credit Facility

The obligation of the Lender to advance the Credit Facility under this Agreement is subject to the terms and conditions of this Agreement and is conditional upon satisfactory evidence being given to the Lender and its counsel as to compliance with the following conditions, on or before the Closing Date and at the time of each Drawdown (unless otherwise indicated):

Representations and Warranties True. The representations and warranties contained in 0 of this Agreement are true and correct as of the Closing Date, and shall continue to be true and correct in every material respect during the Term as if made by the Borrower on the Closing Date.

Resolutions and Certificates. The Lender shall have received, duly executed and in form and substance satisfactory to it:

a copy of the Certificate of Incorporation and by-laws of the Borrower and a copy of the resolutions of the board of directors of the Borrower authorizing the execution, delivery and performance of this Agreement, the Security and any other instruments contemplated hereunder, certified by an appropriate officer of the Borrower (with such resolutions and consents to evidence the consent of a disinterested majority of the Borrower's Board of Directors and approval of not less than 60% of the shares of the Borrower's Series A preferred stock) (delivered on Closing Date only);

a Certificate of Good Standing from the Secretary of State of the State of Delaware (delivered on Closing Date only);

a certificate of incumbency for the Borrower showing the names, offices and specimen signatures of the officers who will execute this Agreement, the Security and any other instruments contemplated hereunder and thereunder (delivered on Closing Date only); and

such additional supporting documents as the Lender or its counsel may reasonably request.

Delivery of Security. The Lender shall have received the Security (together with any necessary consents, estoppels, confirmations, priorities agreements or subordinations of third parties as may be required by the Lender) duly executed by the issuer thereof and in form and substance satisfactory to the Lender and its counsel.

Registration. The Security has been registered, recorded or filed in all jurisdictions deemed necessary by the Lender and its counsel.

Indebtedness. Except for the Permitted Indebtedness, the Borrower shall not have any other Indebtedness.

Legal Opinions. The Lender shall have received from Robert Norton, general counsel to the Borrower, a favorable legal opinion in connection with this Agreement, and the Security,

substantially in the form of the opinion annexed as Schedule "A" hereto (delivery on Closing Date only).

No Default. No Default or Event of Default has occurred and is continuing.

Organization and Capital Structure. The Lender shall be satisfied with the organizational and capital structure of the Borrower. The Lender agrees and confirms that it is satisfied with the Borrower's organizational and capital structure as of the Closing Date for purposes of this subsection (8).

Material Adverse Change. Nothing shall have occurred nor any fact become known to the Lender of which the Lender was not aware at the date of this Agreement and which is reasonably likely to have a material adverse effect on the general affairs, financial condition, business, property or assets of the Borrower or creates a material impairment in the prospect of repayment of any portion of the Credit Facility to be advanced by the Lender or results in a material impairment of the value or priority of the Lender's Security Interest.

Transaction Expenses. The Lender shall have received payment in full of all reasonable fees and out of pocket expenses payable to the Lender which have become due on or before the Closing Date (including payment of all fees and expenses of counsel to the Lender).

Insurance. The Lender shall have received certificates of insurance in accordance with 0.

Material Contracts. Lender shall be satisfied that all material agreements, contracts, permits, licenses and leases of the Borrower are in full force and effect and that the Borrower and the other parties thereto are not in default thereunder.

Security Interests. All Security Interests or secured convertible debentures charging any asset of the Borrower, other than Security Interests in favor of the Lender and Permitted Encumbrances, shall have been (i) discharged, (ii) fully subordinated and postponed in right of security and payment in favor of the Lender's Security and the Outstanding Obligations, or (iii) if applicable, converted into equity securities of the Borrower.

Financial Performance. The Lender shall have received a certificate from the Borrower, and any supporting financial documentation that the Lender may reasonably request, indicating that the Borrower has achieved in the aggregate projected quarterly annualized license fees during its two (2) most recent fiscal quarters, and has maintained its expenses, all in accordance with the Borrower's most recent annual budget.

Waiver

The terms and conditions stated in this 0 are inserted for the sole benefit of the Lender and may be waived by it in writing in whole or in part and with or without terms or conditions.

## REPRESENTATIONS AND WARRANTIES

### Representation and Warranties

The Borrower represents and warrants to the Lender that on the Closing Date and, where applicable, as of the date of each Drawdown:

Due Incorporation. The Borrower is a corporation duly incorporated, organized and in good standing under the laws of the State of Delaware. The Borrower has all necessary corporate power and authority to own its properties and assets and to carry on business as now conducted and is duly licensed or registered or otherwise qualified to carry on business in all jurisdictions wherein the nature of its assets or the business transacted makes such licensing, registration or qualification necessary, including, without limitation, the States of Delaware, New York and the nation of New Zealand, except where failure to do so would not have a material adverse effect on such assets or the ability of the Borrower to perform its obligations hereunder.

Power. The Borrower has full corporate power and capacity to enter into, deliver and perform its obligations under this Agreement, the Note, the Security and all other instruments contemplated hereunder.

Due Authorization and No Conflict. The execution, delivery and performance by the Borrower of this Agreement, the Note, the Security, and all other instruments contemplated hereunder and the consummation of the transactions contemplated hereby and thereby:

have been duly authorized by all necessary corporate action;

do not and will not conflict with, result in any breach or violation of, or constitute a default under the Certificate of Incorporation or by-laws of, or any Applicable Laws, determination or award presently in effect and applicable to the Borrower, or of any commitment, agreement or any other instrument to which the Borrower is now a party or is otherwise bound;

do not (except for the Security) result in or require the creation of any Security Interest upon or with respect to any of the properties or assets of the Borrower; and

do not require the consent or approval (other than those consents or approvals already obtained and copies of which have been delivered to the Lender) of, or registration or filing with, any other party (including shareholders or directors of the Borrower) or any Governmental Authority having jurisdiction except for filings in connection with the perfection of the Security Interests created by the Security.

Valid and Enforceable Obligations. This Agreement, the Note, the Security and all other instruments contemplated hereunder to which the Borrower is a party, are, or when executed and delivered to the Lender will be, legal, valid and binding obligations of the Borrower enforceable by the Lender in accordance with their respective terms.

Title. Subject only to Permitted Encumbrances, the Borrower has good and marketable title to its real and personal property, free and clear of all Security Interests.

Validity and Priority of Security. Subject only to Permitted Encumbrances, the Security creates a valid first priority, charge, lien and security interest on the accounts receivable of the Borrower.

No Actions. Save as set forth in Schedule "B", there are no actions, suits, proceedings, inquiries or investigations existing or, to the knowledge of the Borrower, pending, threatened or affecting the Borrower in any court or before or by any federal, state or municipal or other governmental department, commission, board, tribunal, bureau or agency, domestic or foreign, which are reasonably likely to affect adversely the financial condition, property, assets, operations or business of the Borrower, the ability of the Borrower to repay the Outstanding Obligations or any part thereof or which are reasonably likely to affect adversely the ability of the Borrower to perform any of its obligations under this Agreement, the Note, the Security or any other instrument contemplated hereunder, or the validity or enforceability of this Agreement or the Security.

No Material Adverse Change or Event of Default. No event has occurred and is continuing, and no circumstance exists which has not been waived, and which constitutes a Default or Event of Default hereunder or, to the best of the Borrower's knowledge, a default or event of default in respect of any material commitment, agreement or any other instrument to which the Borrower is now a party or is otherwise bound, entitling any other party thereto to accelerate the maturity of amounts of principal owing thereunder, or terminate any such material commitment, agreement or instrument, or which would have a material adverse effect upon the general affairs, financial condition, property, assets, operations or business of the Borrower.

Compliance with Law. The Borrower is not in violation of any terms of its Certificate of Incorporation or by-laws or, to the best of the Borrower's knowledge, of any law, regulation, rule, order, judgment, writ, injunction, decree, determination or award presently in effect and applicable to it, the violation of which would have a material adverse effect on the general affairs, financial condition, property, assets, operations or business of the Borrower.

Location of Assets. Schedule "C" contains the legal description of all real property owned by the Borrower. Set out in Schedule "D" is a list of all real property locations leased by the Borrower. Set out in Schedule "H" is a list of all real property locations in which any material asset owned by the Borrower is located and which locations are neither owned nor leased by the Borrower.

Subsidiaries. Other than as set out in Schedule "K" to this Agreement, the Borrower does not own any shares or voting securities of any Person and has no Subsidiaries. The Subsidiaries, collectively, do not have assets in excess of \$150,000.

Taxes. The Borrower has filed all foreign, federal, state and local tax returns which are required to be filed and has paid all Taxes due pursuant to such returns or pursuant to any assessment received by the Borrower except such Taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. The charges, accruals and reserves on the books of the Borrower in respect of any Taxes or other governmental charges are adequate.

Intellectual Property.

The Borrower solely owns or licenses pursuant to a License Agreement all Intellectual Property, necessary for the conduct in all material respects of its business as now conducted without any conflict known to the Borrower with the rights of others, and in each case free from any Security Interest except for Permitted Encumbrances and the Security. No Intellectual Property of the Borrower has been dedicated to the public. Set out in Schedule "I" are all registered or applied for patents, patent applications, trademarks, trade names, copyrights, licenses and rights with respect to the Intellectual Property owned by the Borrower.

Any Intellectual Property that is not owned by the Borrower is used with the consent of or license from the rightful owner through the License Agreements set forth in Schedule "J" hereto; such License Agreements are valid and subsisting and in good standing and there are no defaults thereunder by the Borrower or, if applicable, its Subsidiaries. The Borrower has all rights necessary to use the Intellectual Property described in the License Agreements set out in Schedule "J" hereto, free from any Security Interest, except for Permitted Encumbrances and the Security.

Supplier and Trade Relations. There is not any actual or, to the best of the Borrower's knowledge and belief, threatened termination or cancellation of, or any material adverse change in, the business relationship between the Borrower and any supplier or vendor material to the operations of the Borrower.

Labor Matters. To the best of the Borrower's knowledge, there are no strikes or other labor disputes against the Borrower that are pending or threatened. All payments due from the Borrower on account of workers compensation, social security, employment insurance, employee health plans and insurance of every kind and employee income tax source deductions and vacation pay have been paid. The Borrower does not have any obligation under any collective bargaining agreement nor, to the best of the Borrower's knowledge, is there any organizing activity involving the Borrower by any labor union or group of employees. All employee and employer contributions under any pension plan operated by the Borrower have been made and the fund or funds established under such plans are funded in accordance with applicable regulatory requirements and there exists no going concern unfunded liabilities or solvency deficiencies thereunder.

Accuracy of Information. All factual information previously or contemporaneously furnished to the Lender by or on behalf of the Borrower in writing for purposes of or in connection with this Agreement or any transaction contemplated hereby, including, without limitation, any financial statement, budget, balance sheet or business plan, is true and accurate in every material respect and such information is not incomplete by the omission of any material fact necessary to make such information not misleading.

Solvency. The Borrower is solvent and is generally able to pay its debts as they become due and will be able to do so after giving effect to the transactions contemplated in this Agreement.

Chief Executive Office. The chief executive office, principal place of business and place where the Borrower keeps its non-financial Books and Records is located at 39 West 37th Street, 8th floor, New York City, New York 10018.

Financial Year End. The financial year end of the Borrower is the last day of December.

Guarantees. The Borrower has not guaranteed the obligations of any Person in respect of Indebtedness for borrowed money other than in connection with Permitted Indebtedness.

Authorized and Issued Capital. The authorized capital of the Borrower consists of 250,000,000 shares of common stock, par value \$0.001 per share, of which 90,440,000 shares are (as of the Closing Date) issued and outstanding, and 50,000,000 shares of preferred stock, all designated as Series A Preferred Stock, par value \$0.001 per share, of which 32,667,123 shares are (as of the Closing Date) issued and outstanding.

No Required Disposition. Except as set forth in Schedule "J", there is no existing agreement, option, right or privilege capable of becoming an agreement or option pursuant to which the Borrower would be required to sell or otherwise dispose of any of its personal property, including, without limitation, Intellectual Property.

Predecessor Names and Trade Names. Since the date of its incorporation, the Borrower has not used nor does it now use any name other than its current corporate name and any other names set out in Schedule "L" annexed hereto.

No Consumer Goods. The Borrower does not own any consumer goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of the Borrower.

Partnership. The Borrower is not in partnership with any Person nor is the Borrower and any of its Subsidiaries a participant in any joint venture.

No Claims. The Borrower does not have any existing claims against the Lender.

#### Compliance with Securities Laws

The Borrower is in compliance in all material respects with the provisions and requirements of all applicable securities laws, stock exchanges, regulations, rules and requirements of any jurisdiction having authority in relation to the Borrower, including, without limitation, the completion on a proper and timely basis of all necessary filings and reports under any and all such securities laws, regulations, rules and requirements (including those of applicable stock exchanges).

#### Disclosure

No representation or warranty made by the Borrower in this Agreement or any of the Security delivered by the Borrower contains any untrue statement of a fact or omits to state a material fact necessary in order to make the statements contained therein, taken as a whole, not misleading in light of the circumstances in which they were made.

#### Lender Representations and Warranties

The Lender represents and warrants to the Borrower that:

the Lender is a limited partnership whose primary place of business is located in New York City, New York, and all necessary approvals to authorize the execution of this Agreement on behalf of the Lender have been obtained;

the Lender has the right and authority to enter into this Agreement and make the advances of credit contemplated hereby;

the Lender is acquiring the Note as principal for its own account and not for the benefit of any other person;

the Lender is (i) an “accredited investor” within the meaning of the Securities Act of 1933; (ii) is acquiring the Note as an investment and not for resale, and (iii) is able to evaluate its investment in the Borrower on the basis of general business information respecting the Borrower presented by the Borrower;

the Lender has had the opportunity to ask and have answered any and all questions which the Lender wished to have answered with respect to the business and affairs of the Borrower;

#### Survival of Representations and Warranties

The representations and warranties contained in this 0 shall survive the execution and delivery of this Agreement and the making of Borrowings hereunder, regardless of any investigation or examination made by the Lender or its counsel. The Lender shall be deemed to have relied upon each of the Borrower’s representations and warranties in advancing the Credit Facility.

### COVENANTS

#### Positive Covenants

From the date hereof and until the Outstanding Obligations are repaid in full, the Borrower will observe and perform each of the following covenants, unless compliance therewith shall have been waived in writing by the Lender:

Existence. The Borrower will do or cause to be done all such things as are necessary to maintain its corporate existence in good standing, to ensure that it has, at all times, the right and is duly qualified to conduct its business and to obtain and maintain all rights, privileges and licenses necessary for the conduct of its business.

Conduct of Business. The Borrower will maintain, operate and use its properties and assets, and will carry on and conduct its business so as to preserve and protect such properties and assets and business and the profits thereof.

Payment of Principal, Interest and Expenses. The Borrower will duly and punctually pay or cause to be paid to the Lender the Outstanding Obligations at the times and places and in the manner provided for herein.

Payment of Taxes and Claims. The Borrower will pay and discharge promptly when due all Taxes, assessments and other governmental charges or levies imposed upon it or upon its properties or assets or upon any part thereof, as well as all claims of any kind (including claims for labor, materials and supplies) which, if unpaid, would by law become a lien, charge, trust or other claim upon any such properties or assets; but the Borrower shall not be required to pay any such Tax, assessment, charge or levy or claim if the amount, applicability or validity thereof shall be contested in good faith by appropriate proceedings and if the Borrower shall have set aside on its books a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto.

Use of Proceeds. The Borrower shall use the proceeds of all Borrowings exclusively for the purposes set forth in subsection 4.06.

Reserves. The Borrower will maintain appropriate reserves for Taxes and other contingent expenses or liabilities in accordance with GAAP.

Other Information. The Borrower shall furnish to the Lender promptly on written request therefor such other information in its possession respecting its financial condition and its business and affairs as the Lender may from time to time reasonably require.

Insurance.

Borrower shall obtain and maintain for the Term, at its own expense, and present Lender with certificates evidencing the following coverages:

“All Risk” property damage insurance against loss or damage. The coverage limit shall be at least equal to the balance sheet value of the tangible personal property of the Borrower. The deductible shall not exceed US\$25,000.

Commercial General Liability Insurance (including contractual liability, products and completed operations coverage) reasonably satisfactory to Lender. The limit of liability shall be at least equal to US\$1,000,000 per occurrence (inclusive of any excess umbrella liability coverage). The policy shall be without deductible, except for the products liability coverage which may have a deductible up to US\$10,000.

Such other insurance against risks of loss and with terms as shall be reasonably required by Lender. All policies of insurance shall be placed with financially sound, commercial insurers reasonably satisfactory to the Lender.

Books and Records. The Borrower will, at all times, maintain proper records and books of account in accordance with GAAP (except that the unaudited financial statements may not be in accordance with GAAP because of the absence of footnotes normally contained therein and are subject to normal year-end adjustments which in the aggregate will not be material) and therein make true and correct entries of all dealings and transactions relating to its business and, if requested in writing by the Lender, will make the same available for inspection by the Lender or any agent of the Lender at all reasonable times during normal business hours following reasonable notice.

Reporting Requirements. Borrower shall furnish to the Lender:

Financial Statements. Promptly as they are available and in any event: (i) within sixty (60) days of the end of each fiscal quarter of the Borrower, consolidated quarterly financial statements of the Borrower and any Subsidiaries; and (ii) within thirty (30) days of each month end, the unaudited, consolidated internal financial statements of the Borrower and any Subsidiaries.

Notice of Defaults. As soon as possible, and in any event within three (3) Business Days after the discovery of a Default or Event of Default, provide the Lender with an officer’s certificate setting forth the facts relating to or giving rise to such Default

or Event of Default and the remedial action which the Borrower has taken or proposes to take with respect thereto.

Miscellaneous. Such other information as the Lender may reasonably request from time to time.

Access. The Borrower will permit the Lender through its officers or employees or through any agents or consultants retained by it, upon request following reasonable notice, to have reasonable access during normal business hours and from time to time (but not more often than twice per year, unless the Lender has a good faith belief or concern regarding the Borrower's ability to meet its financial projections or repay the Outstanding Obligations, in which case the foregoing limitation shall not apply), to any of the Borrower's premises and, as reasonably requested by the Lender, to any records, information or data in its possession so as to enable the Lender to ascertain the state of the Borrower's operations, and will permit the Lender, to make copies of and abstracts from such records, information or data and will, upon request of the Lender and at Lender's expense (if such expenses are not immaterial), deliver to the Lender copies of such records, information or data.

Notice of Material Adverse Change. The Borrower will give to the Lender prompt written notice, and in any event within three (3) Business Days of the occurrence thereof, of any material adverse change in the general affairs, business, condition (financial or otherwise) of the Borrower or any of its Subsidiaries, or of any material loss, destruction or damage to its properties and assets, or if there is a material impairment of the prospect of repayment of any portion of the Outstanding Obligations owing to the Lender or a material impairment of the value or priority of the Lender's Security Interest in the Property.

Notice of Litigation. The Borrower will give to the Lender prompt written notice, and in any event within five (5) Business Days of the occurrence thereof, of any material action, suit, litigation, or other proceeding which is commenced or threatened against it and which has a claimed amount in excess of US\$100,000.

Registration of Security. The Borrower will provide the Lender with such assistance and do such things as the Lender may from time to time request so that the Security and any other instruments of conveyance or assignment effected pursuant to this Agreement or otherwise will be and remain registered, recorded or filed from time to time in such manner and in such places as may in the opinion of the Lender be necessary or advisable in perfecting the Security Interests constituted thereby.

Material Contracts. The Borrower shall perform all material obligations of the Borrower pursuant to all documents, contracts and agreements material to the operations of the Borrower, subject to any good faith disputes by the Borrower with respect thereto.

Compliance with Laws. The Borrower shall comply in all respects with all Applicable Laws, non-compliance with which could have a material adverse effect on Borrower's business or operations.

New Locations. The Borrower shall advise the Lender in writing not less than thirty (30) days' prior to the Borrower: (i) changing the location of its registered office, principal place of business or the location of its records or acquiring any such new locations; (ii) establishing new places of business; (iii) keeping, maintaining or storing inventory at any

location other than the locations listed in Schedules “C”, “D” or “H” ; or (iv) changing its corporate name or domicile. Upon any event described in subparagraph (iii) above, Schedules “C”, “D” or “H”, as applicable, shall be deemed to be amended to reflect such occurrence without the requirement of any further action.

Maintenance of Equipment and Similar Assets. The Borrower, in accordance with commercially reasonable standards, shall keep and maintain all items of equipment and other similar types of personal property in good operating condition and repair and shall make all necessary replacements thereof and renewals thereto so that the value and operating efficiency thereof shall, at all times, be maintained and preserved, ordinary wear and tear excepted.

Maintenance of Intellectual Property. The Borrower shall pay all fees and take all commercially reasonable steps necessary in a prompt and diligent manner to keep and maintain the Intellectual Property in force, updated, valid and enforceable and to maintain the confidential, proprietary nature of all trade secrets, know how and other unregistered Intellectual Property.

Additional Security. In the event that the Borrower acquires or incorporates a Subsidiary with assets, rights or property with a book value (as determined by the financial statements of such Subsidiary) in excess of US\$100,000 or an existing Subsidiary (or any Subsidiary of a Subsidiary), acquires assets, rights or property with a book value (as determined by the financial statements of such Subsidiary) in excess of US\$100,000 outside of the ordinary course of business, the Borrower shall forthwith deliver to the Lender, in form and substance satisfactory to the Lender and its counsel,

an instrument or instruments of the Subsidiary in favor of the Lender and pursuant to which the Subsidiary shall guarantee the Outstanding Obligations of the Borrower, postpone the indebtedness, liabilities and obligations of the Borrower to such Subsidiary to the Outstanding Obligations of the Borrower, grant a general security interest in favor of the Lender as security for its obligations to the Lender pursuant to such guarantee and represents and warrants substantially as to the matters referred to in Section 7.01 as they would relate to such Subsidiary;

certified copies of the certificate of incorporation and by-laws of each of such Subsidiary and of the resolutions of the board of directors of each of such Subsidiary approving the aforesaid instruments and approving the giving of any financial assistance and of all documents evidencing other necessary corporate action of each such Subsidiary and any shareholder agreement to which the Borrower may be a party with respect to its shareholding in such Subsidiary and government approvals, if any, with respect to the aforesaid instruments;

a certificate of a senior officer of the Subsidiary certifying the jurisdiction of incorporation of the Subsidiary, a description of each type of material property or assets, whether tangible or intangible, of the Subsidiary and its location, the legal description of all property, owned or leased, and the location of each place of business, the chief executive office and the registered office or head office of the Subsidiary;

a certificate of status or good standing with respect to the Subsidiary and issued by the jurisdiction of incorporation of the Subsidiary;

a favorable legal opinion of such Subsidiary's counsel as to such matters as the Lender may reasonably request; and

such other certificates and documentation as the Lender may reasonably request.

#### Restrictive Covenants

From the date hereof and until the Outstanding Obligations are paid in full, the Borrower shall adhere to the following covenants unless waived in writing by the Lender:

Not to Merge, etc. The Borrower and each of its Subsidiaries shall not enter into any transaction or series of related transactions (whether by way of merger, conversion, winding-up, consolidation, reorganization, reconstruction, combination, continuance, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, properties, rights or assets would become the property of any other Person or, in the case of merger or conversion, of the continuing corporation resulting therefrom without the prior written consent of the Lender.

Indebtedness. The Borrower shall not create, assume, issue or permit to exist, directly or indirectly, any Indebtedness except for Permitted Indebtedness without the prior written consent of the Lender.

Negative Pledge. Except for Permitted Encumbrances or Purchase Money Obligations, the Borrower shall not create, assume, incur or suffer to exist any Security Interest in or upon any of the property charged by the Security, including, without limitation, Intellectual Property, without the prior written consent of the Lender.

No Guarantees. The Borrower shall not be or become liable, directly or indirectly, contingently or otherwise, for any obligation of any other Person by Guarantee other than as permitted hereunder, without the prior written consent of the Lender.

Restrictions on Subsidiaries, Investments and Loans. The Borrower shall not, without the prior written consent of the Lender, directly or indirectly, (i) acquire or form any Subsidiary after the date hereof, unless it has complied with the provisions of 0 in connection therewith; or (ii) make any loan or loans to or an equity investment or investments (a "**Permitted Investment**") in excess of US\$50,000 in, or purchase or otherwise acquire or hold any shares or securities of any single Person. For greater certainty, nothing contained in this Agreement shall restrict the ability of the Borrower to enter into any type or amount of treasury bill investment and other term deposits with financial institutions in the ordinary course of business. Except where such business association is in the ordinary course of its business and does not materially or adversely affect the assets of the Borrower or the Security, the Borrower shall not become a partner in any partnership or a participant in any joint venture without the prior written consent of the Lender.

Transactions with Affiliates. The Borrower shall not enter into or consummate a transaction of any kind with any of its Affiliates or any of their respective Affiliates other than (i) compensation and employment arrangements with directors or officers in the ordinary course of business, provided that no payment of any bonus shall be permitted if a Default

or Event of Default has occurred and remains in effect or would be caused by or result from such payment; (ii) transactions with the Lender or any Affiliate of the Lender; (iii) payments permitted under and pursuant to written agreements entered into by and between the Borrower and one or more Affiliates that both (A) reflect and constitute an arm's length transaction between unrelated parties of equal bargaining power, (B) are subject to such terms and conditions as determined by the Lender in its sole discretion, and (C) are, collectively, not more than \$50,000; (iv) carrying out the transactions contemplated by the LLC Agreement; and (v) transactions with a Subsidiary in the ordinary course of business (in relation to what is ordinary as of the Closing Date).

Relocation of Assets. The Borrower shall not locate or permit to be situated any of its present or after-acquired property or assets in any jurisdiction other than as set out in Schedule "C", Schedule "D" or Schedule "H" or assets in transit in the ordinary course of business without having first notified the Lender in writing.

Disposition of Assets. The Borrower and each of its Subsidiaries shall not sell, assign, transfer, convey, lease (as lessor), license, contribute or otherwise dispose of, or grant options, warrants or other rights with respect to the property charged by the Security, other than Permitted Asset Sales and non-exclusive licenses of Intellectual Property in the ordinary course of business, without the prior written consent of the Lender.

Material Contracts. The Borrower shall not cancel or terminate any material contract or amend nor otherwise modify any material contract, or waive any default or breach under any material contract, or take any other action in connection with any contract that would have a material adverse effect on the business or affairs of the Borrower.

Charter Documents; Name; Jurisdiction of Organization. The Borrower shall not (i) amend, modify, restate or change its certificate of incorporation or formation or bylaws or similar charter documents in a manner that would be adverse to the Lender, (ii) without at least thirty (30) days prior written notice to the Lender, change its name or jurisdiction of incorporation, or (iii) wind up, liquidate, dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing.

Intellectual Property Escrow. Except as set forth in Schedule "J", the Borrower hereby covenants with the Lender that it has not, and shall not, place any of its Intellectual Property, including, without limitation, any source code (the "Escrowed Intellectual Property") in escrow, without first ensuring that the beneficiary of such escrow would only be able to use the Escrowed Intellectual Property to update, maintain and internally use such beneficiary's internal software and not be able to modify such Escrowed Intellectual Property (except as may be reasonably required for internal purposes only) or license, sell, assign, transfer, distribute or otherwise dispose of such Escrowed Intellectual Property.

Dividends and Extraordinary Bonuses. The Borrower shall not, without the prior written consent of the Lender, (i) pay any cash dividends or make any cash distributions on its equity securities, (ii) purchase, redeem, retire or otherwise acquire any of its shares (other than repurchases pursuant to the terms of employee stock option plans, up to an aggregate annual amount not to exceed US\$100,000 per year, or pursuant to the LLC Agreement), (iii) return any capital to any holder of its equity securities or (iv) pay any extraordinary bonuses to employees or management, provided however, that the Borrower may pay dividends payable solely in common stock.

## SECURITY

### Security

The Borrower shall execute and deliver to, or shall cause to be executed and delivered to, the Lender in form and substance satisfactory to the Lender and its counsel, this Agreement, the Note, and all documents to secure all debts, liabilities and obligations of the Borrower to the Lender including, without limitation, the Outstanding Obligations, as follows:

a security agreement issued by the Borrower creating a Security Interest in all present and after-acquired accounts receivable of the Borrower (as such accounts receivable are more fully described in the security agreement); and

all such other security agreements with respect to the aforementioned collateral which the Lender may reasonably require.

### Further Assurances

The Borrower from time to time shall execute and deliver, or cause to be executed and delivered, to the Lender such further documents and assurances, in form and substance satisfactory to the Lender and its counsel, as may be reasonably requested by the Lender for the purpose of giving effect to this Agreement, the Note, or the Security or for the purpose of establishing compliance with the representations, warranties and conditions of this Agreement, the Note, or the Security.

## EVENTS OF DEFAULT

### Events of Default

Notwithstanding anything to the contrary herein,

the Outstanding Obligations shall, at the option of the Lender, become immediately due and payable to the Lender and the Lender may without notice to the Borrower apply any amounts outstanding to the credit of the Borrower to repayment of the Outstanding Obligations;

the interest rate on all Outstanding Obligations may, at Lender's option, become the Default Rate; and

the Security shall, at the option of the Lender, become immediately enforceable,

upon the occurrence of any of the following events (each an "**Event of Default**"):

Failure to Pay Principal or Interest – if the Borrower fails to make punctual payment when due of any principal amount or interest payable hereunder and if such payment is not made within five (5) Business Days of the day on which such payment is due;

Failure to Pay Other Amounts – if the Borrower fails to make punctual payment when due of any amount payable hereunder other than principal or interest and if such payment is not made within five (5) Business Days of the day on which the Borrower receives notice that such payment is due;

False Representations, Etc. – if any representation or warranty made or given herein, in any certificate delivered pursuant hereto or in any financial statements, budgets, balance sheets or business plans delivered pursuant hereto is false or misleading in any material respect;

Default in Certain Covenants – if there is any default or failure in the observance or performance of any covenant contained in 0 provided that such default or failure is continuing five (5) Business Days after written notice thereof is given to the Borrower by the Lender.

Default in Other Covenants – if, other than in respect of covenants contained in 0, or any covenant to pay, there is any default or failure in the observance or performance of any other act required to be done or any other covenant or condition required to be observed or performed under this Agreement or the Security, and the default or failure continues for five (5) Business Days after written notice by the Lender to the Borrower specifying such default or failure;

Default under Security – if there is any default, event of default or failure in the observance or performance of any covenant in the Security;

Insurance Lapse – if any insurance on the properties or assets of the Borrower lapses and such coverage shall not be reinstated within fifteen (15) Business Days of such lapse;

Insolvency – if the Borrower or any of its material Subsidiaries is unable to pay its debts as such debts become due or is adjudged or declared to be, or admits to being, bankrupt or insolvent;

Voluntary Proceedings – if the Borrower makes a general assignment for the benefit of creditors; or any proceeding or filing is instituted or made by the Borrower seeking relief on its behalf as debtor, or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any similar law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties or assets; or the Borrower takes any corporate action to authorize any of the actions set forth in this subsection 0;

Involuntary Proceedings – if any notice of intention is filed or any proceeding or filing is instituted or made against the Borrower in any jurisdiction seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties or assets or seeking possession, foreclosure or retention, or sale or other disposition of, or other proceedings to enforce security over, all or a substantial part of the assets of the Borrower unless the same is being contested actively and diligently in good faith by appropriate and timely proceedings and is dismissed, vacated or stayed within thirty (30) days of institution thereof;

Receiver, etc. – if a receiver, liquidator, trustee, sequestrator or other officer with like powers is appointed with respect to, or an encumbrancer pursuant to a Security Interest or otherwise takes possession of, or forecloses or retains, or sells or otherwise disposes of, or

otherwise proceeds to enforce security over any of the properties or assets of the Borrower or gives notice of its intention to do so;

Execution, Distress – if any writ, attachment, execution, sequestration, extent, distress or any other similar process becomes enforceable against the Borrower or if a distress or any analogous process is levied against any of the properties or assets of the Borrower, except where the same is being contested actively and diligently in good faith by appropriate and timely proceedings and the enforcement or levy has been stayed;

Suspension or Termination of Business – if the Borrower or any of its material Subsidiaries suspends or ceases or threatens to suspend or cease its business, dissolves, liquidates, or undertakes to carry out any of the foregoing;

Sale – if the Borrower or any of its material Subsidiaries sells or otherwise disposes of, or threatens to sell or otherwise dispose of, all or a substantial part of its undertaking and property and assets to any arm's length third party, whether in one transaction or a series of related transactions, other than pursuant to a Permitted Asset Sale;

Change in Control – if the Borrower or any of its material Subsidiaries engage in a merger, sale of stock, share exchange, reorganization, conversion, or similar event following which the beneficial owners of the Borrower or Subsidiary (as the case may be) prior to such transaction control less than fifty percent (50%) of the voting or economic interests in the Borrower or Subsidiary (as the case may be);

Assignment – if the Borrower assigns or attempts to assign its rights under this Agreement or any of the Security or any interest herein or therein to a third party without the prior consent of the Lender;

Value of Security – if the value of the Borrower's average accounts receivable is, over the course of twenty (20) consecutive Business Days, less than seventy-five percent (75%) of the Outstanding Obligations during such time;

Cross-Default – if the Borrower defaults in the payment, when due, of any indebtedness for borrowed money in the principal amount of US\$25,000 or greater, and such default has not been waived within the applicable cure period, if any, or if such indebtedness is accelerated or otherwise becomes due and payable prior to the stated maturity thereof; and

Material Adverse Change – if (i) there occurs a material adverse change in the general affairs, business, property, assets, management or condition (financial or otherwise) of the Borrower or any of its Subsidiaries or (ii) there is, in the Lender's good faith business judgment acting reasonably, a material impairment of the prospect of repayment of any portion of the Outstanding Obligations owing to the Lender or an impairment of the value or priority of the Lender's Security Interest (each, an "**Impairment**"). If the Borrower disputes whether an Impairment has occurred, then the Borrower can request that such determination be made by an auditor of national reputation selected by the Borrower and reasonably acceptable to the Lender. The fees and expenses of such independent determination shall be borne by (a) the Borrower if the auditor determines that an Impairment has occurred or (b) the Lender if the auditor determines that an Impairment has not occurred.

### Lender May Waive

The Lender may at any time waive any Default or Event of Default which may have occurred, provided that no such waiver shall extend to or be taken in any manner whatsoever to affect any subsequent Default or Event of Default or the rights or remedies resulting therefrom. No such waiver shall be effective unless given by the Lender in writing.

### Remedies are Cumulative

For greater certainty, the rights and remedies of the Lender under this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; and any single or partial exercise by the Lender of any right or remedy for a Default or Event of Default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy to which the Lender may be lawfully entitled for the same Default or breach, and any waiver by the Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained and any indulgence granted by the Lender shall not be deemed to be a waiver of that or any subsequent Default.

### Set-Off

The Lender shall be entitled at any time or from time to time after the occurrence of an Event of Default which is continuing, without notice to set-off, consolidate and to apply any or all deposits and any other indebtedness at any time held by or owing by the Lender to the Borrower against and on account of the debts, liabilities or obligations of the Borrower to the Lender, whether or not due and payable and whether or not the Lender has made Demand therefor.

## ENVIRONMENTAL MATTERS

### Representations and Warranties

The Borrower hereby represents and warrants as follows:

the business of the Borrower has been operated in compliance in all material respects with all applicable Environmental Laws and with all permits, licenses and authorizations issued pursuant to Environmental Laws; and

there are no claims, investigations, litigation, administrative proceedings, whether pending or threatened relating to any Contaminants, Releases or other forms of pollution or alleged violation of applicable Environmental Laws (collectively, "**Environmental Matters**") that may reasonably be expected to have a material adverse effect upon the Borrower. The Borrower has not assumed any material liability of any other Person for response, removal, remediation, investigation, clean up, compliance or required capital expenditures in connection with any Environmental Matter arising prior to the date hereof.

### Environmental Covenants

The Borrower covenants with the Lender as follows:

Compliance. The Borrower shall comply in all material respects with the requirements of any Environmental Law applicable to it.

Notification. The Borrower shall promptly forward to the Lender copies of all material orders, notices, permits, applications or other communications and reports in its possession in connection with any Environmental Law affecting or relating to the Property or the operations and activities of the Borrower.

## GENERAL

### Notices

Any notice, request or other communication hereunder to any of the parties hereto shall be in writing and be well and sufficiently given if delivered personally, via reputable overnight courier, or sent by prepaid registered mail to its address and to the attention of the person set forth below:

In the case of the Borrower:

DILIGENT BOARD MEMBER SERVICES, INC.  
39 West 37 Street, 8<sup>th</sup> Floor  
New York, New York 10018  
Attn: Alessandro Sodi, Chief Executive Office

In the case of the Lender:

SPRING STREET PARTNERS, L.P.  
488 Madison Ave., 21st Floor  
New York, New York 10022  
Attn: David Liptak

Any such notice shall be deemed to be given and received, if delivered personally or by courier, when delivered, and if mailed, on the third Business Day following the date on which it was mailed, unless an interruption of postal services occurs or is continuing on or within the three (3) Business Days after the date of mailing in which case the notice shall be deemed to have been received on the third Business Day after postal service resumes. Either party may by notice to the other, given as aforesaid, designate a changed address.

### Performance of Covenants by the Lender

If, as a result of an Event of Default, any of the covenants or obligations contained herein shall not be performed by the Borrower, the Lender may perform such covenant or obligation and, if in so doing the Lender spends money or incurs liability, the amount of money reasonably so spent or liability incurred shall be added to the Outstanding Obligations.

### Indemnity

In addition to any other indemnity provided for herein, the Borrower shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against (i) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement or any instrument delivered hereunder; and (ii) all losses or expenses (including any losses or expenses sustained or incurred in liquidating or redeploying deposits or other funds contracted for or acquired or used to effect or maintain the Outstanding Obligations or part thereof) in any way suffered, incurred, or paid by the Lender, its officers, employees and agents as a result of or in anyway arising out of, following, or consequential to transactions between the Lender and the Borrower

under this Agreement or the Security, or otherwise (including without limitation reasonable attorneys fees and expenses), except to the extent that any such losses are caused by the Lender's gross negligence or willful misconduct.

#### No Set-Off or Counterclaim

The obligations of the Borrower to make payments hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any set-off, compensation, counterclaim, recoupment, defence or other right which the Borrower may have against the Lender.

#### Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### Time of Essence

Time shall, in all respects, be of the essence of this Agreement.

#### Assignment

The Borrower may not assign this Agreement or any part hereof without the prior written consent of the Lender. Upon giving written notice thereof to the Borrower, this Agreement shall be assignable by the Lender, in whole or in part.

#### Entire Agreement

This Agreement, together with the Note, Security and any other instruments contemplated hereby, constitutes the entire agreement between the parties with respect to the matters covered hereby and supersedes any other prior agreements or representations.

#### Amendments

No amendment, modification or waiver of any provision of this Agreement or consent by the Lender to any departure from any provision of this Agreement is in any way effective unless it is in writing and signed by the Borrower and the Lender, in which event the amendment, modification, waiver or consent is effective only in the specific instance and for the specific purpose for which it is given.

#### Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York therein and shall be treated in all respects as a New York contract.

#### Conflict

In the event that there is any conflict or inconsistency between the provisions contained in this Agreement and the provisions contained in any document delivered pursuant hereto or in connection herewith including, without limitation, the Security, the provisions of this Agreement shall have priority over and shall override the provisions contained in the other document to the extent of such conflict or inconsistency.

#### Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

Counterparts

This Agreement may be executed by one or more of the parties to this Agreement by facsimile and in any number of separate counterparts, each such counterpart to be deemed an original and all said counterparts when taken together shall be deemed to constitute one and the same instrument.

Waiver of Trial by Jury.

THE BORROWER AND THE LENDER EACH HEREBY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COUNSEL WAIVE TRIAL BY JURY IN ANY ACTIONS, PROCEEDINGS, CLAIMS OR COUNTER-CLAIMS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE SECURITY OR NOTE.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first above written.

*[Signatures on following page]*

**BORROWER:**

**DILIGENT BOARD MEMBER SERVICES,  
INC.**

By: /s/ Alessandro Sodi  
Name: Alessandro Sodi  
Title: CEO and President

**LENDER:**

**SPRING STREET PARTNERS, L.P.**

By: Spring Street Partners, Inc.  
Its: General Partner

By: /s/ David Liptak  
David Liptak, President

**SCHEDULE "A"**

**FORM OF OPINION**



To Spring Street Partners L.P.

March

Re: Credit Agreement, dated March 12, 2010 (the "Credit Agreement") among Diligent Board Member Services, Inc. (the "Company") and Spring Street Partners L.P. (the "Lender").

Ladies and Gentlemen,

I am delivering this opinion to you in my capacity as General Counsel of the Company pursuant to Section 6.01(6) of the Credit Agreement. Unless otherwise defined in this opinion letter or the context otherwise requires, all capitalized terms used herein shall have the respective meanings assigned to them in the Credit Agreement.

In rendering the opinions contained in this opinion letter, I have examined and relied upon such records, documents, instruments, certificates of public officials and certificates of officers of the Company as I have deemed appropriate, including without limitation:

- A. The Amended and Restated Certificate of Incorporation of the Company (the "Amended Certificate").
- B. The Credit Agreement, executed by the Company and the Purchasers.
- C. The Security Agreement, dated March 12, 2010 executed by Company.
- D. The Revolving Promissory Note, dated March 12, 2010, executed by Company (the "Note").
- E. The Financing Statement naming the Borrower as debtor and naming the Lender as secured party, which I understand and assume has been duly filed and indexed in the office of the Secretary of State of the State of Delaware.
- F. A copy of the Amended and Restated Bylaws of the Company.
- G. A copy of the Written Consent in Lieu of Meeting executed by all of the Directors of the Company.

- H. A Certificate of the Delaware Secretary of State with respect to the Company's good standing in such jurisdiction. Our opinions as to the good standing of the Company are based solely upon such certificate.

The Credit Agreement, the Security Agreement and the Note are sometimes referred to in this opinion letter as the "Transaction Documents"). I express no opinion as to any matter relating to the laws of any jurisdiction other than the laws of the State of New York.

As to matters of fact, we have relied, to the extent I deem proper, upon the representations of the Company and the Lender set forth in the Transaction Documents, and upon certificates of officers of the Company. I have assumed due authorization, execution and delivery of the Transaction Documents by, and the enforceability of the Transaction Documents against, all parties thereto other than the Company. I have also assumed the correctness of all statements of fact contained in all agreements, certificates and other documents examined by me; the correctness of all statements of fact made in response to my inquiries by officers and other representatives of the Company and by public officials; the legal capacity of all natural persons; the genuineness of all signatures on all agreements and other documents examined by me; the authenticity of all documents submitted to me as originals; and the conformity to authentic original documents of all documents submitted to me as copies. I have also assumed that the transactions contemplated by the Credit Agreement and Security Agreement have been consummated.

Whenever any opinion or other statement in this letter is indicated to be as "known to me" or based upon "my knowledge," or is similarly qualified, the qualification signifies that, in the course of my representation of the Company, no information has come to my attention which causes me to think that such opinion is not correct, but that I have not undertaken any independent investigation to determine the existence of any information respecting matters addressed in such opinions.

Based solely upon and in reliance on the documents and statements referred to above, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, I am of the opinion that:

1. The Company is a corporation organized and existing under the law of the State of Delaware, the state of its incorporation, and is in good standing.
2. The Company has the corporate power and authority to (a) own its own properties, (b) to conduct its business as currently conducted, and (c) to execute, deliver and perform its obligations under each of the Transaction Documents to which it is a party. The Company has duly authorized the execution and delivery of the Transaction Documents to which it is intended to be a party, and the performance by the Company of its obligations thereunder.

3. The Transaction Documents have been duly executed and delivered by the Company. The execution and delivery by the Company of the Transaction Documents, and the performance by the Company of its obligations thereunder, do not (a) violate the provisions of any New York law; (b) violate the provisions of the Amended Certificate or the Company's Bylaws, each as amended to date; (c) to my knowledge, violate any judgment, decree, order or award of any court, governmental body or arbitrator specifically naming the Company; (d) violate, to my knowledge, any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Company is a party, or by which the company or any of its assets may be bound; or (e) to my knowledge, result in the creation or imposition of any lien on any of the Company's properties or assets (other than as contemplated by the Credit and Security Agreement) pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

4. Subject to the limitations contained in the next paragraph, the Transaction Documents to which the Company is a party are valid and binding upon and enforceable against the Company.

My opinion concerning the validity, binding effect and enforceability of each Transaction Document means that: (a) each such document constitutes an effective contract under applicable law, (b) each such document is not invalid because of a specific statutory prohibition or public policy and is not subject in its entirety to a contractual defense, and (c) subject to the remaining sentences of this paragraph, some remedy is available if there is material default under any such document. However, the validity, binding effect and enforceability of each such document may be limited or otherwise affected by (x) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statutes, rules, regulations or other laws affecting the enforcement of creditors' rights and remedies generally and (y) the unavailability of, or limitation on the availability of, a particular right or remedy (whether in a proceeding in equity or at law) because of an equitable principle or a requirement as to commercial reasonableness, conscionability or good faith.

5. To my knowledge, there is no action, proceeding or investigation pending or overtly threatened against the Company before any court or administrative agency that questions the validity of the Transaction Documents or might be reasonably likely to have a material adverse effect on the Company.

6. No action of, or notice to or filing with, any governmental authority or regulatory body (other than filings to perfect security interests) is required in connection with the execution, delivery and performance of the Transaction Documents by the Company.

The opinions set forth in this opinion letter are effective as of the date hereof. I express no opinions other than as herein expressly set forth, and no expansion of my opinions may be made by implication or otherwise. I do not undertake to advise you of any matter within the scope of this opinion letter which comes to my

attention after the delivery of this letter and disclaim any responsibility to advise you of future changes in law or fact which may affect the above opinions.

This opinion letter is being furnished to the Lender in connection with the transactions contemplated by the Credit Agreement, the Security Agreement and the Note for its use and the use of its counsel. This opinion letter is not to be relied upon for any other purpose or by any other person, or distributed or quoted from, in whole or in part, without my express written consent.

Respectfully yours,

**DILIGENT BOARD MEMBER SERVICES, INC.**

---

Robert Norton

*General Counsel*

**SCHEDULE "B"**

**LITIGATION**

None.

**SCHEDULE "C"**  
**OWNED PROPERTIES**

None.

## **SCHEDULE “D”**

### **LEASED PROPERTIES**

Headquarters at 39 West 37<sup>th</sup> Street, New York, New York 10018 (“Headquarters Office”)

Finance at 155 Willowbrook Boulevard, Wayne, New Jersey 07470 (“Finance Office”)

## SCHEDULE "E"

### FORM OF PROMISSORY NOTE REVOLVING PROMISSORY NOTE

U.S.\$1,000,000

Dated: March 12, 2010.

**FOR VALUE RECEIVED**, the undersigned, **DILIGENT BOARD MEMBER SERVICES, INC.** (the "**Borrower**"), HEREBY PROMISES TO PAY to the order of **SPRING STREET PARTNERS, L.P.** (the "**Lender**"), the principal amount of One Million United States Dollars (US\$1,000,000), or, if less, the Outstanding Borrowings and to pay all other amounts due on the days and in the amounts set forth in the credit agreement referred to below (the "**Credit Agreement**"). Unless defined herein, capitalized terms which are defined in the Credit Agreement shall have the meanings attributed thereto.

The Outstanding Obligations shall be payable in full on the Maturity Date, or such earlier date as provided for in the Credit Agreement.

Interest on the Outstanding Borrowings of this Note from the date of this Note until such principal amount is paid in full shall accrue at the Interest Rate (as detailed in the Credit Agreement) and shall be payable on the dates and in the manner set forth in the Credit Agreement. The Commitment Fee shall be calculated and be payable on the dates and in the manner set forth in the Credit Agreement.

The Outstanding Obligations are payable in US Dollars to the Lender as follows: **SPRING STREET PARTNERS, L.P.** (as detailed in the Credit Agreement), in immediately available funds. The Borrowings advanced by the Lender to the Borrower and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by the Lender on its books.

This Note is the Note referred to in, and is entitled to the benefits of, the Credit Agreement, dated March 12, 2010, between the Borrower and the Lender. The Credit Agreement, among other things, (a) provides for the establishment of a secured Credit Facility by the Lender to the Borrower in the principal amount of up to US\$1,000,000 and (b) contains provisions for acceleration of the maturity thereof upon the happening of certain stated events.

Presentment for payment, demand, notice of protest and protest all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

This Note shall be non-assignable by the Borrower and the obligation of the Borrower to repay the Outstanding Obligations is secured under the Security.

Upon giving written notice thereof to the Borrower, this Note shall be assignable by the Lender, in whole or in part, in accordance with the assignment provisions contained in the Credit Agreement. Whenever in this Note reference is made to Lender or Borrower, such reference shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Note shall be binding upon Borrower and its successors, and shall inure to the benefit of Lender and its successors and assigns.

The Borrower shall pay, in accordance with the terms of the Credit Agreement, all reasonable fees and expenses, including, without limitation, reasonable legal fees and costs, incurred by the Lender in the enforcement or in an attempt to enforce any of the Borrower's obligations hereunder not performed when due. This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without regard to conflicts of law principles. Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision of or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of

such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**IN WITNESS WHEREOF** the Borrower has caused this Note to be duly executed on the date hereof.

**DILIGENT BOARD MEMBER SERVICES, INC.**

By: \_\_\_\_\_

Name: Alessandro Sodi

Title: CEO and President

**SCHEDULE "F"**

**FORM OF DRAWDOWN REQUEST  
FORM OF DRAWDOWN REQUEST**

I, \_\_\_\_\_, the \_\_\_\_\_ of Diligent Board Member Services, Inc., a Delaware corporation (the "**Borrower**"), do hereby certify, on behalf of the Borrower, pursuant to the provisions of that certain Credit Agreement, dated as of March 12, 2010 (as amended, restated, supplemented or replaced from time to time, the "**Credit Agreement**"; capitalized terms used herein without definition shall have the meanings ascribed thereto in the Credit Agreement), by and between the Borrower and Spring Street Partners, L.P. (the "**Lender**"), that:

1. The Borrower hereby requests a Drawdown in the aggregate principal amount of \$\_\_\_\_\_ [**must be \$100,000 or a whole-number multiple thereof**] to be made on \_\_\_\_\_, 20\_\_, under the Credit Agreement. The proceeds of the Drawdown should be wired on behalf of the Borrower as set forth below. The foregoing instructions shall be irrevocable.

Bank Name:  
Bank Address:  
ABA#:  
Account Name:  
Account Number:  
Federal Tax I.D. #:

2. After giving effect to the foregoing, the amount of the Outstanding Borrowings shall not exceed the Commitment.

3. All representations and warranties of the Borrower made in the Credit Agreement and the Security are true and correct as of the date hereof, both before and immediately after giving effect to the application of the proceeds of the Drawdown in connection with which this Drawdown Request is given, and all applicable conditions set forth in Section 6.01 of the Credit Agreement have been and continue to be satisfied as of the date hereof or appropriately waived in writing by the Lender.

4. The amount of all accounts receivable of the Borrower as of the date hereof is equal to \$\_\_\_\_\_.

DATED the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**DILIGENT BOARD MEMBER SERVICES, INC.**

By: \_\_\_\_\_  
Name: Alessandro Sodi  
Title: CEO and President

**SCHEDULE "G"**

**PERMITTED ENCUMBRANCES**

<u><b>Collateral</b></u>	<u><b>Secured Party</b></u>	<u><b>Debtor</b></u>	<u><b>UCC Filing</b></u>	<u><b>UCC Filing #</b></u>
<p>NOTICE FILING: The 'Collateral' defined below is covered by this financing statement only to the extent such Collateral is provided to or obtained by Debtor in connection with present or future: (i) leases, loans, conditional sale agreements or other agreements with Secured Party, or (ii) obligations funded by Secured Party on behalf of or at the direction of Debtor. Copies of applicable agreements with specific Collateral listings can be obtained from Secured Party. To the extent listed in applicable agreements, Collateral consist of all Debtor's right, title and interest in the listed licenses, equipment, inventory and goods (including, without limitation, attachments, accessories, accessions and replacements), wherever located and whether now or hereafter acquired or existing, together with all related: (a) contracts, documents of title, investment property, chattel paper, notes and instruments (b) accounts, contract rights and general intangibles (c) records, data, information and documentation (d) proceeds, whether cash or non-cash, and products of the foregoing in any form and (e) all rights, claims and remedies of Debtor arising in connection with any of the foregoing. Debtor has no independent or separate power, right or authority to encumber, transfer or dispose of such Collateral or of any interest therein except as expressly directed by Secured Party.</p>	Key Equipment Finance, Inc.	Diligent Board Member Services, LLC	YES	6315973-8
<p>All of the following equipment together with all related software, whether now owned or hereafter acquired and wherever located (all as more fully described on IBM Credit LLC Supplement(s) # D37186) IBM Equipment Type 8849 9992 9993 9994 All additions, attachments, accessories, accessions and upgrades thereto and any and all substitutions, replacements or exchanges for any such item of equipment or software and any and all proceeds of any of the foregoing, including, without limitations, payments under insurance or any indemnity or warranty relating to loss or damage to such equipment and software. IBM Credit LLC files this notice as a precautionary filing. See UCC 9-505. (12/11/06) UCC Log Number: CPVP0D37186 2566587</p>	IBM Credit LLC	Diligent Board Member Services, LLC	YES	6432384-6
<p>All equipment and other personal property, including but not limited to furniture, fixtures and equipment subject to that certain Agreement Number LA#092607JE2-003 dated September 26, 2007, between Secured Party as Lessor/Creditor and Debtor as Lessee/Debtor, and subject to any and all existing and future schedule entered into pursuant to and incorporating said Agreement, together with all accessories, parts, attachments and appurtenances appertaining or attached to any of the Equipment, and all substitutions, trade-ins, proceeds, renewals and replacements of, and improvements and accessions to the Equipment. LA #092607JE2-003.</p>	Envision Capital Group, LLC	Diligent Board Member Services, LLC	YES	2007-3898516
<p>All equipment and other personal property, including but not limited to furniture, fixtures and equipment subject to that certain Agreement Number LA#092607JE3-004 dated September 26, 2007, between Secured Party as Lessor/Creditor and Debtor as Lessee/Debtor, and subject to any and all existing and future schedule entered into pursuant to and incorporating said Agreement,</p>	Envision Capital Group, LLC	Diligent Board Member Services, LLC	YES	2007-3898524

<u>Collateral</u>	<u>Secured Party</u>	<u>Debtor</u>	<u>UCC Filing</u>	<u>UCC Filing #</u>
together with all accessories, parts, attachments and appurtenances appertaining or attached to any of the Equipment, and all substitutions, trade-ins, proceeds, renewals and replacements of, and improvements and accessions to the Equipment. LA #092607JE3-004.	Assignment to: Marlin Leasing Corporation			2007-4367610
(1) Catalyst 3750 24 10/100/1000T+4, SFP enhanced multiplayer, (1) CON-SNTP-3750G24T: Smartnet 24x7x4 CAT 3750 24 enhanced multilayer, (1) ASA 5520 appliance with SW, HA, 4GE+FE, 3DES/AES, New (1) ASA 5520 appliance with SW, HA 4GE+FE, 3DES/AES, New (1) CON-SNTP-AS2BUNK9 Smartnet 24x7x4 (1) CON SNTP-AS2BUNK9 Smartnet 24x7x4, (1) ASA 5500 AIP security services module-10, (1) ASA 5500 AIP security services odule-10, (1) CON-SU1-ASIP10K9 IPS SVC, AR NBD ASA AIP, (1) CON-SU1-ASIP10K9 IPS SVC AR NBD. "and all replacements, substitutions, accessions, add-ons, and all proceeds and accounts of the Debtor arising out of or related to the foregoing. This Financing Statement relates to an Equipment Lease between the Debtor (as Lessee) and the Secured Party (as Lessor). The Lease is a "true lease", and this Financing Statement is filed to give notice of Secured Party's ownership interest in the collateral and also as a precautionary measure in the event the Lease is determined to be other than a true lease."	Marlin Leasing Corp	Diligent Board Member Services, LLC	YES	2007-4333422
All computer equipment and peripherals (collectively "Equipment"), wherever located, heretofore or hereafter financed to DILIGENT BOARD MEMBER SERVICES, INC / DILIGENT PARTNERS, LLC by Creditor pursuant to that certain revolving credit Account #6879450205000223512, dated March 7, 2008 (the "Account") and all of Lessee's rights, title and interest in and to use any software and services (collectively, "Software") financed under and described in the Account, along with any additions, financed amounts, modifications or supplements to the Account, and all substitutions, additions, accessions and replacements to the Equipment and Software, now or hereafter installed in, affixed to, or used in, conjunction with the Equipment and Software and the proceeds thereof together with all payments, insurance proceeds, any refunds or credits obtained by Debtor from a manufacturer, licensor or service provider, or other proceeds and payments due and to become due and arising from or relating to said Equipment, Software or the Account.	Dell Financial Services L.P.	Diligent Board Member Services, Inc.	YES	2008-0859817
See attached equipment listing: 1 CMODEMUS EMC Clarion Service Modum US 2 20 CX4G15450 EMC 146 GB 15K 4GB FC 3 2 CS4PDAE EMC 4G DAE Factory Install 4 1 CS4SPS EMC CK4-120 Optional Second SPS 5 1 CX412CKIT EMC CS4-120 Common RTU & PowerPath Docs 6 1 CX412OC EMC CX4-120C SPE with Single SPS 7 1 FSBUNDEMCCX4120 WEMC Clarion Storage Array 8 1 MPRESW001 EMC Premium SW Support Open SW 36 Mths 9 1 MPRESW004 EMC Premium SW Support Open SW Mths 10 2 NAVAGTWINKIT EMC Navisphere Agent for Windows Kit 11 1 NAVAYZ4KIT EMC Navisphere Analyzer CX4 Media Kit 12 1 NAVAY24120 EMC Navisphere Analyzer for the CX4-120 13 1 NAV4KIT EMC Navisphere Manager CX4 Media Kit 14 1	Presidio Technology Capital, LLC	Diligent Board Member Services, Inc.	YES	2009-3291959

<u>Collateral</u>	<u>Secured Party</u>	<u>Debtor</u>	<u>UCC Filing</u>	<u>UCC Filing #</u>
<p>NAV4120 EMC Navisphere Manager fort he CX4-120 15 1 VCX414615K EMC 145GB 15K 4G Drives Vault pack Qty 5 16 1 VP4KIT EMC VirtualProvisioning for the CX4-120 18 1 EMC Virtual Provisioning for the CX-120 18 1 WUPRESHW001 Premium HW Support Warr UPG 36mths</p> <p>All of the equipment and personal property and all modifications and additions thereto and replacements and substitutions therefore, together with all accessories, accessions, attachments, in whole or in part, leased or be leased by Lessor to Lessee pursuant to Schedule No. 637846 to Master Lease Agreement dated October 1, 2009 between Presidio Technology Capital, LLC f/k/a Solarcom Capital, LLC (Lessor) and Diligent Board Member Services, Inc. (Lessee) together with the proceeds thereof. This filing for precautionary purposes in connection with equipment leasing and is not to be construed as indicating the transaction is other than a true lease.</p>				
<p>See attached equipment listing:  1 CMODEMUS EMC Clarion Service Modum US 2 20 CX4G15450 EMC 146 GB 15K 4GB FC 3  2 CS4PDAE EMC 4G DAE Factory Install 4 1 CS4SPS EMC CK4-120 Optional Second SPS 5 1  CX412CKIT EMC CS4-120 Common RTU &amp; PowerPath Docs 6 1 CX412OC EMC CX4-120C  SPE with Single SPS 7 1 FSBUNDEMCCX4120 WEMC Clarion Storage Array 8 1 MPRESW001  EMC Premium SW Support Open SW 36 Mths 9 1 MPRESW004 EMC Premium SW Support  Open SW Mths 10 2 NAVAGTWINKIT EMC Navisphere Agent for Windows Kit 11 1  NAVAYZ4KIT EMC Navisphere Analyzer CX4 Media Kit 12 1 NAVAY24120 EMC Navisphere  Analyzer for the CX4-120 13 2 NAV4KIT EMC Navisphere Manager CX4 Media Kit 14 1  NAV4120 EMC Navisphere Manager fort he CX4-120 15 1 VCX414615K EMC 145GB 15K 4G  Drives Vault pack Qty 5 16 1 VP4KIT EMC VirtualProvisioning for the CX4-120 18 1 EMC  Virtual Provisioning for the CX-120 18 1 WUPRESHW001 Premium HW Support Warr UPG  36mths</p> <p>All of the equipment and personal property and all modifications and additions thereto and replacements and substitutions therefore, together with all accessories, accessions, attachments, in whole or in part, leased or be leased by Lessor to Lessee pursuant to Schedule No. 637848 to Master Lease Agreement dated October 1, 2009 between Presidio Technology Capital, LLC f/k/a Solarcom Capital, LLC (Lessor) and Diligent Board Member Services, Inc. (Lessee) together with the proceeds thereof. This filing for precautionary purposes in connection with equipment leasing and is not to be construed as indicating the transaction is other than a true lease.</p>	<p>Presidio Technology Capital, LLC</p>	<p>Diligent Board Member Services, Inc.</p>	<p>YES</p>	<p>2009- 3292015</p>

## **SCHEDULE “H”**

### **LOCATION OF ASSETS**

PEER 1, 1000-555 West Hastings Street, Vancouver, BC, Canada V6B 4N5 (Servers)

Elus, 1525 – 10<sup>th</sup> Avenue SW, Calgary, AB, Canada T3C 0J4 (Servers)

Equinix, 275 Hartz Way, Secaucus, New Jersey 07094 (Servers)

Switch and Data Inside Delivery, 151 Front Street, Suite 707, Toronto, ON Canada M5J2N1 (Servers)

## **SCHEDULE “I”**

### **INTELLECTUAL PROPERTY**

Patents – NA

Patent Applications – NA

Trademarks – Diligent® Diligent Boardbooks™

Trade names – NA

Copyrights – None filed

Licenses and Rights with Respect to Intellectual Property – Service Agreements with Clients

**SCHEDULE "J"**

**LICENSES**

None.

## **SCHEDULE “K”**

### **SUBSIDIARIES**

Diligent Board member Services NZ, Limited

Diligent Boardbooks Limited

**SCHEDULE "L"**

**PREDECESSOR/TRADE NAMES**

None.

**Exhibit 21**

DILIGENT BOARD MEMBER SERVICES, INC. AND SUBSIDIARIES (AND  
JURISDICTION OF ORGANIZATION)

DILIGENT BOARD MEMBER SERVICES, INC. (Delaware)

Diligent Boardbooks Limited (United Kingdom)

Diligent Board Member Services (NZ) Ltd (New Zealand)

**CERTIFICATION**

I, Alessandro Sodi, certify that:

1. I have reviewed this annual report on Form 10-K of Diligent Board Member Services, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to

adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 18, 2010

/s/ Alessandro Sodi  
Alessandro Sodi,  
President and Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION**

I, Steven P. Ruse, certify that:

1. I have reviewed this annual report on Form 10-K of Diligent Board Member Services, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to

adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 18, 2010

/s/ Steven P. Ruse  
Steven P. Ruse,  
Chief Financial Officer  
(Principal Financial Officer)

**CERTIFICATION  
OF  
PERIODIC REPORT**

I, Alessandro Sodi, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

(1) the Annual Report on Form 10-K of the Company for the fiscal year ended December 31, 2009 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 18, 2010

/s/ Alessandro Sodi  
Alessandro Sodi,  
President and Chief Executive Officer  
(Principal Executive Officer)

[A signed original of this written statement required by Section 906 has been provided to Diligent Board Member Services, Inc. and will be retained by Diligent Board Member Services, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

**CERTIFICATION  
OF  
PERIODIC REPORT**

I, Steven P. Ruse, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

(1) the Annual Report on Form 10-K of the Company for the fiscal year ended December 31, 2009 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 18, 2010

/s/ Steven P. Ruse  
Steven P. Ruse,  
Chief Financial Officer  
(Principal Financial Officer)

[A signed original of this written statement required by Section 906 has been provided to Diligent Board Member Services, Inc. and will be retained by Diligent Board Member Services, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]