

Visitalk.com, Inc. Bankruptcy Plan Distribution

**WARRANTS IN VISITALK CAPITAL CORPORATION  
AND ITS  
OPERATING SUBSIDIARIES**

**CLASS 8 AGREEMENTS**

Agreements in accordance with Section 5.9 on the Plan and related information Booklet



## SECTION 5.9 IMPLEMENTATION AGREEMENT

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## SECTION 5.9 IMPLEMENTATION AGREEMENT

### PARTIES

This Section 5.9 Implementation Agreement (“Agreement”) is made by and between visitalk.com, Inc., an Arizona corporation (“Visitalk”), which was a debtor under the jurisdiction of the United States Bankruptcy Court for the District of Arizona (the “Court”) and which is proposing this Agreement as required by Visitalk’s confirmed and effective Second Joint Plan of Reorganization dated June 22, 2004 (the “Plan”), and the holders of shares of Visitalk’s preferred stock (“Claimants”), whose name, address and Claim amount appear on the “Claim Holder Schedule” which is part of the “Execution, Warrant Acceptance and Effective Delivery Agreement” (“Execution Agreement”) attached hereto as Exhibit A and which is integrated and made part of and with this Agreement. All meanings not otherwise defined in this Agreement or its Exhibits have the same meanings as defined in the Plan.

### BACKGROUND AND DEFINITIONS

- A. “Claimant(s)” are shareholders of Visitalk whose equity interests, in accordance with the terms of the Plan, were cancelled.
- B. “VCC” as used herein means Visitalk Capital Corporation, the successor to Visitalk under the Plan and any successor to VCC.
- C. VCC is acting as the “Execution Agent” for purposes of signing this Agreement and any related agreements for itself and for all the Co-Proponents under the Plan.
- D. Claimant held “Claims” (as defined in Section 3.2 below) against Visitalk in its Bankruptcy Case, the validity of which Visitalk acknowledged or was adjudicated by the Court. The Plan provides for this Agreement to address any such Claims as they would pertain to Visitalk.
- E. “Creditors’ Trust” is an entity formed in accordance with the Plan to pursue claims and causes of action owned and held by Visitalk as of the date of the filing of its bankruptcy petition or arising under the Bankruptcy Code or as a result of the filing by Visitalk for relief under Title 11 of the United States Code (the “Visitalk Claims”).
- F. Visitalk, in proposing the Plan, concluded that a full and formal resolution of any of Claimants’ Claims was in the best interests of all Parties to the Plan and desires to have a formal agreement reflecting such transaction related to all Claims and other related matters, as required by the terms of the Plan.
- G. To induce Visitalk to enter into this Agreement, Claimant is willing to acknowledge and agree that all of his, her or its claims against Visitalk are or have been released based on the terms and conditions provided in the Plan and this Agreement in exchange for the consideration provided herein and the terms of the Plan and Visitalk, in turn, in accordance with the Plan, has assigned all its Visitalk Claims to the Creditors Trust.

### AGREEMENTS

NOW THEREFORE, in consideration of the promises and the mutual agreements, covenants, and provisions contained in this Agreement, and the other consideration, as described below, transferred to the Claimants, the Parties agree and declare as follows:

### ARTICLE I EFFECTIVE DATE AND EXECUTION

1.1 Effective Date. This Agreement is effective as of the Effective Date of the Plan if there is a formal execution by the Claimant of the Execution Agreement. Visitalk must formally accept this Execution Agreement for it to be binding. Such Execution Agreement is also deemed to be an acceptance of the “Plan Warrant Agreement” attached hereto as Exhibit B.

1.2 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon and all of which shall together constitute one and the same instrument. This Agreement shall become binding on any Claimant when each Execution Agreement shall bear the signature of all of the Parties reflected hereon as the signatories.

## **ARTICLE II CONSIDERATION**

2.1 Payments. In consideration for its assignment and release of all its Claims in favor of Visitalk, as provided by the terms of the Plan, the Claimant will receive the following consideration ("Consideration"), which Claimant acknowledges is not being paid on account of Claimant's equity investment in Visitalk but rather only on account of its Claims:

a) Warrant Units. For each \$20 of Claimant's Claims, Visitalk's successor, VCC will issue the Claimant four (4) VCC Warrant Units plus one (1) Warrant Unit in each of VCC's eighteen Operating Subsidiaries created under the Plan. The Warrant Units are defined under the Plan. Claimant, by execution of the Execution Agreement, agrees to be bound by the Plan Warrant Agreement dated September 17, 2004 covering the Warrant Units to be issued, attached hereto as Exhibit B.

b) Participation in the Creditors' Trust. The Creditors Trust has issued beneficial interests in the Creditors' Trust equal to the even dollar amount of the Claimant's Claims (the "Subordinated Beneficial Interest Units"). By accepting the Subordinated Beneficial Interest Units enclosed with this agreement, Claimant agrees that Claimant is also bound by the Liquidating Creditors Trust Agreement and Declaration of Trust (the "Trust Agreement") governing the Creditors' Trust. The Trust Agreement is attached hereto as an Exhibit C. Payments under the Subordinated Beneficial Interest Units are governed by the Trust Agreement. No payments will be made from the Creditors' Trust to holders of the Subordinated Beneficial Interest Units unless all payments under the Plan to Classes 1 through 7 under the Plan and the Creditors' Trust has sufficient assets to pay the Trustee, all the Trustee's expenses for realizing on the assets transferred to the Creditors' Trust, including, without limitation, any legal fees, in accordance with the Plan. In such event the Claimant will participate in a distribution of the remaining assets in the Creditor's Trust, based on the *pro rata* amount of the Claimant's Subordinated Beneficial Interest Units.

2.2 Claim Determination. The Claimant agrees that the amount of the Claimant's Claim is the amount reflected on the books and records of Visitalk, as detailed on the Claim Holder Claim Schedule attached hereto as Exhibit A of the Execution Agreement.

2.3 Taxes. No taxes or other amounts will be withheld from the payments described in Section 2.1 above. Claimant agrees to pay any and all taxes owed relating to the payments made by VCC or the Creditors' Trust pursuant to this Agreement. In the event any person or entity, including, without limitation, any governmental entity or any taxing authority, challenges the characterization of the payments made by VCC under this Agreement or the treatment of these payments for tax purposes, or if it is determined that withholding or other taxes are due and owing with respect to the payments made under this Agreement, Claimant agrees to pay those amounts and also indemnify and hold Visitalk, VCC and all of Visitalk's successors and Co-Proponents under the Plan and the Creditors' Trust harmless from any and all liability associated with the challenge and any recharacterization of the payments, including without limitation all state and federal taxes, interest, penalties, attorneys' fees and costs.

2.4 Invalidity. In the event a court of competent jurisdiction determines that Section 3.1 of this Agreement is invalid, illegal, or unenforceable in any respect, or if such court determines that the Consideration in 2.1(a) was paid on account of an equity interest which may have been held by Claimant, Claimant agrees to promptly return to VCC the Consideration set forth in Section 2.1(a) or VCC may cancel some or all of the Warrant Units issued as related to such determination, however, Claimant may keep the Subordinated Beneficial Interest Units and any non cancelled Warrant units as the only Consideration hereunder. In the event that a court of competent jurisdiction determines that any other provision of this Agreement is invalid, illegal, or unenforceable in any respect, such a determination will not affect the validity, legality, or enforceability of the remaining provisions of this Agreement and the remaining provisions of this Agreement will continue to be valid and enforceable.

**ARTICLE III  
WAIVER AND ASSIGNMENT**

3.1 Assignment and Release of Claims. On behalf of Claimant and Claimant's spouse, heirs, affiliates, successors and assigns, by executing the Execution Agreement, Claimant acknowledges and agrees it has (a) executed this Agreement, (b) executed the Plan Warrant Agreement and (c) has waived, released, transferred and conveyed all existing rights, title and interest in the Claims in favor of Visitalk and VCC, excluding the obligations expressly set forth in the Plan or in this Agreement.

3.2 "Claims." Means any claim, liability, obligation or responsibility against or owing by Visitalk, of any kind, character or description, regardless of the legal principle or theory upon which the same may be based, whether known or unknown, liquidated or unliquidated, contingent, non-contingent or absolute, accrued or unaccrued, asserted or unasserted, disputed or undisputed, matured or unmatured, insured or uninsured, joint or several, determined or undetermined, determinable or otherwise, and shall include, without limitation, any allegation, litigation, proceeding, damage (including, without limitation, actual, punitive and consequential damages), loss, penalty, negligence, strict or other liability in tort, liability for any breach of contract or agreement, breach of representation or warranty, interference with contractual or prospective relations, negligent misrepresentation, deceit, disclosure obligation, cost, expense (including, without limitation, attorneys' fees and costs), cost of defending any claim, or amount or cost of any judgment or settlement.

3.3 No Admission of Wrongdoin. This Agreement does not constitute an admission that any person or entity who is a Party violated any local, state or federal ordinance, regulation, ruling, statute, rule of decision, or principle of common law, or that any person or entity engaged in any improper or unlawful conduct or wrongdoing. Claimant will not characterize this Agreement or the payment of the Consideration in accord with this Agreement as an admission or indication that any person or entity engaged in any improper or unlawful conduct or wrongdoing.

**ARTICLE IV  
MISCELLANEOUS**

4.1 Supplements and Amendments. In accordance with the Plan, VCC may from time to time supplement or amend this Agreement without the approval of any Claimant in order to cure any ambiguity or to correct or supplement any provision contained herein that may be defective or inconsistent with any other provisions herein, or to make any other provisions in regard to matters or questions arising hereunder that Visitalk may deem necessary or desirable after advice of counsel.

4.2 Co-operation. If requested, Claimant will provide reasonable co-operation, at the expense of the requesting Party, in supplying documentation and other confirmation of Claimants Claim and knowledge and proof of such Claim.

4.3 Assignment of Consideration. The Claimant may transfer and assign its rights to any Consideration hereunder; however, any such assignment or transfer must be done in compliance with all state and federal laws and shall not release the Claimant from its commitments and obligations hereunder. The Claimant shall not transfer its rights unless such transfer is registered or exempt from registration under applicable securities laws and transferee agrees to accept Claimant's commitments and obligations related to the Consideration.

4.4 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Unless otherwise specified in controlling agreements enclosed here with, any notice, request, demand, claim or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth in the Execution Agreement unless changed in writing by the Claimant. Notices to VCC must be mailed to its headquarters. Any Party may send any notice, request, demand, claim or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the

intended recipient. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

4.5 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, except as superseded by the jurisdiction of the Bankruptcy Court. Any disputes shall be governed by the Plan, the Bankruptcy Court, the orders of the Bankruptcy Court pertaining to the Plan and the Bankruptcy Code. Venue, if in state or federal court shall be in the State of Arizona, Maricopa County.

4.6 Submission to Jurisdiction. Each of the Parties submits to the jurisdiction of any state or federal court sitting in Maricopa County, Arizona, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto.

4.7 Successors. All the covenants and provisions of this Agreement by or for the benefit of the Parties shall bind and inure to the benefit of their respective successors and assigns hereunder.

4.8 Severability. Should any part of this Agreement for any reason be declared invalid or unenforceable, such decision will not affect the validity or unenforceability of any remaining portion, which remaining portion will remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the Parties hereto that the Parties would have executed the remaining portion of this Agreement without including therein any such part or portion which may, for any reason, be hereafter declared invalid or unenforceable.

4.9 Reliance. Visittalk may rely on the facsimile or similar transmissions from a Claimant as original signatures and representations as to the names and addresses of the Claimants

4.10 Construction. The Parties hereto hereby acknowledge and agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be applied to the interpretation of this Agreement. No inference in favor of, or against, any Party will be drawn from the fact that one Party has drafted any portion hereof.

4.11 Advice of Counsel. Each Party hereby acknowledges that they are entitled to and have been afforded the opportunity to consult legal counsel of their choice regarding the terms and conditions and legal effects of this Agreement, as well as the advisability and propriety thereof. Each Party hereby further acknowledges that having so consulted with legal counsel of their choosing or having chosen not to consult, hereby waives any right to such legal representation or effective representation and any right to raise or rely upon the lack of representation or effective representation in any future proceedings or in connection with any future claim. Claimant further acknowledges that it has read and understands the contents of this Agreement and that it executes this Agreement knowingly, voluntarily, without any coercion or duress, and with the opportunity to obtain independent legal advice of its own choice.

4.12 Complete Agreement; Amendment. Except as determined by the Plan, the Trust Agreement, the Bankruptcy Court, the orders of the Bankruptcy Court and the Bankruptcy Code, this Agreement and its Exhibits sets forth the entire understanding between the Parties hereto and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the Parties hereto with respect to the subject matter hereof. This Agreement may not be modified or amended except as provided herein or by a mutual agreement of the Parties in writing.

4.13 Captions. The descriptive headings of the various Sections or parts of this Agreement are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

4.14 Waiver of Jury Trial. DUE TO THE COMPLEXITY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT A TRIAL BEFORE A JUDGE IS MORE APPROPRIATE THAN A TRIAL BEFORE A JURY AND HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY SUIT INVOLVING THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT OR ANY OF THE DOCUMENTS CONTEMPLATED HEREBY, AND GRANT THE JUDGE PRESIDING OVER ANY SUCH SUIT FULL POWER AND AUTHORITY TO DETERMINE ALL QUESTIONS OF FACT.

IN WITNESS WHEREOF, Visitalk has executed this Agreement on the date below. This Agreement is not binding until the Execution Page has been signed, returned and accepted by Visitalk.

**“CLAIMANT”** deemed executed in accordance with the terms of the Plan and with each individual Claimant’s Execution Agreement which is specifically made part hereto.

**“VISITALK”**  
Visitalk Capital Corporation  
for itself, as the successor to Visitalk and as  
Execution Agent for the Co-Proponents.

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBITS**

**EXHIBIT A**

FORM OF EXECUTION, WARRANT ACCEPTANCE AND EFFECTIVE DELIVERY AGREEMENT INCLUDING CLAIM HOLDERS  
SCHEDULE

**EXECUTION, WARRANT ACCEPTANCE AND EFFECTIVE DELIVERY AGREEMENT**

Visitalk Capital Corporation  
14647 S. 50th St., Suite 130  
Phoenix, AZ 85044

Dear Sir or Madam:

A. Capitalized terms, unless defined herein, have the same meaning as defined in the warrant agreement effective September 17, 2004 (the "Plan Warrant Agreement") or in the Second Joint Plan of Reorganization dated June 22, 2004, confirmed by the United States Bankruptcy Court for the District of Arizona related to Case No. 00-13035-PHX-RTB (the "Plan") of visitalk.com, Inc. ("Visitalk"). The Undersigned represents that they have received and reviewed (1) the Plan Warrant Agreement, (2) the Plan, (3) the Section 5.9 Implementation Agreement, (4) and have had the opportunity to ask questions regarding the terms and restrictions of these documents.

B. Each Issuer is required under the Plan to issue certain warrants (the "Plan Warrants") to various claimants categorized under the Plan if such claimants meet the terms of Section 5.9 of the Plan. Such Plan Warrants are defined in the Plan and governed in accordance with the Plan Warrant Agreement.

C. The Undersigned, \_\_\_\_\_, hereby tenders this Execution, Warrant Acceptance and Effective Delivery Agreement (the "Execution Agreement") to Visitalk Capital Corporation, as an Issuer and as the Implementation Agent for the other Issuers, and, unless an executed "Election to Certificate Agreement" is attached, also hereby elects to have all of their Plan Warrants issued in Book Entry form. Finally, the Execution Agreement accepts all the terms of the Section 5.9 Implementation Agreement.

D. This undersigned represents that the Execution Agreement has been duly authorized by all necessary action on the part of the Undersigned and, if necessary, this Execution Agreement has been duly executed by an authorized officer or representative of the Undersigned and such person is a legal officer or representative of the Undersigned and this Execution Agreement is enforceable in accordance with its terms.

**E. If physical delivery of the Plan Warrant certificates is desired, please sign and return BOTH this Execution Agreement and also sign and return the "Election to Certificate Agreement," attached to the Plan Warrant Agreement as Exhibit F, along with a check for the certificate issue fee as set forth therein.**

BY EXECUTION BELOW, THE UNDERSIGNED REPRESENTS THAT THEY HAVE RECEIVED, EXECUTED AND REVIEWED (1) THE PLAN WARRANT AGREEMENT, (2) THE PLAN, (3) THE SECTION 5.9 IMPLEMENTATION AGREEMENT AND (4) ACKNOWLEDGE THAT THEY HAVE EXECUTED AND RECEIVED EFFECTIVE DELIVERY OF THE PLAN WARRANTS. VISITALK CAPITAL CORPORATION AND EACH ISSUER IS RELYING UPON THE ACCURACY AND COMPLETENESS OF THE REPRESENTATIONS CONTAINED HEREIN IN COMPLYING WITH ITS OBLIGATIONS.

**Claim Holder Accepted and Agreed:**  
CLAIM HOLDER

**Issuer Acceptance**  
VISITALK CAPITAL CORPORATON, as an Issuer  
and as Implementation Agent for the other Issuers

\_\_\_\_\_  
/s/  
Signatures (all record holders should sign)  
Date: \_\_\_\_\_ 2006

\_\_\_\_\_  
/s/  
By: Michael S. Williams  
Its: President  
Date: \_\_\_\_\_ 2006

**Certificate of Authorization**

(to be completed if the Plan Warrants are being accepted by an "Entity")

I hereby certify that \_\_\_\_\_ ("Entity")

(name of company, trust, partnership or other form of entity)

is a \_\_\_\_\_ organized and existing under and by virtue of the laws of the State of \_\_\_\_\_

(entity type)

(state)

and its tax ID number is \_\_\_\_\_ and it is currently in good standing and its charter

(federal tax ID or SS #)

in full force and effect. I further certify that the \_\_\_\_\_ and/or the \_\_\_\_\_

(title)

(title)

are fully authorized and empowered to make, execute and deliver any and all written instruments necessary or

proper to effectuate the authority hereby conferred. I further certify that \_\_\_\_\_ now is

(name)

the \_\_\_\_\_ and \_\_\_\_\_ is now the \_\_\_\_\_.

(title)

(name)

(title)

I further certify that the officers set forth herein, or any one of them, are duly authorized by the Entity to execute and carry out the terms of the Execution Warrant Acceptance and Effective Delivery Agreement and certify further that the Execution Warrant Acceptance and Effective Delivery Agreement has been duly and validly executed on behalf of the Entity and constitutes a legal and binding obligation of the Entity.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Signature of certifying officer

**(Must not be signed by officer authorized to act)**

\_\_\_\_\_  
Title of certifying officer

**CLAIM HOLDER SCHEDULE**

The Plan Warrants specified below are only valid if the specific named Claim Holder named herein, or a proper assignee, has executed a Execution, Warrant Acceptance and Effective Delivery Agreement (“Execution Agreement”) prior to June 15, 2006 and such agreement has been received by Visitalk Capital Corporation as the agent of the Issuers no later than June 25, 2006.

**Claim Holder:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Plan Allowed Claim:**     \$ \_\_\_\_\_

**Plan Class:**                     \_\_\_\_\_

<u>Issuers</u>	<u>Unit #</u>	<u>Warrant Units**</u>
Visitalk Capital Corporation	_____	_____
VT Billing Services, Inc.	_____	_____
VT Business Products, Inc.	_____	_____
VT Consumer Services, Inc.	_____	_____
VT Financial Services, Inc.	_____	_____
Dynamic Biometric Systems, Inc.	_____	_____
VT International Corp.	_____	_____
VT Marketing Services, Inc.	_____	_____
VT Video Services, Inc.	_____	_____
VT Arabic Services, Inc.	_____	_____
VT Chinese Services, Inc.	_____	_____
VT Dutch Services, Inc.	_____	_____
VT French Services, Inc.	_____	_____
VT German Services, Inc.	_____	_____
VT Hispanos Services, Inc.	_____	_____
VT Italian Services, Inc.	_____	_____
VT Japanese Services, Inc.	_____	_____
VT Korean Services, Inc.	_____	_____
VT Portuguese Services, Inc.	_____	_____

\*\* A Warrant Unit consists of consist of one A Warrant, one B Warrant, one C Warrant, one D Warrant, one E Warrant and one F Warrant.

**EXHIBIT B**

PLAN WARRANT AGREEMENT

**PLAN WARRANT AGREEMENT**

ACCEPTANCE AND EFFECTIVE DELIVERY REQUIRED

This Plan Warrant Agreement is effective as of the Effective Date of the Second Joint Plan of Reorganization of visitalk.com, Inc. and other Co-Proponents dated June 22, 2004. This Plan Warrant Agreement and the Plan Warrants are only valid if a Claim Holder executes a Execution, Warrant Acceptance and Effective Delivery Agreement before June 15, 2006; and such Execution, Warrant Acceptance and Effective Delivery Agreement is received by Visitalk Capital Corporation before June 25, 2006.

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## PLAN WARRANT AGREEMENT

This Plan Warrant Agreement (the "Agreement") is effective as of the Effective Date of the Second Joint Plan of Reorganization of visitalk.com, Inc. and other Co-Proponents dated June 22, 2004 (the "Plan"). The Claim Holders, as defined below, are a party to this Agreement pursuant to the operation of the Plan. However, this Agreement and the Plan Warrants, which are the subject of this Agreement, are only valid if a Claim Holder executes a "Execution, Warrant Acceptance and Effective Delivery Agreement" before June 15, 2006 and such Execution, Warrant Acceptance and Effective Delivery Agreement is received by Visitalk Capital Corporation ("VCC") before June 25, 2006. VCC is executing this Agreement and other related agreements necessary to implement this Agreement as an Issuer, as defined below, and as an agent for the other Issuers (the "Implementation Agent"), all of which are controlled by VCC.

### BACKGROUND AND DEFINITIONS

- A. The subject matter of this Agreement is the Series A through F Plan Warrants issued in accordance with the Plan (the "Plan Warrants") for each of the companies on the listing attached hereto as Exhibit A and their successors (each such entity hereinafter an "Issuer" or jointly "Issuers").
- B. Capitalized terms used but not otherwise defined in this Agreement have the same meaning as defined in the Plan.
- C. The Issuers are entities formed or authorized under the Plan, were Co-Proponents of the Plan, and, pursuant to certain exemptions provided in the Bankruptcy Code, are authorized to issue the Plan Warrants and, upon the exercise of the Plan Warrants, Shares, without registration of the Plan Warrants or Shares under applicable securities laws.
- D. The term "Share" refers to one share of common stock of an applicable Issuer.
- E. The term "Claim" refers to an allowed claim under the Plan and the term "Claim Holder" is the owner of such Claim.
- F. The maximum numbers of Plan Warrants to be issued for each Claim are specified in the Plan.
- G. The registered holder of any Plan Warrant is hereinafter referred to as a "Claim Holder."
- H. The Issuers and the Claim Holders desire to specify certain matters regarding the Plan Warrants. In accordance with the Plan, each Issuer will issue six series of Plan Warrants (each, a "Series"), designated as A Warrants, B Warrants, C Warrants, D Warrants, E Warrants and F Warrants, as further described in Article I. The term "Plan Warrants" refers to all of the Series of Plan Warrants as a group.
- I. Each "Plan Warrant" entitles the Claim Holder to purchase, subject to the terms and conditions set forth in this Plan Warrant Agreement, at any time on or after September 17, 2004, and prior to the close of business on the Expiration Date, but not thereafter (unless the Plan Warrant is earlier the subject of a Call or the Plan Warrant Expiration Date is extended by the Issuer), one fully paid and non-assessable share of an Issuer's common stock ("Common Stock"), or equivalent security of any successor thereto, at a purchase price equal to the "Exercise Price", as adjusted, unless lowered by the Issuer as set forth in Article I.
- J. Pursuant to the Plan, each Issuer will initially act as its own agent and perform the duties enumerated in this Agreement (the "Warrant Agent") but each Issuer may determine, in their sole discretion, to engage another qualified person to act as its Warrant Agent to perform the duties and activities hereunder. Any reference to Warrant Agent refers to an individual Issuer, acting as its own Warrant Agent, or the appointed Warrant Agent of the Issuer, as the case may apply.

## AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals, the following representations, warranties, covenants and conditions, and other good and valuable consideration, the receipt of which is acknowledged, the Claim Holders, by executing the "Execution, Execution, Warrant Acceptance and Effective Delivery Agreement," a form of which is included within this booklet, agree with each Issuer as follows:

### ARTICLE I THE PLAN WARRANTS

1.1 Each Plan Warrant has a specified "Exercise Price," which is the amount, as adjusted from time to time as provided in Section 1.4 below, at which a Claim Holder is entitled to purchase one Share from an Issuer. A Claim Holder may exercise all or any number of a Series of Plan Warrants resulting in the purchase of a whole number of Shares.

1.2 Initial Exercise prices. Each Series of Plan Warrants has an initial Exercise Price as set forth below.

- a) Each Series A Warrant (an "A Warrant") has an initial Exercise Price of \$2.00.
- b) Each Series B Warrant (a "B Warrant") has an initial Exercise Price of \$2.00.
- c) Each Series C Warrant (a "C Warrant") has an initial Exercise Price of \$3.00.
- d) Each Series D Warrant (a "D Warrant") has an initial Exercise Price of \$3.00.
- e) Each Series E Warrant (an "E Warrant") has an initial Exercise Price of \$4.00.
- f) Each Series F Warrant (an "F Warrant") has an initial Exercise Price of \$4.00.

1.3 Number of Plan Warrants. The "Claim Holder Schedule", attached hereto as Exhibit C, specifies, by Issuer, the number of each Series of Plan Warrants to be delivered to any Claim Holder for a specified Claim under the Plan. Pursuant to the Plan, an Issuer, in their sole discretion, has the option of issuing the Plan Warrants as "Plan Warrant Unit." The Plan Warrants on Exhibit C are presented as Plan Warrant Units with each unit consisting of one Series A Warrant, one Series B Warrant, one Series C Warrant, one Series D Warrant, one Series E Warrant and one Series F Warrant. Pursuant to the Plan, in the future, a Plan Warrant Unit may consist of any combination of the Plan Warrants as determined by each Issuer in their sole discretion.

1.4 Adjustments in Number of Plan Warrants and Exercise Price. If, prior to the exercise of any Plan Warrant, an Issuer shall have effected one or more stock splits-ups, stock dividends or other increases or reductions of the number of Shares into which the Plan Warrants are exercisable without receiving compensation in money, services or property, then the number of Shares subject to a Plan Warrant may, at the sole discretion of the Issuer, (i) if a net increase shall have been effected in the number of outstanding Shares, be proportionately increased, and the cash consideration payable per share for the Exercise Price be proportionately reduced, or, (ii) if a net reduction shall have been effected in the number outstanding Shares, be proportionately reduced, and the cash consideration payable per Share for the Exercise Price be proportionately increased. Pursuant to the Plan, an Issuer may, in its sole discretion and without further shareholder approval, upon any increase or decrease in the number of shares of its common stock outstanding, elect to (i) keep the terms of any of its Plan Warrants outstanding unchanged, (ii) proportionately increase or decrease the Exercise Price and keep the number of Plan Warrants unchanged or (iii) proportionately increase or decrease the number of Shares issuable upon exercise of the Plan Warrants and keep the Exercise Price unchanged.

1.5 Discretionary Reduction in the Plan Warrant Exercise Price. An Issuer may, in its sole discretion and in accordance with the Plan, from time to time and, at any time, reduce the Exercise Price of any Plan Warrant subject to this Agreement, including a temporary reduction in the Exercise Price.

**ARTICLE II**  
**EXERCISE PERIOD; REDEMPTION**

2.1 Plan Warrant Exercises. Unless individually extended as provided herein, the Plan Warrants will expire at 5:00 p.m., MST on August 31, 2006 (the "Warrant Expiration Date").

a) All Plan Warrants hereunder may be exercised at any time after the Effective Date of this Agreement and prior to the Warrant Expiration Date.

b) After any Warrant Expiration Date, unless such date is extended by an Issuer and except as provided in Article VII, any unexercised Plan Warrants will be void and all rights of the Claim Holders shall cease.

2.2 Redemption. At any time prior to any Expiration Date, each Issuer, in its sole discretion and in accordance with the Plan, may redeem some or all of any then outstanding Plan Warrants for \$.0001 per Plan Warrant ("Redemption Price"). In accordance with the Plan, an Issuer may choose to redeem all or any portion of a Series of Plan Warrants, which may be selected on a pro rata basis, by random lot or as otherwise fairly determined, all in the Issuer's sole discretion. Upon an Issuer's determination to redeem any Plan Warrants, such Issuer shall give notice ("Redemption Notice") of its determination to all affected Claim Holders and the Claim Holders shall have the time specified in the Redemption Notice (the "Redemption Date"), which shall not be less than twenty (20) days from the date of such Redemption Notice, to exercise any Plan Warrant as provided herein. Upon expiration of the Redemption Date, and after expiration of the period during which limited rights may be granted to an agent under Article VII (the "Contingent Agent"), but only if one has been appointed by an Issuer as provided in Article VII, the Issuer shall pay the Redemption Price to the Claim Holders. An Issuer shall not be required to pay any amount less than \$1.00 to any Claim Holder and any amounts less than \$1.00 due to any Claim Holder shall be retained by an Issuer.

2.3 Extension of the Warrant Expiration Date. An Issuer may, in its sole discretion and in accordance with the Plan, from time to time and, at any time, extend the Warrant Expiration Date of any Plan Warrant for any period of time. Notice to the Claim Holders of Plan Warrant changes shall be provided in accordance with Article IX.

**ARTICLE III**  
**ISSUANCE AND TRANSFER OF OWNERSHIP**

3.1 Form of Plan Warrant. The Plan Warrants may be issued in either uncertificated form (i.e., "Book Entry") or in registered and certificated form, as determined pursuant to Section 3.2 below.

a) Book Entry Form. If Plan Warrants are issued in uncertificated form ("Book Entry"), the Warrant Agent shall maintain records of the number of Plan Warrants owned by each registered Claim Holder. The Warrant Agent shall report ownership positions to the Claim Holders no more than sixty (60) days after the end of each calendar year or, if requested in writing by a Claim Holder, each calendar quarter. The report shall indicate any transactions regarding the Plan Warrants such as exercises or transfers. The report shall be delivered by regular mail to the address appearing on a Warrant Agent's records for any Claim Holder. A Claim Holder may elect delivery by e-mail or other similar delivery option as an alternative to regular mail. At any time an Issuer determines not to maintain Book Entry for the Plan Warrants, the Issuer may certificate and deliver the warrants to the Claim Holders at no cost to the Claim Holders for the certification.

b) Certificated Form. If in certificated form, the warrant certificates (the "Warrant Certificates") shall be substantially in the form attached hereto as Exhibit D. Warrant Certificates shall be signed by, or shall bear the facsimile signature of an Executive Officer of each Issuer and shall bear the Issuer's corporate seal or a facsimile of the Issuer's corporate seal. If any person, whose facsimile signature has been placed on any Warrant Certificate as the signature of an officer of an Issuer, shall have ceased to be an officer before the Warrant Certificate is countersigned, issued and delivered, the Warrant Certificate shall be countersigned, issued and delivered with the same effect as if the officer had not ceased to be an officer. Any Warrant Certificate may be signed by, or made to bear the facsimile signature of, any person who at the actual date of the preparation of the Warrant Certificate shall be a proper officer of an Issuer to sign the Warrant Certificate even though such person was not an officer upon the date of this Agreement. If a Warrant Agent other than the Issuer is appointed, and Warrant Certificates are issued after the appointment, Warrant Certificates shall be manually countersigned by the Warrant Agent and shall not be valid for any purposes unless so countersigned. The Warrant Agent hereby is authorized to countersign any Warrant

Certificate that is properly issued and deliver the same to, or in accordance with the properly documented and verified instruction of, any registered Claim Holder.

3.2 Delivery of Plan Warrant. The Claim Holder shall select the method of delivery of the Plan Warrant, as set forth in Section 3.1b) above.

a) Book Entry Form. The Claim Holder, by executing and delivering the “Execution, Warrant Acceptance and Effective Delivery Agreement,” a form of which is attached hereto as Exhibit B, hereby elects to have all the Plan Warrants issued in Book Entry form. By executing only the Execution, Warrant Acceptance and Effective Delivery Agreement and thereby electing Book Entry for the Plan Warrants, the Claim Holders also elect to have a Contingent Agent act for them under certain limited circumstances as set forth in Article VII.

b) Certificated Form. If the Claim Holder desires to receive physical delivery of the Plan Warrants (i.e. certificated form), such Claim Holder must, in addition to executing the Execution, Warrant Acceptance and Effective Delivery Agreement as set forth in Section 3.2a) above, also execute and deliver the “Election to Certificate Agreement” as attached hereto as Exhibit F. The Plan Warrants requested in certificated form will be issued in Units consisting of one A Warrant, one B Warrant, one C Warrant, one D Warrant, one E Warrant and one F Warrant for each Issuer. To receive certificates for the Plan Warrants, such Claim Holder shall remit an issuance fee set forth in the Election to Certificate Agreement. Claim Holders electing Plan Warrants in certificated form also waive any of the rights and benefits to having the Contingent Agent act for them under certain limited circumstances as set forth in Article VII.

3.3 Transfer of Ownership. The Warrant Agent may register the transfer of any outstanding Warrant Certificate or any Book Entry ownership change upon the receipt of appropriate instruments of transfer, in a form satisfactory to both the Issuer and the Warrant Agent, duly executed by the Claim Holder or a duly authorized attorney, including, if requested by the Warrant Agent, legal opinions and signature verification as required, in the Issuer’s sole discretion. An Assignment Form appears on the back of the “Form of Plan Warrant Certificate” attached hereto as Exhibit D. Upon any registration of transfer, either (i) a new Warrant Certificate shall be issued in the name of and delivered to the transferee and the surrendered Warrant Certificate shall be canceled or (ii) a new Book Entry shall be made reflecting the transfer and notice shall be given to the new Claim Holder. In the event a certificated warrant is submitted for transfer, a customary cash fee for the transfer must accompany such Plan Warrant prior to the execution of the transfer.

3.4 Mutilated or Missing Warrant Certificates. If any Warrant Certificate is mutilated, lost, stolen, or destroyed, an Issuer and the Warrant Agent may, on such terms as to fully indemnify them or otherwise as they may in their sole discretion impose (which shall, in the case of a mutilated Warrant Certificate, include the surrender thereof), and upon the receipt of evidence satisfactory to an Issuer and the Warrant Agent of such mutilation, loss, theft or destruction, issue a substitute Warrant Certificate of like denomination and tenor as the Warrant Certificate so mutilated, lost, stolen or destroyed. Applicants for substitute Warrant Certificates shall comply with such other reasonable regulations and pay any reasonable charges as an Issuer or the Warrant Agent may prescribe including costs of an indemnity bond, if required by an Issuer in its sole discretion.

3.5 No Fractional Plan Warrants or Shares. An Issuer shall not be required to issue fractions of Plan Warrants upon the reissue of Plan Warrants due to any adjustments as described in Section 1.4 or otherwise. In lieu of issuing any fractional interest, an Issuer shall round up to the nearest full Plan Warrant. If the total Plan Warrants surrendered by exercise would result in the issuance of a fractional Share, an Issuer shall not be required to issue a fractional Share but rather the aggregate number of Shares issuable will be rounded up to the nearest full share. At an Issuer’s sole option, an Issuer may pay the cash value of any such fractional interest in lieu of issuing additional Shares or Plan Warrants.

#### **ARTICLE IV EXERCISE OF PLAN WARRANTS**

4.1 Method of Exercise. Subject to Article V, any Plan Warrant or any multiple of Plan Warrants evidenced by any Warrant Certificate or in Book Entry form may be exercised on or before the Expiration Date. Plan Warrants shall be exercised by the Claim Holder by either (i) surrendering to the Warrant Agent the Warrant Certificate evidencing the Plan Warrants with a “Subscription and Exercise Notice,” a form of which is attached hereto as Exhibit E, duly completed and executed showing the number of Plan Warrants being exercised, or (ii) if in Book

Entry form, by delivering to the Warrant Agent a Subscription and Exercise Notice, duly completed and executed showing the number of Book Entry Plan Warrants being exercised. In addition, the Claim Holder must deliver to the Warrant Agent, by certified check, or other immediately available funds or wire transfer, in U. S. dollars (“Good Funds”), as the Warrant Agent may elect, payable to the order of the Issuer of such Plan Warrant, the Exercise Price for each Share to be purchased. Both the Subscription and Exercise Notice relating to a certificated Plan Warrant and a Book Entry Plan Warrants are hereinafter referred to as an “Exercise Notice.” The form of Exercise Notice may be changed from time to time and, at any time, in the discretion of the Issuer.

4.2 Delivery of Shares. Upon receipt of the Exercise Notice and payment in Good Funds of the full Exercise Price for the Plan Warrants that are the subject to the Exercise Notice, the Warrant Agent shall requisition the issuance of the required Shares, and deliver such Shares in accordance with the properly documented instructions of the Claim Holder. The certificate for the Shares shall be deemed to be issued, and the person to whom the Shares are issued of record shall be deemed to have become a holder of record of the Shares, as of the date of the surrender of such properly executed Exercise Notice and payment of the Exercise Price in Good Funds, whichever shall last occur. If however, the books of an Issuer with respect to the Shares shall be deemed to be closed, the person to whom such Shares are issued shall be deemed to have become a record holder of such Shares as of the date on which such books of the Issuer shall next be open (whether before, on or after the Expiration Date). All Warrant Certificates surrendered upon exercise of Plan Warrants shall be canceled.

4.3 Unexercised Warrants. If less than all the Plan Warrants evidenced by a Warrant Certificate or Book Entry are exercised upon a single occasion, until the Expiration Date, a new Warrant Certificate or Book Entry for the balance of the Plan Warrants not so exercised shall be issued and delivered to or recorded in the Claim Holder’s name, or in accordance with transfer instructions properly given by the Claim Holder.

4.4 Escrow. Upon the exercise, or conversion of any Plan Warrant, the Warrant Agent, if not the Issuer, shall promptly deposit the payment of the Exercise Price into an escrow account established by mutual agreement of an Issuer and their Warrant Agent at a federally insured commercial bank. All funds deposited in the escrow account will be disbursed on a weekly basis to an Issuer once such funds have been determined by the Warrant Agent to be collected funds. Once the funds are determined to be collected funds, the Warrant Agent shall take actions to cause the certificate(s) representing the Shares issued pursuant to the exercise of the Plan Warrants to be issued.

4.5 Expenses. Except for Section 4.6, expenses incurred by the Warrant Agent while acting in the capacity as Warrant Agent will be paid by each Issuer. These expenses, including delivery of Share certificates to the shareholder, will be deducted from the Exercise Price submitted prior to distribution of funds to the Issuer. The Warrant Agent will supply a detailed account statement relating to the number of Shares exercised, names of the registered Claim Holder(s) and the net amount of funds remitted will be given to the applicable Issuer with each payment.

4.6 Fees. At the time of exercise of any Plan Warrant, any cost for Share issuance and transfer fee is to be paid by the Claim Holder. In the event the Claim Holder must pay such fees and fails to remit same, the Warrant Agent, if agreed to by the Issuer, may elect to have such fee deducted from the proceeds prior to distribution to an Issuer.

## **ARTICLE V LIMITATIONS ON EXERCISE**

5.1 Limit of Exercise. The Claim Holder, together with the Claim Holder’s “affiliates,” as such term is defined in the Securities and Exchange Commission’s rules and regulations, shall not be entitled to exercise any Plan Warrant if, after giving effect to such exercise, the Claim Holder and its Affiliates would beneficially own in excess of 4.99% of the outstanding Shares of an Issuer. For purposes of the foregoing calculation, the Shares beneficially owned by a Claim Holder and its Affiliates or acquired by the Claim Holder and its Affiliates, shall include the number of Shares issuable upon exercise of such Plan Warrant with respect to which the determination is being made, but shall exclude the number of Shares that would be issuable upon (i) exercise of the remaining, non-exercised portion of any Plan Warrants issued by the Issuer and beneficially owned by such Claim Holder and its Affiliates and subject to a limitation on conversion or exercise and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of an Issuer subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

5.2 Claim Holder Representation. Each Exercise Notice executed by a Claim Holder shall constitute a representation by such Claim Holder that, after giving effect to such Exercise Notice, (i) such Claim Holder will not beneficially own (as determined in accordance with this Article V) in excess of 4.99% of the outstanding Shares of an Issuer and (ii) the Claim Holder will not have acquired, through exercise of such Plan Warrant or otherwise, a number of Shares that, when added to the number of Shares beneficially owned by the Claim Holder at the beginning of the sixty (60) day period ending on and including the applicable date of exercise of such Plan Warrant, is in excess of 4.99% of the outstanding Shares of the Issuer following the exercise during the sixty (60) day period ending on and including the date of exercise.

5.3 Shares Outstanding. For purposes of this Article V, in determining the number of the outstanding Shares of an Issuer, the Claim Holder may rely on the number of outstanding Shares (i) as reflected on an Issuer's web site or, (ii) at such time as an Issuer is a reporting Issuer under the Exchange Act, as reflected in an Issuer's most recent annual, quarterly or current report filed pursuant to the Exchange Act, or (iii) as reflected in its most recent public announcement or other notice by an Issuer setting forth the number of Shares outstanding. The number of outstanding Shares shall be determined after giving effect to exercises of such Plan Warrant (including the exercise with respect to which this determination is being made) by the Claim Holder.

5.4 Waiver. An Issuer, in their sole discretion, may waive the ownership and exercise limitations imposed by this Article V in whole or in part upon receipt by the Claim Holder of its undertaking, in form acceptable to an Issuer in its sole discretion, including if necessary legal opinions, to fully comply with all applicable securities law reporting requirements.

## **ARTICLE VI RIGHTS AND DUTIES OF WARRANT AGENT**

6.1 Third Party Warrant Agent. If an Issuer appoints a third party Warrant Agent, which it may do in its sole discretion, and such Warrant Agent accepts the appointment, such Warrant Agent will only accept upon the following terms and conditions, by all of which an Issuer and every Claim Holder by acceptance of this Plan Warrant Agreement shall be bound:

a) Statements contained in this Agreement and in the Warrant Certificates, if such Warrant Certificates are issued, shall be taken as statements of the Issuer. The Warrant Agent assumes no responsibility for the correctness of any of these statements except those that describe the Warrant Agent or any action taken or to be taken by the Warrant Agent.

b) The Warrant Agent shall not be responsible for any failures of an Issuer to comply with any of an Issuer's covenants contained in this Agreement or in the Warrant Certificates.

c) The Warrant Agent may consult at any time with counsel satisfactory to it (who may also be counsel for its applicable Issuer) and the Warrant Agent shall incur no liability or responsibility to an Issuer or to any Claim Holder in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or the advice of such counsel, provided the Warrant Agent shall have exercised reasonable care in the selection and continued employment of such counsel.

d) The Warrant Agent shall incur no liability or responsibility to an Issuer or to any Claim Holder for any action taken in reliance upon any notice, resolution, waiver, consent, order, certificate or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

e) An Issuer agrees to pay to the Warrant Agent reasonable compensation for all services rendered by the Warrant Agent in the execution of this Agreement, to reimburse the Warrant Agent for all expenses, taxes and governmental charges and all other charges of any kind in nature incurred by the Warrant Agent in the execution of this Agreement and to, except as a result of a Warrant Agent's negligence or bad faith, indemnify the Warrant Agent and save it harmless against any and all liabilities, including judgments, costs and counsel fees, for this Agreement.

f) The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless an Issuer or one or more Claim Holders shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expense that may be incurred in connection with such action, suit or legal proceeding. However, this proceeding provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. All rights of action under this Agreement or under any of the Plan Warrants may be enforced by the Warrant Agent without the possession of any of the Warrant Certificates or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as Warrant Agent, and any recovery of judgment shall be for the ratable benefit of the Claim Holders as their respective rights or interest may appear.

g) The Warrant Agent and any shareholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Plan Warrants or other securities of an Issuer or become pecuniary interested in any transaction in which an Issuer may be interested, or contract with or lend money to an Issuer or otherwise act as fully and freely as though it were not Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for an Issuer or for any other legal entity.

6.2 Successor Warrant Agent. Any corporation into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any corporation succeeding to the corporate trust business of the Warrant Agent, shall be the successor to the Warrant Agent hereunder without the execution or filing of any paper or any further act of a party or the parties hereto. In any such event or if the name of the Warrant Agent is changed, the Warrant Agent or its successor may adopt the countersignature of the original Warrant Agent and may countersign the Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent.

6.3 Appointment of a New Warrant Agent. A Warrant Agent may resign or be discharged by the applicable Issuer from its duties under this Agreement, with or without cause, by one party giving notice in writing to the other, and by giving a date when such resignation or discharge shall take effect, which, unless for cause, such notice shall be sent at least thirty (30) days prior to the date so specified.

a) If a Warrant Agent shall resign, be discharged or shall otherwise become incapable of acting, an Issuer may elect to act as its own Warrant Agent or shall appoint a successor to the Warrant Agent.

b) If an Issuer fails to make such election or appointment within a period of thirty (30) days after it has been notified in writing of the resignation or incapacity of its Warrant Agent, then any Claim Holder may apply to the Bankruptcy Court in Phoenix, Arizona, for the appointment of a successor to the Warrant Agent.

c) Pending appointment of a successor to the Warrant Agent, either by the Issuer or by the Bankruptcy Court, each Issuer shall carry out the duties of the Warrant Agent. After appointment, the successor Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as the Warrant Agent without further act or deed and the Warrant Agent shall deliver and transfer to the successor Warrant Agent any property at the time held by it as the Warrant Agent, and execute and deliver any further assurance, conveyance, act or deed necessary for effecting the delivery or transfer.

d) Failure to give any notice provided for in this Section 6.3, shall not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the successor Warrant Agent.

## **ARTICLE VII CONTINGENT CLAIM HOLDER AGENT**

7.1 Contingent Claim Holder Agent. By the execution of the Execution, Warrant Acceptance and Effective Delivery Agreement and electing Book Entry for the Plan Warrants, the accepting Claim Holders elect also to have an additional agent act for them only under the limited circumstances and in the manner specified in the “Contingent Agent Agreement” attached hereto as Exhibit G (the “Contingent Agent”). If a Claim Holder executing the Execution, Warrant Acceptance and Effective Delivery Agreement, however, elects to receive physical delivery of the Plan Warrants in accordance with the terms of the “Election to Certificate Agreement” as attached hereto as

Exhibit F, the electing Claim Holder waives any of its rights and benefits to having the Contingent Agent act for them pursuant to the Contingent Agent Agreement.

7.2 General Duties of the Contingent Agent. In the event a Claim Holder fails to exercise a Plan Warrant before an Expiration Date or lapse of date specified in a Redemption Notice, the Contingent Agent shall have the rights specified in the Contingent Agent Agreement to act for the Claim Holder with limitations and with a duty to the Claim Holder to remit any benefits pro rata to the Claim Holders of all similarly affected Plan Warrants.

7.3 Subsequent Termination of Contingent Agent. Subsequent to the execution of the Execution, Warrant Acceptance and Effective Delivery Agreement, any Claim Holder may elect to terminate the Contingent Agent Agreement by notifying an Issuer in writing. Any such notice must be received before the Expiration Date of the applicable Plan Warrant.

7.4 No Duty to Appoint a Contingent Agent. An Issuer may elect to appoint a Contingent Agent but has no duty to do so. The terms of the Contingent Agent Agreement are controlling regarding all issues pertaining to the Contingent Agent.

## **ARTICLE VIII RIGHTS AND DUTIES OF CLAIM HOLDERS**

### 8.1 Rights of Claim Holders.

a) No Claim Holder, as such, shall have any rights as a shareholder of any Issuer, either at law or equity, and the rights of the Claim Holders are limited to those rights expressly provided in this Agreement or in the Warrant Certificates, if issued. Notwithstanding any notice to the contrary, an Issuer and their Warrant Agent may treat the registered Claim Holder in respect to any Warrant Certificate or Book Entry or otherwise as the absolute owner thereof for all purposes.

b) Except as otherwise specifically provided herein, no Claim Holder shall be entitled to vote or receive dividends or be deemed the holder of Shares of the applicable Issuer for any purpose, nor shall anything contained in any Plan Warrant or this Agreement be construed to confer upon the Claim Holder including but not limited to (i) any of the rights of a stockholder of an Issuer, (ii) any right to vote, (iii) any right to give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), and (iv) any right to receive notice of meetings or receive dividends or subscription rights prior to the issuance of the Shares that the Claim Holder is then entitled to receive upon the due exercise of any Plan Warrant.

c) No Plan Warrant shall be construed as imposing any liabilities on any Claim Holder to purchase any securities of an Issuer, whether such liabilities are asserted by an Issuer or by creditors of an Issuer.

8.2 Taxes. The Claim Holder will pay all taxes attributable to the Plan Warrants or the initial issuance of Shares upon exercise of the Plan Warrants, including any tax that may be payable with respect to any transfer involved in any issue of Warrant Certificates or in the issue of any certificates of Shares upon the exercise of any Plan Warrant in a name other than that of the Claim Holder.

## **ARTICLE IX NOTICES**

9.1 Notices to Claim Holders. Any distribution, notice or demand required or authorized by this Agreement to be given or made by an Issuer or by a Warrant Agent to or on the Claim Holder shall be sufficiently given or made if sent by first class mail, postage prepaid, addressed to the Claim Holder at their last known address as it appears on the Plan Warrant registration books of the Issuer or the official Claim Holder listing maintained by the Warrant Agent.

a. Notice of Plan Warrant Changes. Except for an extension of the Expiration Date, which shall be effective when such information is a matter of public record (or upon mailing or other means of notification agreed to by a Claim Holder, upon any adjustment pursuant to Sections 1.4 and 1.5, an Issuer within twenty (20) days thereafter will (i) file with the Warrant Agent a certificate signed by an officer of the Issuer setting forth the details

of the adjustment, the method of calculation and the facts upon which the calculation is based, and (ii) provide written notice of the adjustments to each Claim Holder as of the record date.

b. Notice of Reorganization. If an Issuer proposes to enter into any reorganization, reclassification, sale of substantially all of its assets, consolidation, merger, dissolution, liquidation or winding up, an Issuer will give notice of the fact at least twenty (20) days prior to the action to all Claim Holders. This notice shall set forth the facts to indicate the effect of the action (to the extent the effect may be known at the date of the notice) on the Exercise Price and the kind and amount of the Shares or other property deliverable upon exercise of the Plan Warrants.

c. Failure to Give Notice. Without limiting the obligation of an Issuer to provide notice to each Claim Holder, failure of an Issuer to give notice shall not invalidate corporate action taken by an Issuer.

d. Unclaimed Notices and Bad Addresses. All notices, mailings and distributions under the Plan which are returned by the Post Office undelivered or which cannot be delivered due to the failure of the Claim Holder to provide the Issuers with a current address will be retained by the Issuer pursuant to Section 5.13 of the Plan, incorporated herein by reference. The Warrant Agent or the Issuer is under no obligation to continue notices, mailings and distributions to known undeliverable or bad addresses.

9.2 Notices to Warrant Agent and Issuers. Any notice or demand authorized by this Agreement to be given or made by the Warrant Agent or by any Claim Holder to or on an Issuer shall be sufficiently given or made if sent by mail, first class, certified or registered, postage prepaid, addressed (until another address is filed in writing by an Issuer with its Warrant Agent), to an Issuer's official headquarters address. Any notice or demand authorized by this Agreement to be given or made by any Claim Holder or by an Issuer to or on the Warrant Agent shall be sufficiently given or made if sent by mail, first class, certified or registered, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with an Issuer), to the Warrant Agent's official headquarters address.

## **ARTICLE X MISCELLANEOUS**

10.1 Reservation of Shares. For the purpose of enabling an Issuer to satisfy its obligations to issue Shares upon exercise of their Plan Warrants, Issuers will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued shares, the full number of Shares that may be issued upon the exercise of Plan Warrants. The Shares will, upon issue, be fully paid and non-assessable by an Issuer and free from all liens, charges and security interest with respect to the issue thereof.

10.2 Governmental Restrictions. If any Shares issuable upon the exercise of a Plan Warrant require approval of any governmental authority, the applicable Issuer will endeavor to secure such approval; provided that in no event shall such Shares be issued, and an Issuer shall have the authority to suspend the exercise of all Plan Warrants, until such approval has been obtained. If any such period of suspension continues past an Expiration Date, all affected Plan Warrants, the exercise of which have been requested on or prior to the Expiration Date and which were accompanied with Good Funds, shall be exercisable upon the removal of such suspension until the close of business on the business day immediately following the expiration of such suspension. The Issuer or the Warrant Agent shall hold any funds received during such suspension in escrow in a segregated and specified account. In the event a governmental authority requires the modification of this Agreement, any effected Issuer may make such modification without further agreement of any Claim Holder. If such modification materially impacts the rights of the Claim Holders, such Issuer will mail a notification of such change to the affected Claim Holders.

10.3 Supplements and Amendments. An Issuer and the Warrant Agent may from time to time supplement or amend this Agreement without the approval of any Claim Holders in order to cure any ambiguity or to correct or supplement any provision contained herein that may be defective or inconsistent with any other provisions herein, or to make any other provisions in regard to matters or questions arising hereunder that an Issuer and the Warrant Agent may deem necessary or desirable.

10.4 Assignment. A Claim Holder may transfer and assign their rights to any Plan Warrant provided, however, that any such assignment shall not release the Claim Holder from their commitments and obligations hereunder unless the obligations are formally assumed by such assignee. A Claim Holder shall not transfer the Plan Warrants

unless the transfer is registered or exempt from registration under applicable securities laws. The Warrant Agent may require that such Claim Holder first obtain an opinion of counsel satisfactory to the Warrant Agent and the Issuer that the proposed disposition or transfer does not violate securities laws. Any transfer must specifically acknowledge that this Agreement will continue to control the Plan Warrants so transferred.

10.5 Termination. This Agreement shall terminate at the close of business on the Expiration Date or such earlier date upon which all Plan Warrants of all Issuers have been exercised or redeemed; provided, however, that if exercise of any Plan Warrants are suspended pursuant to Section 10.2 and such suspension continues past the Expiration Date, this Agreement shall terminate at the close of the business on the business day immediately following the expiration of the suspension. The provisions of Article VI shall survive this termination.

10.6 Governing Law. This Agreement and each Plan Warrant Certificate or other evidence of ownership issued hereunder shall be deemed to be a contract made under the laws of the state in which an Issuer is incorporated at such time as a dispute arises and, for all purposes except as superseded by the jurisdiction of the Bankruptcy Court, shall be construed in accordance with the laws of such State. Any disputes shall be governed by the Plan, the Bankruptcy Court, the orders of the Bankruptcy Court pertaining to the Plan and the Bankruptcy Code. Venue, if in state or federal court shall be the most convenient state or federal court in relationship to the applicable Issuer's headquarters.

10.7 Successors. All the covenants and provision of this Agreement by or for the benefit of an Issuer, a Claim Holder or a Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

10.8 Severability. Should any part of this Agreement for any reason be declared invalid or unenforceable, such decision will not affect the validity or unenforceability of any remaining portion, which remaining portion will remain in force and effect as if this Agreement had been executed with the invalid portion eliminated and it is hereby declared the intention of the parties hereto that the parties would have executed the remaining portion of this Agreement without including therein any such part or portion which may, for any reason, be hereafter declared invalid or unenforceable.

10.9 Reliance. The Warrant Agent may rely on the facsimile or similar transmissions from a Claim Holder as original signatures and representations of the Issuer as to the names, addresses and number of Plan Warrants of the Issuer's Claim Holders and their ownership positions.

10.10 Construction. The parties hereto hereby acknowledge and agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be applied to the interpretation of this Agreement. No inference in favor of, or against, any party will be drawn from the fact that one party has drafted any portion hereof.

10.11 Advice of Counsel. Each party hereby acknowledges that they are entitled to and have been afforded the opportunity to consult legal counsel of their choice regarding the terms and conditions and legal effects of this Agreement, as well as the advisability and propriety thereof. Each party hereby further acknowledges that having so consulted with legal counsel of their choosing or having chosen not to consult, hereby waives any right to the legal representation or effective representation and any right to raise or rely upon the lack of representation or effective representation in any future proceedings or in connection with any future claim.

10.12 Complete Agreement; Amendment. Except as determined by the Plan, the Bankruptcy Court, the orders of the Bankruptcy Court and the Bankruptcy Code, this Agreement sets forth the entire understanding between the parties hereto and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof. This Agreement may not be modified or amended except by the mutual written agreement of the parties.

10.13 Captions. The descriptive headings of the various Sections or parts of this Agreement are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

10.14 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signature of all of the parties reflected hereon as the signatories.

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date written above.

**“CLAIM HOLDER”** deemed executed in accordance with the terms of the Plan and the Execution, Warrant Acceptance and Effective Delivery Agreement, attached hereto as Exhibit B and specifically made part hereto.

/s/

\_\_\_\_\_  
Signature (all record holders should sign)

**“ISSUERS”**

VISITALK CAPITAL CORPORATON  
As an Issuer and as Implementation Agent for the other Issuers

/s/

\_\_\_\_\_  
By: Michael S. Williams  
Its: President

## **EXHIBITS**

### **EXHIBIT A**

#### **ISSUERS COVERED BY THE PLAN WARRANT AGREEMENT**

Visitalk Capital Corporation  
VT Billing Services, Inc.  
VT Business Products, Inc.  
VT Consumer Services, Inc.  
VT Financial Services, Inc.  
VT Gaming Services, Inc.  
VT International Corp.  
VT Marketing Services, Inc.  
VT Video Services, Inc.  
VT Arabic Services, Inc.  
VT Chinese Services, Inc.  
VT Dutch Services, Inc.  
VT French Services, Inc.  
VT German Services, Inc.  
VT Hispanos Services, Inc.  
VT Italian Services, Inc.  
VT Japanese Services, Inc.  
VT Korean Services, Inc.  
VT Portuguese Services, Inc.

**EXHIBIT B**

**EXECUTION, WARRANT ACCEPTANCE AND EFFECTIVE DELIVERY AGREEMENT**

Visitalk Capital Corporation  
14647 S. 50th St., Suite 130  
Phoenix, AZ 85044

Dear Sir or Madam:

F. Capitalized terms, unless defined herein, have the same meaning as defined in the warrant agreement effective September 17, 2004 (the "Plan Warrant Agreement") or in the Second Joint Plan of Reorganization dated June 22, 2004, confirmed by the United States Bankruptcy Court for the District of Arizona related to Case No. 00-13035-PHX-RTB (the "Plan") of visitalk.com, Inc. ("Visitalk"). The Undersigned represents that they have received and reviewed (1) the Plan Warrant Agreement, (2) the Plan, (3) the Section 5.9 Implementation Agreement, (4) and have had the opportunity to ask questions regarding the terms and restrictions of these documents.

G. Each Issuer is required under the Plan to issue certain warrants (the "Plan Warrants") to various claimants categorized under the Plan if such claimants meet the terms of Section 5.9 of the Plan. Such Plan Warrants are defined in the Plan and governed in accordance with the Plan Warrant Agreement.

H. The Undersigned, \_\_\_\_\_, hereby tenders this Execution, Warrant Acceptance and Effective Delivery Agreement (the "Execution Agreement") to Visitalk Capital Corporation, as an Issuer and as the Implementation Agent for the other Issuers, and, unless an executed "Election to Certificate Agreement" is attached, also hereby elects to have all of their Plan Warrants issued in Book Entry form. Finally, the Execution Agreement accepts all the terms of the Section 5.9 Implementation Agreement.

I. This undersigned represents that the Execution Agreement has been duly authorized by all necessary action on the part of the Undersigned and, if necessary, this Execution Agreement has been duly executed by an authorized officer or representative of the Undersigned and such person is a legal officer or representative of the Undersigned and this Execution Agreement is enforceable in accordance with its terms.

**J. If physical delivery of the Plan Warrant certificates is desired, please sign and return BOTH this Execution Agreement and also sign and return the "Election to Certificate Agreement," attached to the Plan Warrant Agreement as Exhibit F, along with a check for the certificate issue fee as set forth therein.**

BY EXECUTION BELOW, THE UNDERSIGNED REPRESENTS THAT THEY HAVE RECEIVED, EXECUTED AND REVIEWED (1) THE PLAN WARRANT AGREEMENT, (2) THE PLAN, (3) THE SECTION 5.9 IMPLEMENTATION AGREEMENT AND (4) ACKNOWLEDGE THAT THEY HAVE EXECUTED AND RECEIVED EFFECTIVE DELIVERY OF THE PLAN WARRANTS. VISITALK CAPITAL CORPORATION AND EACH ISSUER IS RELYING UPON THE ACCURACY AND COMPLETENESS OF THE REPRESENTATIONS CONTAINED HEREIN IN COMPLYING WITH ITS OBLIGATIONS.

**Claim Holder Accepted and Agreed:**  
CLAIM HOLDER

**Issuer Acceptance**  
VISITALK CAPITAL CORPORATON, as an Issuer  
and as Implementation Agent for the other Issuers

/s/ \_\_\_\_\_  
Signatures (all record holders should sign)  
Date: \_\_\_\_\_ 2006

/s/ \_\_\_\_\_  
By: Michael S. Williams  
Its: President  
Date: \_\_\_\_\_ 2006

**\*\* NOTE – If the Plan Warrants are being accepted by an "Entity",  
Claim Holder must sign the Certificate of Authority on Exhibit B-2**

**EXHIBIT B-2**

**CERTIFICATE OF AUTHORIZATION**  
(to be completed if the Plan Warrants are being accepted by an “Entity”)

I hereby certify that \_\_\_\_\_ (“Entity”)  
(name of company, trust, partnership or other form of entity)  
is a \_\_\_\_\_ organized and existing under and by virtue of the laws of the State of \_\_\_\_\_  
(entity type) (state)  
and its tax ID number is \_\_\_\_\_ and it is currently in good standing and its charter  
(federal tax ID or SS #)  
in full force and effect. I further certify that the \_\_\_\_\_ and/or the \_\_\_\_\_  
(title) (title)  
are fully authorized and empowered to make , execute and deliver any and all written instruments necessary or  
proper to effectuate the authority hereby conferred. I further certify that \_\_\_\_\_ now is  
(name)  
the \_\_\_\_\_ and \_\_\_\_\_ is now the \_\_\_\_\_.  
(title) (name) (title)  
I further certify that the officers set forth herein, or any one of them, are duly authorized by the Entity to execute and  
carry out the terms of the Execution Warrant Acceptance and Effective Delivery Agreement and certify further that  
the Execution Warrant Acceptance and Effective Delivery Agreement has been duly and validly executed on behalf  
of the Entity and constitutes a legal and binding obligation of the Entity.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Signature of certifying officer  
**(Must not be signed by officer authorized to act)**

\_\_\_\_\_  
Title of certifying officer

**EXHIBIT C**

**CLAIM HOLDER SCHEDULE**

The Plan Warrants specified below are only valid if the specific named Claim Holder named herein, or a proper assignee, has executed a Execution, Warrant Acceptance and Effective Delivery Agreement (“Execution Agreement”) prior to June 15, 2006 and such agreement has been received by Visitalk Capital Corporation as the agent of the Issuers no later than June 25, 2006.

**Claim Holder:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Plan Allowed Claim:**     \$ \_\_\_\_\_  
**Plan Class:**                 \_\_\_\_\_

<b><u>Issuers</u></b>	<b><u>Unit #</u></b>	<b><u>Warrant Units**</u></b>
Visitalk Capital Corporation	_____	_____
VT Billing Services, Inc.	_____	_____
VT Business Products, Inc.	_____	_____
VT Consumer Services, Inc.	_____	_____
VT Financial Services, Inc.	_____	_____
Dynamic Biometric Systems, Inc.	_____	_____
VT International Corp.	_____	_____
VT Marketing Services, Inc.	_____	_____
VT Video Services, Inc.	_____	_____
VT Arabic Services, Inc.	_____	_____
VT Chinese Services, Inc.	_____	_____
VT Dutch Services, Inc.	_____	_____
VT French Services, Inc.	_____	_____
VT German Services, Inc.	_____	_____
VT Hispanos Services, Inc.	_____	_____
VT Italian Services, Inc.	_____	_____
VT Japanese Services, Inc.	_____	_____
VT Korean Services, Inc.	_____	_____
VT Portuguese Services, Inc.	_____	_____

\*\* A Warrant Unit consists of consist of one A Warrant, one B Warrant, one C Warrant, one D Warrant, one E Warrant and one F Warrant.

**EXHIBIT D**

**FORM OF WARRANT CERTIFICATE OR WARRANT UNIT CERTIFICATE**

**NAME OF ISSUER**

Plan Warrants to Purchase \_\_\_\_\_ Shares  
Plan Warrant Expiration Date \_\_\_\_\_

Warrant Series \_\_\_\_ - Number \_\_\_\_  
Per Warrant Exercise Price \$ \_\_\_\_\_.00

THIS IS TO CERTIFY that, \_\_\_\_\_ or registered assigns, is the registered holder (“Claim Holder”) of the number of warrants (“Plan Warrants”) set forth above. Each Plan Warrant entitles the Claim Holder to purchase, subject to the terms and conditions in this certificate and set forth in a warrant agreement effective September 17, 2004, (the “Plan Warrant Agreement”) which is hereby incorporated herein and made a part hereof, at any time on or after September 17, 2004, and at or prior to the close of business on the Expiration Date, but not thereafter, unless the Plan Warrant is earlier Called or the Plan Warrant Expiration Date is extended by the Issuer, one fully paid and non-assessable share of the Issuer’s common stock (“Share”), or equivalent security of any successor thereto, at a purchase price equal to the Exercise Price set forth above, as adjusted, in accordance with the Plan Warrant Agreement. Capitalized terms herein have the same meaning as in the Plan Warrant Agreement, which is controlling.

Upon (i) exercise and satisfaction of one or more conditions precedent set forth herein and in the Plan Warrant Agreement, (ii) presentation and surrender to the Issuer or the Warrant Agent, or its successor, a Warrant Certificate with a Subscription and Exercise Notice duly executed, and (iii) accompanied by payment of the purchase price in Good Funds payable to the order of the Issuer, the Claim Holder will receive one or more certificates of Shares or equivalent securities so purchased. Issuance of fractional shares is governed by the Plan Warrant Agreement.

The Issuer covenants and agrees that all Shares delivered upon the exercise of these Plan Warrants will, upon delivery, be fully paid and non-assessable. The Plan Warrants shall not be exercisable in any jurisdiction where exercise would be unlawful. The Issuer shall not be required to honor the exercise of the Plan Warrants if, in the opinion of its Board of Directors, upon advice of counsel, the issuance of Shares upon exercise of the Plan Warrants would be unlawful. The number of Shares, or other equivalent equity security, issuable upon the exercise of these Plan Warrants and the Exercise Price shall be subject to adjustment from time to time, in certain events, as set forth in the Plan Warrant Agreement.

The Issuer agrees at all times to reserve or hold available, or cause to reserve or hold available, a sufficient number or Shares, or other equivalent equity security, to cover the number of Shares, or other equivalent equity security, issuable upon the exercise of these and all other Plan Warrants of like tenor then outstanding.

This Warrant Certificate does not entitle the Claim Holder hereof, either at law or in equity, to any voting rights or other rights as a shareholder of the Issuer, or to any other rights whatsoever except the rights expressly herein set forth, and no dividend shall be payable or accrue in respect of these Plan Warrants or the interest represented hereby, or the Shares that may be purchased upon exercise hereof until or unless, and except to the extent that, these Plan Warrants shall be duly exercised.

This Warrant Certificate is exchangeable at any time prior to expiration upon the surrender hereof by the Claim Holder to the Warrant Agent for one or more new Warrant Certificates of like tenor and date representing in the aggregate the right to purchase the number of Shares that may be purchased upon exercise hereof, each of the new Warrant Certificates to represent the right to purchase the number of Shares as may be designated by the Claim Holder at the time of the surrender. Any issuance or transfer costs related to this Warrant Certificate shall be paid by the Claim Holder.

The Issuer may deem and treat the Claim Holder of this Warrant Certificate at any time as the absolute owner hereof and of the Plan Warrants covered hereby for all purposes and shall not be affected by any notice to the contrary.

The Plan Warrants evidenced by this Warrant Certificate are subject to the terms of the Plan Warrant Agreement which is available at the principal corporate office of the Warrant Agent or the Issuer. The Plan Warrant Agreement is incorporated herein by reference and made a part hereof and reference is hereby made to the Plan Warrant Agreement for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Warrant Agent, the Issuers and the Claim Holders of the Plan Warrants.

If a Third Party Warrant Agent has been appointed, this Warrant Certificate shall not be valid or obligatory for any purpose unless countersigned by the Warrant Agent.

IN WITNESS WHEREOF, the Issuer has caused this Warrant Certificate to be executed by its duly authorized officer, and the corporate seal hereunto affixed.

**ISSUER**

Dated: \_\_\_\_\_

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

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

**Exhibit D-1**

**ASSIGNMENT FORM**

To assign this Plan Warrant or a Book Entry Plan Warrant, fill in the form below:

I or we assign and transfer \_\_\_\_\_ of my Plan Warrant rights under Warrant Series \_\_\_\_\_  
(indicate A through F or U for unit) – Certificate or Book Entry No. \_\_\_\_\_ to: (must include Assignee’s Social Security or EIN No. below)

\_\_\_\_\_  
(Print or type assignee’s name) (“Assignee”)

\_\_\_\_\_  
(Print or type assignee’s address and zip code)

Federal Tax ID or Social Security Number(s): \_\_\_\_\_

and irrevocably appoint \_\_\_\_\_ as agent to transfer this Plan Warrant on the books of the Issuers. The agent may substitute another to act for him.

**I represent that the Assignee received and has agreed to be bound by all the terms of the Plan Warrant Agreement dated September 17, 2004 governing this Plan Warrant.**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Warrant Certificate)

Signature Guarantee \*\*: \_\_\_\_\_

By \_\_\_\_\_

**\*\* – The signature must be guaranteed by an eligible guarantor institution (a bank, stockbroker, savings and loan association or credit union with Membership in an approved signature guarantee medallion program) pursuant to Rule 17Ad-15 of the Securities Exchange Act of 1934.**

**EXHIBIT E**

**FORM OF SUBSCRIPTION AND EXERCISE NOTICE**

(To be completed and signed only upon an exercise of a Plan Warrant(s) in whole or in part)

ISSUER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Sir or Madam:

A. Capitalized terms, unless defined herein, have the same meaning as defined in the warrant agreement effective September 17, 2004 (the "Plan Warrant Agreement") or in the Second Joint Plan of Reorganization dated June 22, 2004, confirmed by the United States Bankruptcy Court for the District of Arizona related to Case No. 00-13035-PHX-RTB (the "Plan") of visitalk.com, Inc. ("Visitalk"). The Undersigned represents that they have reviewed the Plan Warrant Agreement and the Plan and have had the opportunity to ask questions regarding their terms and restrictions.

B. The Undersigned, \_\_\_\_\_, the Claim Holder of the attached Plan Warrant or Book Entry Plan Warrant designated as \_\_\_\_\_, hereby irrevocably elects to exercise the purchase right represented by such Plan Warrants for, and to purchase from the Issuer, \_\_\_\_\_ Shares, and herewith makes a payment of \$ \_\_\_\_\_ in Good Funds, as such terms are defined in the Plan Warrant Agreement. (Payment = Plan Warrants exercised x Exercise Price).

C. **Important Notice regarding Ownership Limitations.** This Subscription and Exercise Notice is governed by Article V of the Plan Warrant Agreement and is a specific representation by the Undersigned that, after giving effect to this Exercise Notice, (i) the Claim Holder and its Affiliates will not beneficially own in excess of 4.99% of the outstanding Shares of the Issuer and (ii) the Claim Holder will not have acquired, through exercise of this Plan Warrant or otherwise, a number of Shares that, when added to the number of Shares beneficially owned by the Claim Holder at the beginning of the 60-day period ending on and including the applicable date of exercise of these Plan Warrants, is in excess of 4.99% of the outstanding Shares of an Issuer.

D. The Undersigned hereby requests that the Certificate for the Shares be issued in the following name and delivered to the following address: \_\_\_\_\_ (Print or type name, address and zip code)

E. If this Subscription and Exercise Notice is for an exercise of the Plan Warrants to purchase fewer the maximum Shares to which the Undersigned is entitled under the Plan Warrants tendered, the Undersigned hereby requests that new Plan Warrants for the remaining Plan Warrants be issued in the following name and delivered to the following address: \_\_\_\_\_ (Print or type name, address and zip code)

F. This Subscription and Exercise Notice has been duly authorized by all necessary action on the part of the Undersigned and, if necessary, this Subscription and Exercise Notice has been duly executed by an authorized officer or representative of the Undersigned and such person is a legal officer or representative of the Undersigned and this Subscription and Exercise Notice is enforceable in accordance with its terms.

BY EXECUTION BELOW, THE UNDERSIGNED ACKNOWLEDGES THAT THE ISSUER IS RELYING UPON THE ACCURACY AND COMPLETENESS OF THE REPRESENTATIONS CONTAINED HEREIN IN COMPLYING WITH ITS OBLIGATIONS.

**Claim Holder Accepted and Agreed:**  
CLAIM HOLDER \*\*

**Issuer Acceptance**

\_\_\_\_\_  
Signatures (all record holders should sign)

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

**\*\* NOTE – If the Plan Warrants are being accepted by an "Entity",  
Claim Holder must sign the Certificate of Authorization on Exhibit E-2**

**EXHIBIT E-2**

**CERTIFICATE OF AUTHORIZATION**  
(to be completed if the Plan Warrants are being accepted by an “Entity”)

I hereby certify that \_\_\_\_\_ (“Entity”)  
(name of company, trust, partnership or other form of entity)  
is a \_\_\_\_\_ organized and existing under and by virtue of the laws of the State of \_\_\_\_\_  
(entity type) (state)  
and its tax ID number is \_\_\_\_\_ and it is currently in good standing and its charter  
(federal tax ID or SS #)  
in full force and effect. I further certify that the \_\_\_\_\_ and/or the \_\_\_\_\_  
(title) (title)  
are fully authorized and empowered to make , execute and deliver any and all written instruments necessary or  
proper to effectuate the authority hereby conferred. I further certify that \_\_\_\_\_ now is  
(name)  
the \_\_\_\_\_ and \_\_\_\_\_ is now the \_\_\_\_\_.  
(title) (name) (title)  
I further certify that the officers set forth herein, or any one of them, are duly authorized by the Entity to execute and  
carry out the terms of the Subscription and Exercise Notice and certify further that the Subscription and Exercise  
Notice has been duly and validly executed on behalf of the Entity and constitutes a legal and binding obligation of  
the Entity.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Signature of certifying officer  
**(Must not be signed by officer authorized to act)**  
\_\_\_\_\_  
Title of certifying officer

**EXHIBIT F**

**FORM OF ELECTION TO CERTIFICATE AGREEMENT**

Visitalk Capital Corporation  
14647 S. 50th St., Suite 130  
Phoenix, AZ 85044

Dear Sir or Madam:

A. Capitalized terms, unless defined herein, have the same meaning as defined in the warrant agreement effective September 17, 2004 (the “Plan Warrant Agreement”) or in the Second Joint Plan of Reorganization dated June 22, 2004, confirmed by the United States Bankruptcy Court for the District of Arizona related to Case No. 00-13035-PHX-RTB (the “Plan”) of visitalk.com, Inc. (“Visitalk”). The Undersigned represents that they have reviewed the Plan Warrant Agreement and the Plan and have had the opportunity to ask questions regarding their terms and restrictions.

B. The Undersigned, \_\_\_\_\_, by executing this Election to Certificate Agreement, hereby elects to have all its Plan Warrants issued in certificated form. The Plan Warrants requested will be issued in Units consisting of one A Warrant, one B Warrant, one C Warrant, one D Warrant, one E Warrant and one F Warrant for each Issuer, in accordance with the Plan Warrant Agreement and as authorized under the Plan.

**C. The Undersigned is enclosing a check for \$285.00 (19 certificates x \$15.00 per certificate issuance fee) payable to Visitalk Capital Corporation as the Implementation Agent for the Issuers.**

D. The Undersigned understands and acknowledges that, by electing to receive physical delivery of the Plan Warrants:

a. the Undersigned waives any of the rights and benefits to having the Contingent Agent act for them pursuant to the Contingent Agent Agreement, and

b. transfer fees will be imposed upon any future transfers or changes in the Units. For example, if the Undersigned desires to exercise only the A Warrants, the Undersigned will have to submit the Unit certificate and pay a fee to issue a new Unit certificate.

E. This Election to Certificate Agreement has been duly authorized by all necessary action on the part of the Undersigned and, if necessary, this Election to Certificate Agreement has been duly executed by an authorized officer or representative of the Undersigned and such person is a legal officer or representative of the Undersigned and this Election to Certificate Agreement is enforceable in accordance with its terms.

BY EXECUTION BELOW, THE UNDERSIGNED ACKNOWLEDGES THAT VISITALK CAPITAL CORPORATION AND EACH ISSUER IS RELYING UPON THE ACCURACY AND COMPLETENESS OF THE REPRESENTATIONS CONTAINED HEREIN IN COMPLYING WITH ITS OBLIGATIONS.

**Claim Holder Accepted and Agreed:**  
CLAIM HOLDER \*\*

**Issuer Acceptance**  
VISITALK CAPITAL CORPORATON, as an Issuer  
and as Implementation Agent for the other Issuers

\_\_\_\_\_  
Signatures (all record holders should sign)

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

**\*\* NOTE – If the Plan Warrants are being accepted by an “Entity”,  
Claim Holder must sign the Certificate of Authorization on Exhibit F-2**

**EXHIBIT F-2**

**CERTIFICATE OF AUTHORIZATION**  
(to be completed if the Plan Warrants are being accepted by an “Entity”)

I hereby certify that \_\_\_\_\_ (“Entity”)  
(name of company, trust, partnership or other form of entity)  
is a \_\_\_\_\_ organized and existing under and by virtue of the laws of the State of \_\_\_\_\_  
(entity type) (state)  
and its tax ID number is \_\_\_\_\_ and it is currently in good standing and its charter  
(federal tax ID or SS #)  
in full force and effect. I further certify that the \_\_\_\_\_ and/or the \_\_\_\_\_  
(title) (title)  
are fully authorized and empowered to make , execute and deliver any and all written instruments necessary or  
proper to effectuate the authority hereby conferred. I further certify that \_\_\_\_\_ now is  
(name)  
the \_\_\_\_\_ and \_\_\_\_\_ is now the \_\_\_\_\_.  
(title) (name) (title)  
I further certify that the officers set forth herein, or any one of them, are duly authorized by the Entity to execute and  
carry out the terms of the Election to Certificate Agreement and certify further that the Election to Certificate  
Agreement has been duly and validly executed on behalf of the Entity and constitutes a legal and binding obligation  
of the Entity.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Signature of certifying officer  
**(Must not be signed by officer authorized to act)**  
\_\_\_\_\_  
Title of certifying officer

## **EXHIBIT G**

### **FORM OF CONTINGENT AGENT AGREEMENT**

This Contingent Agent Agreement (the "Agreement") is made effective as of the day last executed by and among the Issuer (the "Issuer") and an agent, (the "Contingent Agent"), whose name and address appear on the signature page hereto.

#### **RECITALS**

A. The Issuer, pursuant to the confirmed and effective Second Joint Plan of Reorganization dated June 22, 2004 filed with the United States Bankruptcy Court for the District of Arizona related to Case No. 00-13035-PHX-RTB (the "Plan") of visitalk.com, Inc. and other Co-Proponents (jointly "Visitalk"), has issued certain warrants to various claimants under the Plan (the "Plan Warrants") in accordance with the Plan and a warrant agreement effective September 17, 2004 (the "Plan Warrant Agreement").

B. Capitalized terms, unless defined herein, have the same meaning as defined in the Plan Warrant Agreement or the Plan.

C. The Plan Warrants are all subject to redemption by the Issuer in its sole discretion and have a fixed Expiration Date that may be extended by the Issuer in its sole discretion.

D. The Plan Warrant Agreement authorizes the Issuer to, in its sole discretion; provide the registered Claim Holders of the certain Plan Warrants (the "Claim Holders") with a Contingent Agent to act for such Claim Holders to attempt to maximize the value of the Plan Warrants for such Claim Holders under certain limited circumstances.

E. The Plan Warrant Agreement allows any Holder to elect in writing not to be bound by this Agreement so that any references to Claim Holders herein only pertain to the Claim Holders who have not elected out of this Agreement. The Plan Warrants of any Claim Holder covered by this Agreement must have been exempt from registration under Section 1145 of the Bankruptcy Code by meeting such requirements.

#### **AGREEMENTS**

NOW, THEREFORE, in consideration of the above recitals, the following representations, warranties, covenants and conditions, and other good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

#### **ARTICLE I**

##### **APPOINTMENT OF CLAIM HOLDER CONTINGENT AGENT**

1.1 Appointment. Subject to the limitations in this Agreement, the Issuer hereby appoints the Contingent Agent to perform limited services for the Claim Holders.

1.2 Qualifications. The Contingent Agent agrees to be bound by the terms of this Agreement, and this Agreement may be modified to clarify its intent and the duties and responsibilities of the Contingent Agent. The Contingent Agent must be a licensed broker-dealer.

1.3 Resignation or Removal of the Contingent Agent. The Contingent Agent may resign its duties and be discharged from all further duties and liabilities hereunder after giving thirty (30) days notice in writing to the Issuer; provided that such shorter notice may be given, as such Issuer shall accept as sufficient. At any time, the Issuer, upon notice and with or without cause, may remove the Contingent Agent. In the event the office of the Contingent Agent shall become vacant by resignation or incapacity to act or otherwise, the Issuer may, but is not required to, appoint in writing a new Contingent Agent in place of the Contingent Agent vacating the office.

1.4 Successor Contingent Agent. Upon appointment, which requires the execution of a form of this Agreement, any successor Contingent Agent shall be vested with the same powers, rights, duties, responsibilities and immunities as if such agent had been originally named as Contingent Agent. If for any reason it becomes necessary or expedient to execute any further assurance, conveyance, act or deed, the same shall be done at the expense of the Issuer. Subject to the foregoing provisions, any corporation into which any Contingent Agent may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which any Contingent Agent is a party shall be the successor Contingent Agent under this Agreement without any further act. Hereinafter, any reference to the Contingent Agent shall apply to any properly elected successor Contingent Agent.

## **ARTICLE II**

### **RIGHTS AND DUTIES OF THE CONTINGENT AGENT IN THE EVENT OF NON-EXERCISE**

2.1 General Duties. The Contingent Agent will act for the Claim Holders to sell the Plan Warrants or the shares of common stock issued through the exercise of the Plan Warrants (the “Shares”) to attempt to maximize the value of the Expired Warrants, as defined in paragraph 2.2. The Contingent Agent’s decisions regarding negotiation of Share prices or Plan Warrant prices, in public or private sales, unless grossly negligent, are deemed to be reasonable. The Contingent Agent has the right but not the obligation to exercise the rights in this Article and the Contingent Agent’s good faith exercise of these rights shall be in its sole discretion.

2.2 Contingent on the Expiration of Time to Exercise. In the event Plan Warrants expire due to either a redemption Call of any specific Series of Plan Warrants as provided in the Plan Warrant Agreement or upon occurrence of any Expiration Date (the “Expired Warrants”), the Claim Holder and Issuer of each such Plan Warrant hereby grant the Contingent Agent special rights as provided in this Agreement to maximize the potential value of any such Expired Warrants but only after the date specified in the Redemption Notice or after the Expiration Date.

2.3 Limited Extension of Exercise Date. Only if there is a Contingent Agent and only if the Expired Warrants are in Book Entry form, the Issuer will extend the period any Expired Warrants may be exercised for an additional thirty (30) days after the Redemption Date specified in the Redemption Notice or after the Expiration Date (the “Special Exercise Period”). Only during this Special Exercise Period, may the Contingent Agent exercise any amount of Expired Warrants as allowed under this Agreement, subject to the limitation in Article 3.2 below, and only for the benefit of all the Claim Holders of all the Expired Warrants (the “Covered Holders”). The Contingent Agent may also sell any amount of the Expired Warrants for the benefit of all the Covered Holders and may assign the Special Exercise Period right to the buyer of any such Expired Warrants, subject to the limitation in Article 3.2 below. This grant of a Special Exercise Period to the Contingent Agent in no way grants any Claim Holder additional time to exercise.

2.4 Distribution of Proceeds from Sale or Exercise. In the event that the Contingent Agent exercises its rights under this Article, the Contingent Agent will accumulate the proceeds received from the sale of Expired Warrants or Shares in a specifically established trust account (the “Trust Account”) and will deduct the Fees and Expenses (as defined below) to derive the net proceeds (“Net Proceeds”). The beneficiaries of such Trust Account are the Claim Holders of all the Expired Warrants. Within ten (10) business days of the expiration of the Special Exercise Period, the Contingent Agent shall distribute the Net Proceeds pro rata to all the Covered Holders. Payment of the Net Proceeds will be accompanied by a summary accounting of the receipts, expenses and fees. The distribution to any Covered Holder will equal the Net Proceeds multiplied by a fraction that equals the Expired Warrants the Covered Holder could have exercised prior to the Expiration Date divided by all Expired Warrants that could have been exercised by all Covered Holders prior to the Expiration Date.

2.5 Contingent Agent’s Fees and Expenses. The Contingent Agent’s Fees and Expenses shall include (i) all reasonable expenses incident to the performance of or compliance with its obligations under this Agreement; (ii) all costs and expenses incurred by the Contingent Agent (including all transfer taxes, brokerage and other discounts and commissions and finders’ and similar fees payable in respect to the sales of the Expired Warrants or Shares issued upon the exercise of the Expired Warrants, and (iii) a Contingent Agent commission equal to a percentage of the gross sale proceeds as negotiated by the Issuer from time to time.

**ARTICLE III**  
**LIMITATION AND METHOD OF EXERCISE**

3.1 Method of Exercise. In the event the Contingent Agent elects to exercise Plan Warrants and sell the Shares so received, the Issuer and the Contingent Agent agree that the Contingent Agent can instruct the selling broker to remit the Exercise Price directly to the Issuer with the remaining proceeds being delivered to the Contingent Agent for deposit to the Trust Account. The Issuer agrees that in its sole discretion, upon the sale confirmation and upon coordination with any broker, the Issuer may cause the Shares to be delivered simultaneously with the receipt of the Exercise Price.

3.2 Limitation on Ownership.

(a) Notwithstanding anything to the contrary contained herein, unless specifically waived and approved by the Issuer in writing, the number of Expired Warrants subject to this Agreement shall not be in excess of 4.99% of the outstanding shares of common stock of the Issuer. For purposes of this paragraph, the number of outstanding shares of common stock will be ascertained from the Issuer's transfer agent as of the close of business of the Expiration Date of the subject Plan Warrants. The number of outstanding shares of common stock shall be determined after giving effect to the Shares not yet issued as a result of the exercise of Plan Warrants on or prior to the Expiration Date, including the exercise with respect to this determination.

(b) The Contingent Agent may transfer and assign its rights to any Expiring Warrants of the Issuer provided, however, that any such assignment shall require that all such obligations in the Plan Warrant Agreement regarding limitation of ownership are formally assumed by the assignee.

3.3 Grant by the Claim Holder of Limited power of attorney. The Contingent Agent shall be the sole attorney in fact of the Claim Holders to exercise or sell any Expired Warrants held in the name of the Claim Holder throughout the Special Exercise Period.

3.4 Special accounts. The Contingent Agent has the right and authority to open a special brokerage account or other financial institution account to maintain the securities or proceeds and to facilitate transactions. Such accounts will be a fiduciary account for the Covered Holders.

**ARTICLE IV**  
**CONCERNING THE CONTINGENT AGENT**

4.1 Actions by Contingent Agent. The Contingent Agent may, for the execution of the duties and in the execution of the powers conferred upon it, appoint or employ as agents or representatives or otherwise any solicitors, counsel, bankers, brokers, accountants, clerks or inspectors or other agents, and all reasonable expenses and disbursements made and incurred by the Contingent Agent in connection with the execution of its duties hereunder will be included as Fees and Expenses as provided in Section 2.5 above.

4.2 Exculpatory Provisions. In order to induce the Contingent Agent to act hereunder, the Issuer and each Claim Holder, by not electing out of this Agreement, agree that:

(a) The Contingent Agent shall be entitled to take legal or other advice and employ such assistance as it may deem necessary to the proper discharge of its duties hereunder and to pay proper and reasonable compensation therefore and may in connection with any matter relating to this Agreement, act on the opinion or advice or information obtained from any attorney, auditor or other expert, whether obtained by the Contingent Agent, the Issuer or otherwise and shall not be responsible for any loss occasioned by acting thereon;

(b) Whenever in the administration of its duties under this Agreement, the Contingent Agent shall deem it necessary or desirable that any matter be provided or established by the Issuer prior to taking or suffering any action hereunder, such matter (unless other evidence is specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an executive officer of the Issuer delivered to the Contingent

Agent and such certificate shall be full justification and cause to the Contingent Agent for any action taken or suffered in good faith by it under the provisions of this Agreement; but in its discretion, the Contingent Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as the Contingent Agent may deem reasonable;

(c) The Contingent Agent shall be liable hereunder only for its own negligence or willful misconduct;

(d) The Contingent Agent shall not be liable for or by reason of any of the statements of facts or recitals contained in this Agreement or in the Plan Warrant Agreement or be required to verify the same and all such statements and recitals are and shall be deemed to have been made by the Issuer only;

(e) The Contingent Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof or in respect of the validity of the execution or exercise of any Plan Warrant covered hereunder; nor shall the Contingent Agent be responsible for any breach by the Issuer of any covenant or condition contained in this Agreement or in any such Plan Warrant; nor shall the Contingent Agent by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares to be issued upon the right of purchase provided for in the Plan Warrant Agreement or in any Warrant or as to whether any shares will, when issued, be duly authorized or be validly issued and fully paid and non-assessable, it being hereby agreed and declared that as to all the matters and things referred to in this subparagraph the duty and responsibility shall rest upon the Issuer and not upon the Contingent Agent and the failure of the Issuer to discharge any such duty and responsibility shall not in any way render the Contingent Agent liable or place upon it any duty or responsibility for breach of which it would be liable;

(f) Except as in this Agreement expressly provided, the Contingent Agent acts hereunder solely for the benefit of the Claim Holders and does not assume any fiduciary or other relationship or agency or trust for or with the Issuer. The duties and obligations of the Contingent Agent under this Agreement shall be determined solely by the provisions hereof, and no implied covenants or obligations shall be read into this Agreement against the Contingent Agent.

4.3 Indemnification. Provided the Contingent Agent carries out its duties, within its discretion as provided under this Agreement, the Issuer will indemnify and hold harmless the Contingent Agent from and against any claim, action or loss resulting from the performance of its duties hereunder.

4.4 Modification of Agreement. The Contingent Agent may, without the consent or concurrence of the Claim Holders by supplemental agreement or otherwise, concur with the Issuer in making any modifications or corrections to this Agreement as to which it shall have been advised by counsel (who may but need not also be counsel for the Issuer) that the same are not prejudicial to the rights of the Claim Holders as indicated by the general sense or intent of the original language and are required for the purpose of curing or correcting the inconsistent provision or clerical omission or mistake or manifest error herein. The Issuer or the Contingent Agent may request a modification of the Agreement by a majority of the Claim Holders, voting in person or by proxy.

## **ARTICLE V MISCELLANEOUS**

5.1 Successors and Assigns. This Agreement shall be binding upon the heirs, successors and assigns of the Claim Holders and the Issuers.

5.2 Severability. Should any part of this Agreement for any reason be declared invalid or unenforceable, such decision will not affect the validity or unenforceability of any remaining portion, which remaining portion will remain in force and effect as if this Agreement had been executed with the invalid portion eliminated and it is hereby declared the intention of the parties hereto that the parties would have executed the remaining portion of this Agreement without including therein any such part or portion which may, for any reason, be hereafter declared invalid or unenforceable.

5.3 Reliance. The Contingent Agent may rely on facsimile or similar transmissions from the Claim Holders as original signatures and representations of the Issuer as to the names, addresses and number of Plan Warrants of the Claim Holders.

5.4 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the state in which an Issuer is incorporated at such time as a dispute arises and, for all purposes except as superseded by the jurisdiction of the Bankruptcy Court, shall be construed in accordance with the laws of such State. Any disputes shall be governed by the Plan, the Bankruptcy Court, the orders of the Bankruptcy Court pertaining to the Plan and the Bankruptcy Code. Venue, if in state or federal court, shall be the most convenient state or federal court in relationship to the applicable Issuer's head quarters.

5.5 Construction. The parties hereto hereby acknowledge and agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be applied to the interpretation of this Agreement. No inference in favor of, or against, any party will be drawn from the fact that one party has drafted any portion hereof.

5.6 Advice of Counsel. Each party hereby acknowledges that they are entitled to and have been afforded the opportunity to consult legal counsel of their choice regarding the terms and conditions and legal effects of this Agreement, as well as the advisability and propriety thereof. Each party hereby further acknowledges that having so consulted with legal counsel of their choosing or having chosen not to consult, hereby waives any right to such legal representation or effective representation and any right to raise or rely upon the lack of representation or effective representation in any future proceedings or in connection with any future claim.

5.7 Complete Agreement; Amendment. This Agreement sets forth the entire understanding between the parties hereto and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof. This Agreement may not be modified or amended except by the mutual written agreement of the parties.

5.8 Captions. The descriptive headings of the various Sections or parts of this Agreement are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, this Agreement has been executed as of the date last executed below.

**ISSUER**

By: /s/  
\_\_\_\_\_  
Name:  
Its:  
Date:

**CONTINGENT AGENT**

By: /s/  
\_\_\_\_\_  
Name:  
Its:  
Date:  
Address:

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**EXHIBIT C**

**TRUST AGREEMENT**

**AMENDED LIQUIDATING CREDITORS TRUST AGREEMENT**

**By and Among**

**The Bankruptcy Estate of Visitalk.com, Inc.**

**And**

**Biltmore Associates, L.L.C.,  
As Creditors Trustee**

**Effective Date**

**September 6, 2004**

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## AMENDED LIQUIDATING CREDITORS TRUST AGREEMENT

This Liquidating Creditors Trust Agreement and Declaration of Trust (the "Trust Agreement") is entered into effective as of September 17, 2004, (the "Plan Effective Date") by the bankruptcy estate of Visitalk.com, Inc. (the "Transferor" or "Debtor") and Biltmore Associates, L.L.C., as trustee (the "Creditors Trustee").

### RECITALS

- A. On or about November 29, 2000, Debtor filed a voluntary Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court, District of Arizona (the "Bankruptcy Court"), under Case No. 00-13035 PHX-RTB (sometimes referred to herein as the "Debtor's Case").
- B. On or about June 24, 2004, Debtor filed a Second Joint Plan of Reorganization dated June 22, 2004 (the "Plan") that provided for a liquidating Creditors Trust to be established.
- C. On or about August 27, 2004, the Court entered an order confirming the Amended Plan.
- D. On or about October 19, 2004, Biltmore Associates, L.L.C., was appointed by the Court as the Trustee of the Creditors Trust.

### **ARTICLE I DEFINITIONS**

Section 1.01 Definitions. For purposes of this Trust Agreement, unless the context otherwise requires, the following terms will have the definitions indicated below, all of which definitions are substantive terms of this Trust Agreement. Capitalized terms used in this Trust Agreement that are not otherwise defined herein have the meanings ascribed to them in the Plan or in the Bankruptcy Code, as appropriate. Defined terms include, as appropriate, all genders and the plural as well as the singular.

**"Accounts"** means any collection accounts, distribution reserve accounts, operating accounts, tax accounts or holding accounts.

**"Active Professionals"** shall mean those Court appointed professionals who are supplying active services to the Debtor or the Estate as of the date the Court held its hearing regarding the adequacy of the D/S.

**"Allowed Claim or Allowed Interest"** shall mean a Claim or Interest having the following characteristics:

- a. Either such Claim or Interest was listed in the Chapter 11 Schedules the Debtor filed with the United States Bankruptcy Court for the District of Arizona (hereafter, the "Court") pursuant to Section 521 of the Code and such Claim or Interest was not identified in those schedules as "disputed," "contingent" or "Unliquidated," or proof such Claim of Interest has been filed with the Court in the time and in the manner prescribed by the Court and the Federal Rules of Bankruptcy Procedure; and
- b. No objection to the allowance of such Claim or Interest has been interposed within the periods of limitation fixed by the Court, the Code or the Federal Rules of Bankruptcy Procedure or any order resolving any objection to the allowance of such Claim or Interest has become a Final Order.

**"Allowed Unsecured Claim"** shall mean an Allowed Claim which is not an Allowed Administrative Claim, an Allowed Secured Claim or an Allowed Claim entitled to priority pursuant to 11 U.S.C. § 507, or a Subordinated Unsecured Claim.

**“Beneficiaries”** means the holders of Claims that are Allowed Unsecured Claims in Class 7 of the Plan, claims of Active Professionals, and Subordinated Unsecured Claims, and their permitted transferees as the same will appear in the records of the Creditors Trustee, from time to time; provided, however, that upon the payment in full of a claimholder in accordance with the Plan, such holder will cease to be a Beneficiary of the Trust.

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which national banking associations or state banking institutions in New York, New York, Phoenix, Arizona or the city in which the Corporate Trust Office of the Creditors Trustee is located are authorized or obligated by law or executive order or governmental decree to be closed.

**“Cause”** means a termination of the Creditors Trustee which is a result of (i) such person’s felony conviction, (ii) such person’s continued action or conduct that impedes or impairs the effective operation and management of the Trust or (iii) such person’s willful and continued failure to substantially perform its duties in accordance with the Trust Agreement (other than any such failure resulting from such person’s incapacity due to physical or mental illness or any such actual or anticipated failure resulting from a resignation by such person) after written demand for substantial performance is delivered to such person by resolution of the Beneficiaries, which demand specifically identifies the manner in which the Beneficiaries believe that such person has not substantially performed or will be unable to substantially perform his/her duties, and which performance is not substantially corrected by such person within ten (10) days of receipt of such demand. For purposes of the previous sentence, no act or failure to act on the Creditors Trustee’s part will be deemed “willful” unless done, or omitted to be done, by such person not in good faith and without reasonable belief that such person’s action or omission was in the best interest of the Trust.

**“Causes of Action”** shall mean all claims and causes of action that are property of the Estate or belong to the Debtor, including but not limited to: Avoidance Actions, arising from or related to breach of fiduciary duty, fraud, negligence, misrepresentation, conversion, breach of contract, fraudulent transfer, patent infringement, copyright violation, Lanham Act violations, computer fraud and abuse, securities laws violations, derivative claims, misappropriation of trade secrets, unfair business practices, deceptive trade practices, unjust enrichment, indemnification and contribution, arising from or related to directors and officers’ liability; and fraudulent transfer claims; claims against carriers of policies of directors and officers insurance (“D&O Insurance”); potential claims and/or existing litigation involving MP3.com, i2v2.com, Inc., GN Netcom, Inc.; and all claims against defendants set forth in any pending litigation brought by Debtor and/or the Creditors Trustee, including the pending District Court litigation, Case No. CIV 02-2405-PHX-HRH, against former directors and officers, former counsel for Debtor (Snell & Wilmer), former accountants, and the pending adversary proceedings in this case.

**“Causes of Action Proceeds”** shall mean any funds being held in escrow, trust accounts or otherwise or commitments related to payments for the settlement of Causes of Action.

**“Collection Account”** has the meaning ascribed thereto in Section 5.02(a)(i).

**“Creditors Trustee”** shall mean Biltmore Associates, L.L.C.

**“Debtor”** means visitalk.com, Inc.

**“Distribution Date”** means the date upon which the Creditors Trustee may, in its sole discretion, make distributions to Beneficiaries.

**“Distribution Reserve”** has the meaning ascribed thereto in Section 5.02(a)(iv).

**“Eligible Institution”** means a depository institution organized under the laws of the United States of America or any one of its states or the District of Columbia, the deposits in which are insured by the Federal Deposit Insurance Corporation and that maintains a short-term unsecured debt rating of a least “A-1” by S&P or “P-1” by Moody’s.

**“Final Distribution Date”** means the Distribution Date on which the Creditors Trustee distributes the remaining proceeds of the Trust Assets immediately prior to the dissolution of the Trust.

**“Fiscal Year”** means the calendar year which, unless otherwise provided by the Creditors Trustee, will be the Trust’s tax and accounting reporting period.

**“Moody’s”** means Moody’s Investment Service, Inc.

**“Person”** means an individual, corporation, business trust, partnership, joint venture, association, joint stock company, limited liability company, trust, entity or unincorporated association.

**“Plan Proponent”** means visitalk.com, Inc. and its affiliates.

**“Record Date”** means the fifteenth Business Day preceding each Distribution Date.

**“Subordinated Unsecured Claim”** means holders of claims arising from the issuance of the Debtor’s Series “A”, “B” and “C” preferred stock, in the principal amount of dollars paid by such claimant for such stock, and the holders of claims arising from the issuance or purchase of any other class of the Debtor’s preferred stock or common stock in the principal amount of dollars paid by such claimant for such stock, as may subsequently be determined by the Bankruptcy Court or the District Court to hold such a claim or which the Creditors Trustee agrees in writing pursuant to any settlement agreement holds such a claim in such amount.

**“Transfer Date”** means the Business Day immediately preceding the last Business Day of each calendar quarter.

**“Transferors”** means visitalk.com, Inc.

**“Trust”** means the trust created pursuant to this Trust Agreement in accordance with the Plan.

**“Trust Property”** means all property and proceeds to be contributed to the Trust as more fully set forth in the Plan, including such additional or different corpus as the Creditors Trustee may from time to time hold in trust or receive on behalf of the Beneficiaries of the Trust; the Causes of Action, including the Avoidance Actions; all post confirmation proceeds of the foregoing (including, without limitation, “proceeds” as defined in the Uniform Commercial Code); \$50,000 from the Causes of Action Proceeds, and any stock or warrants or Trust Units to be transferred by Transferor to the Trust from time to time.

**“Trust Unit”** shall mean one share of the Unsecured Creditors Trust where there are as many shares as there are Allowed Unsecured Claims.

Section 1.02 Rules of Construction.

Except as otherwise expressly provided in this Trust Agreement or unless the context otherwise clearly requires:

(a) References to designated articles, sections, and other subdivisions of this Trust Agreement, such as “Section 6.12(a)”, refer to the designated article, section or other subdivision of this Trust Agreement as a whole and to all subdivisions of the designated article, section, or other subdivision. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular article, section or other subdivision of this Trust Agreement.

(b) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements or any other changes that may have occurred after the date of this Trust Agreement.

(c) The term “including and all of its variations” means “including but not limited to.” Except when used in conjunction with the word “Either,” the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both,” not “either A or B but not both”).

(d) All accounting terms used in an accounting context and not otherwise defined will be construed in accordance with generally accepted accounting principles.

(e) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the word “from” means “from and including” and the words “to” or “until” mean “to but excluding.” Likewise, in setting deadlines or other periods, “by” means “on or before,” and “after” means “from and after.”

All terms defined in this Trust Agreement will have the defined meanings when used in any certificate or other documents made or delivered pursuant hereto unless otherwise defined herein.

## **ARTICLE II ORGANIZATION**

### Section 2.01 Name.

This Trust will be known as “Visitalk Creditors Trust,” in which name the Creditors Trustee may conduct the affairs of the Trust.

### Section 2.02 Office.

The office of the Trust will be in care of the Creditors Trustee at any address that the Creditors Trustee may designate.

### Section 2.03 Declaration of Trust.

For good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, and pursuant to the terms of the Plan, the Confirmation Order self-executed this Trust Agreement and, subject to the provisions of Section 2.05 below, irrevocably transferred, absolutely assigned, conveyed, set over, and delivered to the Creditors Trustee, and its successors and assigns, all of their right, title and interest in and to the Assets transferred pursuant to the Plan in trust to and for the benefit of the Beneficiaries for the uses and purposes stated herein and in the Plan, except as may otherwise be specifically provided by the Plan. Effective as of the date hereof, the Creditors Trustee will have all the rights, powers and duties set forth herein and pursuant to applicable law for accomplishing the purposes of the Trust. The Creditors Trustee is hereby authorized to file with the Secretary of State of the State of Arizona any documents necessary to establish the Trust.

### Section 2.04 Appointment of Creditors Trustee.

The Creditors Trustee was appointed as trustee of the Trust effective as of the Plan Effective Date to have all the rights, powers and duties set forth herein and that appointment is, hereby, confirmed with the Creditors Trustee having all such rights, powers and duties.

Section 2.05 Acceptance of Trust.

The Creditors Trustee has accepted and confirms its acceptance of the Trust Property and has agreed and confirms its agreement to hold and administer the Trust Property for the benefit of the Beneficiaries subject to the terms and conditions of this Trust Agreement and the Plan.

Section 2.06 Tax Treatment of Trust.

For United States federal and applicable state income tax purposes, the transfer of the Trust Property to the Trust pursuant to and in accordance with the Plan will be reported as a disposition of the Trust Property directly to and for the benefit of the Beneficiaries immediately followed by a contribution of the Trust Property by the Beneficiaries to the Trust for the benefit of the Beneficiaries. The Beneficiaries will be treated as the grantors and owners of the Trust. The Trustee will file tax returns as a grantor trust pursuant to Section 1.671(a) or (b)(3) of the Income Tax Regulations as elected by the Trustee.

Section 2.07 Conveyance of Assets and Valuation.

Except as otherwise provided by the Plan or this Trust Agreement, upon the Effective Date of the Plan, title to the Trust Property passed or will pass to the Trust free and clear of all Claims and Interests in accordance with Section 1141 of the Bankruptcy Code. Any valuation of the Trust Property approved by the Bankruptcy Court as part of the confirmation process will be consistently used by the Creditors Trustee and the Beneficiaries for all United States federal and applicable state income tax reporting purposes but will not limit the Creditors Trustee in regard to pricing the Trust Property in conjunction with their sale.

Section 2.08 Nature and Purpose of the Trust.

(a) Purpose. The Trust is a liquidating trust pursuant to which the Creditors Trustee is to (i) hold the Trust Property and dispose of the same in accordance with this Trust Agreement and the Plan in accordance with Treasury Regulation Section 301.7701-4(d) and (ii) oversee and direct the liquidation of the Trust Property. Accordingly, the primary purpose of the Trust is to liquidate the assets transferred to it with no intentions to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the Trust Property, and consistent with, the liquidating purpose of the Trust. The Creditors Trustee shall make continuing efforts to dispose of the Trust Property, make timely distribution, and not unduly prolong the duration of the Creditors Trust.

(b) Manner of Acting. The Creditors Trustee will oversee the liquidation of the Trust Property in a cost-effective manner in a reasonable time, with due regard for the risk that undue haste may minimize the liquidating proceeds of a particular Trust Property. The Creditors Trustee will make continuing efforts to dispose of the Trust Property, make timely distributions and not unduly prolong the duration of the Trust. In overseeing the selling of the Trust Property, or otherwise monetizing them, the Creditors Trustee will use its best efforts to maximize the amount of the proceeds derived therefrom. The liquidating of the Trust Property may be accomplished either through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, or otherwise subject to the terms of the Plan. Notwithstanding anything to the contrary contained herein, the Trust will not be permitted to receive or retain cash or cash equivalents in excess of a reasonable amount to: (i) meet all distributions, Claims and contingent liabilities; (ii) establish such reserves as provided herein and in the Plan; or (iii) preserve or enhance the liquidating value of the Trust Property during the term of the Trust.

(c) Relationship. This Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Trust is not intended to be, and will not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor will the Creditors Trustee or Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Beneficiaries to the Creditors Trustee will be solely that of beneficiaries of a trust and will not be

deemed a principal or agency relationship, and their rights will be limited to those conferred upon them by this Trust Agreement.

Section 2.09      Status of Creditors Trustee.

The Creditors Trustee will directly and indirectly be the representative of the Debtors' Estate as that term is used in Section 1123(b)(3)(B) of the Bankruptcy Code and will have the rights and powers provided for in the Bankruptcy Code, including Section 1107 thereof, in addition to any rights and powers granted in this Trust Agreement and in the Plan. The Creditors Trustee will be the successor-in-interest to the Debtor with respect to any action which was or could have been commenced by the Debtor prior to the Effective Date and will be deemed substituted for the same as the party in such litigation. All actions, claims, rights or interests constituting Trust Property, are preserved and retained and may be enforced by the Creditors Trustee as the representative of the Debtor's Estate pursuant to Section 1123 (b)(3)(B) of the Bankruptcy Code. The Creditors Trustee will be a party-in-interest as to all matters over which the Bankruptcy Court has jurisdiction or retains jurisdiction under the Plan.

**ARTICLE III  
BENEFICIARIES**

Section 3.01      Rights of Beneficiaries.

Each Beneficiary will take and hold its uncertificated (or, at the option of the Trustee, certificated beneficial interest set forth in separate classes in accordance with their payment priority) beneficial interest subject to all of the terms and provisions of this Trust Agreement and the Plan. The interest of a Beneficiary of the Trust is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary's interest will pass to the legal representative of such Beneficiary and such death, insolvency or incapacity will not terminate or affect the validity of this Trust Agreement. A Beneficiary will have no title to, right to, possession of, management of, or control of, the Trust Property except as herein expressly provided. No surviving spouse, heir or devisee of any deceased Beneficiary will have any right of dower, homestead, or inheritance, or of partition, or any other right, statutory or otherwise, in the Trust Property, but the whole title to all the Trust Property will be vested in the Creditors Trustee and the sole interest of the Beneficiaries will be the rights and benefits given to such persons under this Trust Agreement. Notwithstanding anything herein to the contrary, the Active Professionals shall be paid with priority and in full by the Creditors Trust prior to any payment of the Allowed Unsecured Claims of Class 7. Further, no distribution shall be made to any holders of Subordinated Unsecured Claims until such time as the Active Professionals and the holders of Allowed Unsecured Claims have been paid in full. The holders of Subordinated Unsecured Claims are not part of and shall not be entitled to share in the Class 7 Securities Pool (described in the Plan) and such claims shall be subordinated for all purposes to all creditors in Class 7 by operation of 11 U.S.C. §510(b) and to the Active Professionals.

Section 3.02      No Legal Title in Beneficiaries.

No Beneficiary will have legal title to any part of the Trust Property. No transfer by operation of law or otherwise, of the right, title and interest of any Beneficiary in and to the Trust Property or hereunder will operate to terminate this Trust or entitle any successor or transferee of such Beneficiary to an accounting or to the transfer to it of legal title to any part of the Trust Property.

Section 3.03      Meetings of Beneficiaries.

In the event that a vote of the Beneficiaries is required under any other provision of the Trust Agreement or the Plan, the following provisions will apply:

(a)      Meeting. Meetings of the Beneficiaries may be held whenever and wherever called for by the Creditors Trustee.

(b) Notices. Not less than ten (10) nor more than fifty (50) days (inclusive of the date of the meeting) before the date of any meeting of the Beneficiaries and at the discretion of the person or persons calling the meeting, the Creditors Trustee will cause a written notice setting forth the time, place and general purposes of the meeting to be deposited in the mail with postage prepaid, addressed to each Beneficiary. Any Beneficiary may waive call or notice of any annual or special meeting (and any adjournment thereof) at any time before, during or after it is held. Attendance of a Beneficiary at any such meeting in person or by proxy will automatically evidence his waiver of call and notice of such meeting (and any adjournment thereof) unless he or his proxy is attending the meeting for the express purpose of objecting to the transaction of business thereat because it has not been properly called or noticed. No call or notice of a meeting of the Beneficiaries will be necessary if each of them waives the same in writing or by attendance as aforesaid.

(c) Beneficiaries of Record. For the purpose of determining Beneficiaries entitled to notice of or to vote at any meeting of Beneficiaries (and at any adjournment thereof), or Beneficiaries to receive payment of any dividend, or in order to make a determination of Beneficiaries for any other lawful action, the Creditors Trustee may fix in advance a record date which will not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) nor less than ten (10) days prior to such other action.

If no record date is fixed for determining Beneficiaries entitled to notice of or to vote at a meeting of Beneficiaries, the record date will be at four o'clock (4:00) in the afternoon on the day before the day on which notice is given or, if notice is waived, at the commencement of the meeting. If no record date is fixed for determining Beneficiaries entitled to express written consent to corporate action without meeting, the record date will be the time of the day on which the first written consent is served upon the Liquidating Trustee.

A determination of Beneficiaries of record entitled to notice of or to vote at a meeting of Beneficiaries will apply to any adjournment of the meeting; provided, however, that the Creditors Trustee may fix a new record date for the adjourned meeting and further provided that the adjournment or adjournments of any such meeting do not exceed thirty (30) days in the aggregate.

(d) Voting Record. The Creditors Trustee will make a complete record of the Beneficiaries entitled to vote at a meeting of the Beneficiaries (and at any adjournment thereof), arranged in alphabetical order, with the address and *Pro Rata* share of Allowed Claims (of all Beneficiaries) of each Beneficiary. Such record will be produced and kept open at the time and place of the meeting and will be subject to the inspection of any Beneficiary during the whole time of the meeting for the purposes thereof.

(e) Proxies. Any Beneficiary entitled to vote thereat may vote by proxy at any meeting of the Beneficiaries (and at any adjournment thereof) which is specified in such proxy, provided that his proxy is executed in writing by him or his duly authorized attorney-in-fact. No proxy will be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. The burden of proving the validity of any proxy undated, irrevocable or otherwise contested at any such meeting of the Beneficiaries will rest with the person seeking to exercise the same. A telephone or cablegram appearing to have been transmitted by a Beneficiary or by his duly authorized attorney-in-fact may be accepted as a sufficiently written and executed proxy.

(f) Voting. Except as may otherwise be required by applicable law, each Beneficiary represented at any meeting of the Beneficiaries in person or by a proxy given as provided in Section 3.03(e) above, will be entitled to a number of votes equal to such Beneficiary's *Pro Rata* share of Allowed Claims of the Beneficiaries; provided, however, that holders of Subordinated Unsecured Claims shall not be entitled to vote or be counted toward a quorum of the meeting in and until all Allowed Unsecured Claims have been paid in full. Any question submitted to the Beneficiaries will be resolved by a majority of the votes cast thereon provided that such votes constitute a majority of the quorum of the particular meeting, whether or not such quorum is then present. The voting may be held by either ballot or by voice vote. No ballot or change of vote will be accepted after the polls have been declared closed following the ending of the announced time for voting. Votes by holders of Subordinated Unsecured Claims shall be equal to the principal amount of dollars paid by such claimant for their stock.

(g) Voting of Interests by Certain Beneficiaries. A beneficial interest held by a corporation may be voted by such corporation's officer, agent or proxy as its Bylaws may prescribe or, in the absence of such a bylaw provision, by any other person designated by resolution of its board of directors and such officer, agent or other person so designated may vote such corporation's beneficial interest in person or by proxy appointed by him.

A beneficial interest held by an administrator, executor, guardian or conservator may be voted by such representative, either in person or by proxy, without a transfer of such beneficial interest into his name. A beneficial interest standing the name of a trustee, other than a trustee in bankruptcy, may be voted by such representative, either in person or by proxy.

A beneficial interest outstanding in the name of a receiver, trustee in bankruptcy or assignee for the benefit of creditors may be voted by such representative, either in person or by proxy. A beneficial interest held by or under the control of such a receiver or trustee may be voted by such receiver or trustee, either in person or by proxy, without the transfer thereof into his name, if authority to do so be contained in an appropriate order of the court by which such receiver or trustee was appointed.

A Beneficiary with an Allowed Claim whose beneficial interest is pledged will be entitled to vote until the beneficial interest has been transferred into the name of the pledge, and thereafter the pledge will be entitled to vote the beneficial interest so transferred.

If a beneficial interest stands in the name of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or tenants by community property or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same beneficial interest, unless the Creditors Trustee is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting will have the following effect:

- (1) If only one votes, his act binds;
- (2) If more than one votes, the act of the majority so voting binds all; and
- (3) If more than one votes, but the vote is evenly split on any particular matter, each faction may vote the beneficial interest in question proportionally.

(h) Quorum. At any meeting of the Beneficiaries, until all Allowed Unsecured Claims have been paid in full, the presence in person or by proxy of the holders of Allowed Claims totaling more than fifty percent (50%) of unpaid Allowed Unsecured Claims will constitute a quorum of the Beneficiaries for all purposes. At any meeting of Beneficiaries following the payment in full of Allowed Unsecured Claims, the presence in person or by proxy of the holders of Subordinated Unsecured Claims totaling fifty percent (50%) of unpaid subordinated Unsecured Claims will constitute a quorum of Beneficiaries for all purposes. In the absence of a quorum, any meeting may be adjourned from time to time (but not exceeding thirty (30) days in the aggregate) by the Creditors Trustee until a quorum is formed without notice by announcement at the meeting, or with notice pursuant to Section 3.03(b) above, if a new record date is fixed for the adjourned meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. The Beneficiaries present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal or temporary absence of enough Beneficiaries to leave less than a quorum.

(i) Organization and Conduct of Meetings. Each meeting of the Beneficiaries will be called to order and thereafter chaired by the Creditors Trustee. The Creditors Trustee or his representative will act as secretary of each meeting of the Beneficiaries. After calling a meeting to order, the Creditors Trustee may require the registration of all Beneficiaries intending to vote in person, and the filing of all proxies with the Creditors Trustee. After the announced time for such filing of proxies has ended, no further proxies or changes, substitutions or revocations, of proxies will be accepted. Absent a showing of bad faith on his part, the Creditors Trustee will, among other things, have absolute authority to fix the period of time allowed for the registration of Beneficiaries and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal or question and answer portions thereof).

(j) Informalities and Irregularities. All informalities or irregularities in any call or notice of a meeting of the Beneficiaries, or in the areas of credentials, proxies, quorums, voting and similar matters, will be deemed waived if no objection is made at the meeting.

(k) Action by Beneficiaries Without a Meeting. Any action required or permitted to be taken at a meeting of the Beneficiaries of the Trust may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Beneficiaries entitled to vote with respect to the subject matter thereof. Such consent will have the same effect as a unanimous vote of the Beneficiaries of the Trust.

#### **ARTICLE IV THE CREDITORS TRUSTEE**

##### Section 4.01 Appointment and Tenure of Creditors Trustee

The Creditors Trustee's authority was or will be effective as of the date it is appointed by the Court. The Creditors Trustee shall serve as trustee until its, his or her successor will have been appointed in accordance with Section 4.02 or until resignation, death or removal.

##### Section 4.02 Tenure, Removal, and Replacement of the Creditors Trustee.

Subject to the provisions of Section 4.01 above, the authority of the Creditors Trustee will remain and continue in full force and effect until (a) all of the Trust Property is liquidated in accordance with the Plan, the Net Distributable Cash has been completely distributed in accordance with the provisions of the Plan, all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities, and the Order closing the Chapter Case is a Final Order; (b) payment in full of all Claims of Beneficiaries and Active Professionals; or (c) the determination by the Creditors Trustee in his reasonable business judgment that no further action should be taken with regard to the remaining Trust Property and that no additional distributions will be made. The service of the Creditors Trustee will be subject to the following:

(a) The Creditors Trustee will serve until death, resignation pursuant to subsection (b) below, or removal;

(b) The Creditors Trustee may resign at any time by providing a written notice of resignation to the Bankruptcy Court. Such resignation will be effective when a successor is appointed as provided herein;

(c) The Creditors Trustee may be removed for Cause by Order of the Bankruptcy Court, which may be sought by any Trust Unit holder of the Creditor's Trust, or upon a vote of greater than fifty percent (50%) of the Beneficiaries then entitled to vote.

(d) In the event of a vacancy in the position of the Creditors Trustee, whether by removal, resignation, illness, incapacity, or death, the vacancy will be filled by the appointment of a successor Creditor's Trustee approved by the Bankruptcy Court after appropriate notice and hearing. Furthermore, the appointment of the successor Creditors Trustee will be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor Creditors Trustee;

(e) Immediately upon appointment of any successor Creditors Trustee, all rights, powers, duties, authority, and privileges of the predecessor Creditors Trustee hereunder will be vested in and undertaken by the successor Creditors Trustee without any further act; and the successor Creditors Trustee will not be liable personally for any act or omission of the predecessor Creditors Trustee; and

(f) Upon the resignation of the Creditors Trustee and the appointment of a successor, the resigning Creditors Trustee will, if applicable, convey, transfer, and set over to the successor by appropriate instrument or instruments all of the funds, if any, then un conveyed or otherwise undisposed of and all other assets then in its possession and held hereunder.

Section 4.03 Acceptance of Appointment by Successor Creditors Trustee

Any successor Creditors Trustee appointed hereunder will execute an instrument accepting such appointment and assuming all of the obligations of the retiring Creditors Trustee hereunder and thereupon the successor Creditors Trustee will, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of its predecessor in the Trust hereunder with like effect as if originally named herein; but the retiring Creditors Trustee nevertheless will, if applicable, when requested in writing by the successor Creditors Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Creditors Trustee upon the trust herein expressed, all the estates, properties, rights, power and trusts of such retiring Creditors Trustee, and will duly assign, transfer, and deliver to such successor Creditors Trustee all property and money held hereunder.

Section 4.04 Authority.

Subject to any limitations contained in, or as otherwise provided by this Trust Agreement or in the Plan, the Creditors Trustee will have the following powers, authorities and duties, by way of illustration and not of limitation:

(a) The Creditors Trustee shall marshal, maintain, administer, pursue, collect, settle, dispose of, and disperse the Trust Property for the benefit of Beneficiaries, including the Active Professionals' Claims included in Class 1 (a) of the Debtor's confirmed Plan. Effective on the Effective Date, the Creditors Trustee will be the representative of the Estate as that term is used in Bankruptcy Code §1123(b)(3)(B) and will have the rights and powers provided for in a Bankruptcy Code in addition to any rights and powers granted herein to pursue the Causes of Action.

(b) To obtain liquidation values of all assets at the time of transfer to the Trust;

(c) to hold all interests in the Trust Property;

(d) to liquidate or direct the Transferors to liquidate any and all of the Trust Property in accordance with the terms of this Trust Agreement and the Plan;

(e) to manage, sell, transfer, assign, compromise, settle or deal in any other manner with any of the Trust Property in such manner not otherwise provided for herein as the Creditors Trustee may deem advisable consistent with the terms of the Plan;

(f) to release, convey or assign or direct the Transferors to release, convey or assign any right, title or interest in or to the Trust Property or any portion thereof; and to do or direct the Transferors to do all things necessary or appropriate to perform any obligations required to be performed by the Trust under the terms of any agreement for the sale of any of the Trust Property, including the execution and delivery of any deeds, assignments, bills of sale or other instruments of conveyance necessary or appropriate to transfer and convey such assets;

(g) to undertake any actions necessary or desirable to operate or conduct the affairs of the Creditors Trust, including entering into contracts and other agreements and any other action necessary to preserve or enhance the liquidating value of the Trust Property;

(h) to collect, receive, hold, manage, invest and distribute any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust and to give full discharge and acquittance therefor;

(i) pending sale or other disposition or distribution, to retain or direct the Transferors to retain all or any assets constituting part of the Trust Property regardless of whether or not such assets are, or may become, underproductive, unproductive or a wasting asset (the Creditors Trustee will be permitted to keep any part of the Trust Property as may be in cash, or as may be converted into cash uninvested for a reasonable period of time and the Creditors Trustee will not be chargeable with interest thereon);

(j) subject to the terms of the Plan, to retain and set aside funds out of Trust Property as the Creditors Trustee will deem necessary or appropriate to pay, or provide for the payment of: (i) the unpaid liabilities, debts or obligations of the Trust, (ii) contingencies, and (iii) the expenses of administering the Trust Property;

(k) to do and perform or to direct the Transferors to do or perform any acts or things necessary or appropriate for the conservation and protection of the Trust Property, including any acts or things necessary or appropriate to maintain assets held by the Creditors Trustee pending sale or other disposition thereof or distribution thereof to the Beneficiaries, and in connection therewith to employ brokers or other agents and to confer upon them such authority as the Creditors Trustee may deem necessary or appropriate, and to pay reasonable compensation therefor;

(l) the Creditors Trustee will hold all right, title and interest in and to the Causes of Action on behalf of the Beneficiaries of the Creditors Trust and will pay from the Creditors Trust all ordinary and necessary costs of protecting, preserving, investigating and pursuing the Causes of Action. In accordance with Section 1123(b)(3)(B) of the Bankruptcy Code, the Plan and this Trust Agreement, to engage in, intervene in, prosecute, join, defend, compound, settle, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, controversies, demands or other litigation relating to the Plan, the Causes of Action, the Trust, the Trust Property or the Trust's affairs, to enter into agreements relating to the foregoing, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof, all in the name of the Trust if necessary or appropriate, and institute or continue actions which were or otherwise could have been brought by the Debtors and prosecute or defend all litigation or appeals on behalf of the Debtors and/or the Debtors estate, and, when appropriate, settle such actions and claims;

(m) in accordance with Section 1123(b)(3) of the Bankruptcy Code, to own and retain, and prosecute, enforce, compromise, settle, release, or otherwise dispose of, any and all claims, defenses, counterclaims, setoffs, and recoupments belong to the Debtors or the Debtors' estate; the power to retain and employ, for reasonable compensation and upon reasonable terms professional persons, including but not limited to appraisers, accountants, brokers, attorneys, and clerical assistants to assist in the administration and liquidation of the Trust Property;

(n) to borrow funds on reasonable business terms to finance the investigation and litigation of the Causes of Action;

(o) to assign its rights under the Plan;

(p) to file any and all documents and take any and all such other action as the Creditors Trustee, in its sole judgment, may deem necessary in order that the Creditors Trustee may lawfully carry out the purposes of the Trust in any jurisdiction;

(q) to review all Claims in the Chapter 11 Case and file or litigate objections to the allowance of Claims and seek to estimate them;

(r) to pay and discharge any costs, expenses, professional fees or obligations deemed necessary to preserve or enhance the liquidation value of the Trust Property, discharge duties under the Plan or perform the purpose of the Plan and this Trust Agreement; payment of such fees and expenses will not require Bankruptcy Court approval;

(s) to open and maintain bank accounts and deposit funds, draw checks and make disbursements in accordance with the Plan and this Trust Agreement;

(t) to select and engage such Persons, including such professional advisors, as the Creditors Trustee deems necessary and desirable to assist it in fulfilling its obligations under this Trust Agreement and the Plan and pay the reasonable fees of such Persons and reimburse such Persons for this reasonable out-of-pocket costs and expenses. To the extent that the Creditors Trustee is licensed and capable of doing so, the Creditors Trustee may serve as its own accountant, and/or tax specialist in conjunction with any of the rights, powers and duties of the Creditors Trustee under the Plan;

(u) to sue and be sued in a representative capacity for the Trust;

(v) to enforce, waive, assign or release rights, privileges or immunities of any kind;

(w) to vote any share or shares of stock or interests and otherwise exercise the rights appurtenant to ownership of such stock or interests;

(x) to in general, without any manner limiting any of the foregoing, deal with the Trust Property or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, whether similar to or different from the ways herein specified, but in all events subject and consistent with the terms of the Plan;

(y) to obtain and pay for insurance coverage relative to the proper performance of its duties under the Plan and this Trust Agreement, and to indemnify itself and others provided for in the Plan, and this Trust Agreement;

(z) to establish the Trust Accounts, and establish such additional reserves, funds, and accounts out of the Trust Property as may be necessary for carrying out the provisions of this Trust Agreement which are consistent with the terms of the Plan;

(aa) as soon as is practicable, ask the Bankruptcy Court to enter the Final Decree;

(bb) to seek any relief from or resolution of any disputes by the Bankruptcy Court;

(cc) to appear and participate in any proceeding with respect to any matter regarding or relating to the Plan or the Trust;

(dd) to review and object to any application for Professional Fees; and

(ee) without limitation, to do or direct the Transferors to do any and all things necessary to accomplish the purposes of the Plan and this Trust Agreement.

In addition, the Creditors Trustee will have the right to seek Bankruptcy Court approval of any action to be undertaken by the Trust, and the Creditors Trustee will have the authority and power provided under Section 363 of the Bankruptcy Code, including, without limitation, the power to sell any Trust Property free and clear of any Liens;

#### Section 4.05 Compensation and Reimbursement of Creditors Trustee.

The Creditors Trustee and any professionals or any Person retained by the Creditors Trustee pursuant to the Plan will be entitled to reasonable compensation for services rendered at a rate reflecting actual time billed by such professional or Person on an hourly basis, at the standard billing rates in effect at the time of service or such other rate or basis of compensation that is reasonable or such other reasonable and standard agreements for compensation of such professionals, such as a contingency fee agreement, as determined to be appropriate by the Creditors Trustee in the exercise of its best business judgment. All reasonable out-of-pocket expenses incurred by the Creditors

Trustee or any other professional or other Person retained by the Creditors Trustee pursuant to the Plan will be reimbursable as an expense of the Trust prior to payment of any Allowed Unsecured Claims or Subordinated Unsecured Claims.

Section 4.06 No Implied Obligations.

No other further covenants or obligations will be implied into this Trust Agreement. The Creditors Trustee will not be responsible in any manner whatsoever for the correctness of any recital, statement, representation, or warranty herein, or in any documents or instrument evidencing or otherwise constituting a part of the Trust Property.

Section 4.07 Unknown Property and Liabilities

The Creditors Trustee will be responsible for only that property delivered to it, and will have no duty to make, nor incur any liability for failing to make, any search for unknown property or for any liabilities.

**ARTICLE V  
ADMINISTRATION OF THE TRUST**

Section 5.01 Distributions.

Notwithstanding anything to the contrary contained herein, the Creditors Trustee will make distributions of funds pursuant to and in accordance with the Plan, as amended, as follows:

(a) First, to satisfy any valid loans that have been obtained by the Creditors Trust for purposes of financing the Creditors Trust activities.

(b) Second, to pay all costs and expenses related to the care and maintenance of the Trust Property, including but not limited to, the expenses of the Creditors Trust (including the fees and expenses of the Creditors Trustee and his or her professionals) and the expenses of the Creditors Trustee and his or her professionals) and the expenses related to prosecution of the Causes of Action arising after the Plan Effective Date on a *pro rata* basis;

(c) Third, to pay the Active Professionals Claimants included in Class 1(a) on a *pro-rata* basis in full for remaining fees and costs incurred prior to and owed as of the Plan Effective Date. All unpaid fees and costs of the Active Professionals, any fees and costs of the Active Professionals incurred post-Effective Date and all costs and expenses of the Creditors Trustee and his or her professionals shall have administrative priority pursuant to 11 U.S.C. section 507 and 503(b) over all other obligations of the Creditors Trust.

(d) Fourth, to establish and fund a reserve account of no less than \$50,000 to provide for future expenses of the Creditors Trust (the initial reserve account shall be established by the conveyance of \$50,000 from Causes of Action Proceeds free and clear of liens by the Debtor to the Creditors Trust on the Effective Date);

(e) Fifth, to pay holders of Trust Units on a *pro-rata* basis with any amounts attributable to an unsecured claim that is still a Disputed Claim as of the date of the distribution being set aside in a separate interest bearing account pending determination by the Court as to whether or not the Claim is an Allowed Unsecured Claim.

(f) Sixth, to pay on a *pro-rata* basis holders of the Subordinated Unsecured Claims, which equity claims are subordinated under 11 U.S.C. §510(b), with amounts attributable to any such claims that are disputed as of the date of the distribution being set aside in a separate interest bearing account pending determination by the Court as to whether or not the claim is an Allowed claim.

The Creditors Trustee will not be required to make *de minimis* distributions except upon the Final Distribution Date.

The Creditors Trustee will, in accordance with the Plan and on each Distribution Date, distribute to the Beneficiaries the net income of the Trust and the net proceeds from the disposition of the Trust Property in excess of such amounts reasonably necessary to preserve or enhance the liquidating value of the Trust Property during the term of the Trust, to pay reasonable estimated administrative expenses and to meet all Claims or other contingent liabilities.

The Creditors Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Creditors Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement (including, but not limited to, the "Foreign Investment in Real Property Tax Act"). Distributions will be made to the Beneficiaries who hold such interest on the Record Date immediately preceding the Distribution Date. Distributions will be made at least on an annual basis, and may be made more frequently as may be feasible, at the sole discretion of the Trustee.

The Creditors Trustee may also withhold, pending resolution of an objection to an unsecured claim, if any, and the receipt by the Creditors Trustee of the proof that the claim is an Allowed Claim entitled to be treated as a Trust Unit holder, the *pro-rata* share of any securities from the Securities Pool, as defined in the Plan, including VTEC Common Shares, VTE Warrant Units, Operating Subsidiary Common Stock and Operating Subsidiary Warrant Units. Within ten (10) business days succeeding the Creditors Trustee's receipt of proof of the resolution of any such objection, the Creditors Trustee shall distribute the Trust Unit holders *pro rata* share of such securities, if any, held by Creditors Trustee.

Section 5.02     Accounts: Eligible Investments.

(a)           Creation of Account.

(1)   The Creditors Trustee, on behalf of the Beneficiaries, will establish and maintain in the name of the Creditors Trustee at an Eligible Institution a segregated trust account accessible only by the Creditors Trustee will be identified as a Trust Account and will bear a designation clearly indicating that the funds deposited therein are held on behalf of the Beneficiaries.

(2)   The Creditors Trustee, on behalf of the Beneficiaries, will establish and maintain in the name of the Creditors Trustee at an Eligible Institution a segregated trust account accessible only by the Creditors Trustee (the "Distribution Reserve") which will be identified as a Trust Reserve Account held on behalf of the Beneficiaries.

(b)           Maintenance of Account.

The Creditors Trustee will possess all right, title and interest in and to all funds on deposit in and all Eligible Investments, if any, credited to, and in all proceeds of, the Trust Accounts. The Accounts will be under the sole dominion and control of the Creditors Trustee on behalf of the Beneficiaries and Active Professionals. If, at any time, any Account is held by an institution other than an Eligible Institution, the Creditors Trustee will within five Business Days establish a new Account meeting the conditions for that account in this Section and will transfer any cash and any investments to such new account. The Creditors Trustee will be the sole Person with authorization to withdraw any amount from any Account.

Section 5.03     Distributions from the Trust Account.

The Creditors Trustee will make distributions from the Trust Account to the Beneficiaries as of the applicable Record Date in accordance with and subject to the distribution and priority scheme set forth above, subject to the provisions contained herein relating to the Distribution Reserve.

Section 5.04 Distributions from the Reserve Account.

(a) Pending the resolution of an objection to any claim, if any, and the receipt by the Creditors Trustee of proof of the same, the Creditors Trustee shall withhold the pro rata share of any cash distributions that such party might be entitled to, if their claim is determined to be valid, in the Trust Reserve Account. Within ten (10) Business Days succeeding the Creditors Trustee's receipt of proof of the resolution of any objection, the Creditors Trustee will withdraw from the Trust Reserve Account and distribute to the holder of an Allowed Claim the amount of the distributions to which such holder is entitled which were previously withheld.

Section 5.05 Distribution to the Holders of Claims.

(a) The Creditors Trustee shall distribute at least annually its net income, including proceeds from the sale of assets or income from investments, provided, however, that the Creditors Trust may retain a reasonable amount of proceeds or income to meet claims and contingent liabilities, including anticipated fees and costs of litigation, and maintain the value of its assets.

(b) On the Distribution Date, the Creditors Trustee will withdraw from the Trust Account and distribute to each holder of an Active Professional Claim an amount equal to such holder's *Pro Rata* share of net distributable cash until they receive the full amount due them.

(c) On each Distribution Date, the Creditors Trustee will withdraw from the Trust Account and distribute to each holder of an Allowed Unsecured Claim as of the applicable record date, an amount equal to such holder's pro rata share of net distributable cash based on their pro rata percentage of the Allowed Unsecured Claims until the holders of the Allowed Unsecured Claims receive the full amount due to them.

(d) On each Distribution Date, the Creditors Trustee will withdraw from the Trust Account and distribute to each holder of a Subordinated Unsecured Claim as of the applicable record date, an amount equal to such holder's *pro rata* share of net distributable cash based on their *pro rata* percentage of the Subordinated Unsecured Claims until the holders of the Subordinated Unsecured Claims receive the full amount due them.

Section 5.06 Delivery of Distributions.

Distributions will be made by the Creditors Trustee or by the Disbursing Agent at the direction of the Creditors Trustee as follows:

(a) At the addresses set forth in the Proof of Claim filed by holders of Claims (or the last known addresses of such holders if no Proof of Claim is filed or if the Creditors Trustee has been notified of a change of address);

(b) At the addresses set forth in written notices of address change delivered to the Creditors Trustee after the date of any related Proof of Claim;

(c) At the addresses reflected in either the Schedules or records of the Debtor if no Proof of Claim has been filed and the Creditors Trustee has not received a written notice of change of address; or

(d) If any distribution to a Beneficiary is returned as undeliverable, no further distributions to such Beneficiary will be made unless and until the Creditors Trustee is notified of the Beneficiary's then current address, at which time all missed distributions will be made to the holder without interest. Provided, however, after the expiration of six (6) months from the date of the first attempted distribution, any unclaimed securities and all future distributions will vest in the Creditor's Trust, free of any claim of the distributee. The Creditors Trust will open a securities account and any such unclaimed securities will be deposited into this account for the benefit of the Creditors Trust. The Trustee shall have the authority to sell such securities and use the proceeds for the benefit of the Creditors Trust or the Creditors Trust may distribute the securities if it bears all transfer fees. The claim of any

Beneficiary with respect to such unclaimed property will be discharged and forever barred, notwithstanding any federal or state escheat law to the contrary.

Section 5.07 Operating Expenses.

The Creditors Trustee will utilize the reserves (which need not be in separate accounts) as follows:

(a) In accordance with the Plan and subject to any agreements regarding budgets for the operation of the Trust, the Creditors Trustee will draw on amounts available in the Trust Account to pay all costs and expenses related to the care and maintenance of the Trust Property, including, without limitation) costs of selling the assets and (ii) any expenses of the Trust (including the fees and expenses of the Creditors Trustee and their professionals in pursuing, without limitation, the Causes of Action otherwise).

(b) The Creditors Trustee will draw on the Collection Account to pay all costs and expenses related to the prosecution of any Causes of Action or objections to Disputed Claims, including, but not limited to, the fees and expenses of the Creditors Trustee and the fees and expenses of professionals retained by the Creditors Trustee to assist in the prosecution of such actions or objections.

Section 5.08 Final Distribution.

If the Creditors Trustee will determine that the remaining assets of the Trust may be conveniently distributed, or if the existence of the Trust will terminate, the Creditors Trustee will, as expeditiously as is consistent with the conservation and protection of the Trust Property, distribute the Trust Property to the Beneficiaries.

Section 5.09 De minimis Distributions.

The Creditors Trustee will not be required to make any distribution, except on the Final Distribution Date, to any Beneficiary if the amount to be distributed is \$50.00 or less. If a Beneficiary does not receive a distribution due to the provisions of this paragraph on any Distribution Date, then the Claim (so long as it is an Allowed Claim) will remain eligible for distributions on any subsequent Distribution Date, subject to the provisions of this paragraph. In all events, the holders of Allowed Claims which have not received a distribution on any previous Distribution Dates because of this provision, will receive such distribution on the Final Distribution Date.

Section 5.10 Tax Returns/Tax Matters.

(a) The Creditors Trustee will file all tax returns and other filings with governmental authorities on behalf of the Trust and the Trust Assets it holds for time periods ending on or before termination of this Trust. Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Creditors Trustee of a private letter ruling if the Creditors Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Creditors Trustee) the Creditors Trustee will file tax returns for the Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a). The Creditors Trustee's filing will also include any responses to any tax audits.

(b) The Creditors Trustee is authorized to act as agent for the Trust Property in withholding or paying over any amounts required by law (including tax law) to be withheld or paid by the Trust Property in connection with the transfer and assignment of the Trust Property to the Trust pursuant to the Plan. The Creditors Trustee is further entitled to deduct any United States federal or applicable state withholding taxes from any payments made with respect to claims paid by the Creditor Trust, as appropriate, and will otherwise comply with Section 346 of the Bankruptcy Code.

(c) All net income of the Trust and net proceeds from the disposition of the Trust Property will be subject to United States federal and applicable state income taxation in the year such net income or net proceeds are realized, whether or not such amounts are immediately distributed to the Beneficiaries or retained by the Creditors Trustee in such reserves necessary to meet the Disputed Claims and maintain or enhance the liquidating value of the Trust Property.

Section 5.11 Allocations.

(a) All income, expenses and loss realized upon full liquidation of the Trust Property will be allocated to each Beneficiary that holds an Allowed Unsecured Claim (in proportion to the amount of the claim of each holder of such claim), until the Allowed Unsecured Claims have been paid in full and thereafter allocated to each Beneficiary that holds a Subordinated Unsecured Claim (in proportion to the amount of the claim of each holder of such claim).

(b) The Creditors Trustee may adopt such other methods of allocating Trust taxable income and loss for federal and applicable state income tax purposes as it deems reasonable, appropriate and necessary to ensure that all allocations are consistent with the Plan and the Beneficiaries' economic interests in the Trust Property.

Section 5.12 Reporting Requirements.

Beginning with a date which is 90 days after the Effective Date, and continuing quarterly thereafter until the final distribution under the Creditors Trust, the Creditors Trustee will provide written reports to those Beneficiaries who request special notice from the Creditors Trustee on or after the Effective Date. The reports will provide information on collections and disbursements, administrative costs, settlements, and the Creditors Trustee's ongoing efforts to administer the Trust Property.

Section 5.13 Limitations on Creditors Trustee.

(a) The Creditors Trustee will not at any time, on behalf of the Trust or Beneficiaries, (i) enter into or engage in any trade or business, and no part of the Trust Property or the proceeds, revenue or income therefrom will be used or disposed of by the Trust in furtherance of any trade or business, except to the extent reasonably necessary to preserve and enhance the liquidating value of the Trust Property, or (ii) except as provided below, reinvest any assets.

(b) All moneys and other assets received by the Creditors Trustee will, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Trust Property, unless and to the extent required by law or as otherwise specified in this Trust Agreement.

(c) The Trust Trustee will be restricted to the holding, collection, conservation, protection and administration of the Trust Property in accordance with the provisions of this Trust Agreement and the Plan, and the payment and distribution of amounts as set forth herein for the purposes set forth in this Trust Agreement. The scope of any permissible investments will be limited to include only those investments, or will be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service guidelines, whether set forth in Internal Revenue Service rulings, other Internal Revenue Service pronouncements or otherwise. Any determination by the Creditors Trustee as to what actions are in the best interests of the Trust will be determinative.

Section 5.14 Abandonment.

On thirty (30) days' written notice to any Creditor which has a lien on the property to be abandoned, and pursuant to the Plan, the Creditors Trustee may abandon any property which it determines in its reasonable discretion to be of *de minimis* value or burdensome to the Trust, including any pending adversary proceeding or

other legal action commenced or commenceable by the Trust. If the affected Creditor provides a written objection to the Creditors Trustee prior to the expiration of the thirty (30) days period with respect to the proposed abandonment of such property, then such property may only be abandoned pursuant to an application made to the Bankruptcy Court.

Section 5.15 Further Authorization.

The Creditors Trustee will be entitled to seek such orders, judgments, injunctions and rulings as they deem necessary to carry out the intentions and purposes, and to give full effect to the provisions, of the Plan and this Trust Agreement.

Section 5.16 Protection of Persons Dealing with the Creditors Trustee.

Any transfer of the Trust Property, or any part thereof, will bind the Beneficiaries and will be effective to transfer all right, title and interest of the Creditors Trustee and the Beneficiaries in and to the Trust Property or such part thereof. No purchaser of the Trust Property or any portion thereof will be required to inquire as to the authorization, necessity, expediency or regularity of such transfer or as to the application of any proceeds thereof. Any person dealing with the Creditors Trustee will be fully protected in relying upon a certificate signed by the Creditors Trustee that he has authority to take any action under this Trust Agreement.

**ARTICLE VI  
DURATION OF TRUST**

Section 6.01 Duration of Trust.

This Trust will terminate on the earlier of (i) five (5) years from the date of formation of the Trust; (ii) the date the Creditors Trustee certifies to the Court and creditors that all Allowed Claims have been paid in full; (iii) or the date that all Trust Property have been fully liquidated and administered. If the assets have not all been liquidated or all the claims have not been paid on or before the five (5) years anniversary of the creation of the Trust, the Trustee may request a court order extending the terms of the Trust as may be appropriate under the circumstances. At all time the Trustee will make continuing efforts to dispose of Trust Property, make timely distributions and not unduly prolong the duration of the Trust. If the duration of the Trust is extended, it will be extended in increments of no more than five (5) years at a time.

Section 6.02 Termination of the Trust.

Upon any of the above Termination Events, the Creditors Trustee shall file with the Court a “Notice of Termination” (the “Notice”). The Notice shall be mailed to all Beneficiaries and state that such Beneficiary may file an objection to the Notice, with a copy to the Creditors Trustee within twenty (20) days of filing the Notice and then a hearing shall be set on such objections. The Notice also shall contain an accounting of the Creditors Trust and a summary of action taken by the Creditors Trustee to dispose of the Trust Property and the results obtained. The Notice shall certify that the terms of this provision have been satisfied in full and unless an objection is received from a party in interest, the duties and responsibilities of the Creditors Trustee shall terminate twenty (20) days after service of the Notice. If a party in interest objects, then the Creditors Trustee’s duties and responsibilities will not terminate until the Court has so ruled following Notice and a hearing. Concurrently therewith, the Creditors Trustee shall be discharged from all further duties and responsibilities in connection with the Trust Property and the Beneficiaries. All tax returns and any filings or reports shall have been filed with the appropriate state or federal regulatory authorities and all taxes have been paid prior to termination of the Creditors Trustee’s duties.

Section 6.03 Continuance of Trust for Winding Up.

After termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Creditors Trustee will continue to act as such until its duties have been fully performed. Subject to the Final Decree, at the Creditors Trustee’s discretion, all of such records and documents may, but need not, be destroyed at any time

after one (1) year from the completion and winding up of the affairs of the Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust, final distribution of the entire Trust Property and entry of the Final Decree, the Creditors Trustee will have no further duties or obligations hereunder.

**ARTICLE VII  
INDEMNIFICATION; LIMITATIONS ON LIABILITY**

Section 7.01     General Indemnification.

The Trust will indemnify and hold harmless any Person who was, or is, a party, or is threatened to be made a party, to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Person is or was the Creditors Trustee or an employee of the Trust, or an agent, attorney, accountant or other professional for the Creditors Trustee against all costs, expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such entity in connection with such action, suit or proceeding, or the defense or settlement of any claim, issue or matter therein, to the fullest extent, except to the extent such liability is determined to be the result of willful misconduct or gross negligence. Costs or expense incurred by any entity in defending any such action, suit or proceeding may be paid by the trust in advance of the institution or final disposition of such action, suit or proceeding, if authorized by the Creditors Trustee. The Creditors Trustee may in its discretion purchase and maintain insurance on behalf of any Person who is or was a beneficiary of this provision.

From and after the Effective Date, the Trust will indemnify and hold harmless the Creditors Trustee and all of the respective professional advisors, attorneys, consultants, or agents of the Debtors (collectively, the “Indemnified Parties”) from and against any and all liabilities (fixed or contingent), obligations, losses, claims, actions, suits, costs, damages, expenses (including legal fees and expenses), disbursements, amounts paid in settlement, judgments, fines of any kind and nature whatsoever (each, as “Indemnity Claim”) which may at any time be made, assessed, imposed on, asserted against or otherwise incurred by an Indemnified Party in connection with, relating to, or arising out of, the Chapter 11 Case, the preparation for the Plan, the negotiation and pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan, *except for* such Indemnified Party’s acts or omissions constituting willful misconduct, as finally determined by a court of competent jurisdiction. In each instance where there is an Indemnity Claim or potential Indemnity Claim for which any Indemnified Party is or may be entitled to seek indemnification, the Indemnified Party must notify the Creditors Trustee in writing of such pleadings and other pertinent written communications from the party asserting such Indemnity Claim. The Trust will promptly advance any legal fees and expenses incurred by an Indemnified Party and reimburse any Indemnity Claim. If an Indemnified Party’s actions or omissions are found to constitute willful misconduct, as finally determined by a court of competent jurisdiction, any funds transferred by the Trust to such Indemnified Party in connection with the related Indemnity Claim will be promptly reimbursed. Any Indemnified Party may in its sole discretion retain its choice of legal counsel in connection with any Indemnity Claim. Neither the Debtors nor their attorneys, accountants, advisors or employees are hereby indemnified for any of their actions or omissions prior to the Confirmation Date.

Section 7.02     No Recourse.

Except as provided in the Plan and this Trust Agreement, no recourse will ever be had, directly or indirectly, against the Creditors Trustee or against any agent, attorney, accountant or other professional for the Creditors Trustee by legal or equitable proceedings, or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Creditors Trustee under the Plan, this Trust Agreement, or by reason of the creation of any indebtedness by the Creditors Trustee under the Plan or this Trust Agreement for any purpose authorized by the Plan or this Trust Agreement, it being expressly understood and agreed that all such liabilities, covenants and agreements will be enforceable only against and be satisfied only out of the Trust Property or such part thereof as will under the terms of any such agreement be liable therefore or be evidence only of a right of payment out of the Trust Assets.

Section 7.03 Limited Liability.

The Creditors Trustee will not be liable for any act it may do or omit to do as the Creditors Trustee while acting in good faith and in the exercise of its reasonable judgment, and the fact that such act or omission was advised by an authorized attorney for the Creditors Trustee will be evidence of such good faith and reasonable judgment; nor will the Creditors Trustee be liable in any event, except to the extent determined to be the result of its own gross negligence or willful fraud or willful misconduct. The foregoing limitation on liability will apply equally to the agents and/or employees of the Creditors Trustee acting on behalf of the Creditors Trustee in the fulfillment of the Creditors Trustee's duties under the Plan and this Trust Agreement. Neither Creditors Trustee nor any of the Beneficiaries will be personally liable with respect to any liabilities or obligations of the Trust or any liabilities or obligations relating to the Trust Assets, including, without limitation, those arising under this Trust Agreement or with respect to the Trust or the Trust Property, and all personal dealing with the Trust must look solely to the Trust Assets for the enforcement of any claims against the Trust or the Trust Assets.

Section 7.04 No Liability for Acts of Predecessor.

No successor Creditors Trustee will be in any way responsible or liable for the acts or omissions of any predecessor Creditors Trustee in office prior to the date on which such Person becomes the Creditors Trustee, nor will such successor Creditors Trustee be obligated to inquire into the validity or propriety of any such act or omission unless such successor Creditors Trustee expressly assumes such responsibility. Any successor Creditors Trustee will be entitled to accept as conclusive any final accounting and statement of Trust Assets furnished to such successor Creditors Trustee by the predecessor Creditors Trustee and will further be responsible only for those Trust Assets included in such statement.

Section 7.05 Express Exculpatory Clauses in Instruments.

As far as practicable, the Creditors Trustee will cause any written instrument creating an obligation of the Trust to include a reference to this Trust Agreement and to provide that neither the Beneficiaries nor the Creditors Trustee will be liable thereunder and that the other parties to such instrument will look solely to the Trust Property for the payment of any claim thereunder or the performance thereof; *provided, however*, that the omission of such provision from any such instrument will not render any Beneficiary or the Creditors Trustee liable nor will the Creditors Trustee be liable to anyone for such omission.

**ARTICLE VIII  
MISCELLANEOUS PROVISIONS**

Section 8.01 Notices.

All notices, requests or other communications to the parties hereto will be in writing and will be sufficiently given only if (i) delivered in person; (ii) sent by electronic facsimile communication, as evidenced by a confirmed facsimile transmission report; (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communication, as provided below, all notices, requests and other communications will be sent to the parties at the following addresses or facsimile numbers:

If to the Creditors Trustee, to:  
Biltmore Associates, L.L.C.  
c/o Mr. Vernon Schweigert  
1121 E. Missouri Ave., #100  
Phoenix, AZ 85014  
Telephone: 602-604-0878  
Fax: 602-604-2335

All notices will be effective and will be deemed delivered (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic facsimile communication, on the date of transmission of the communication; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

Section 8.02     Effectiveness.

This Trust Agreement was, is or will become effective upon the Effective Date of the Plan.

Section 8.03     Governing Law.

Except to the extent the Bankruptcy Code or the Bankruptcy Rules are applicable, this Trust Agreement will be governed by, construed under and interpreted in accordance with, the laws of the State of Arizona.

Section 8.04     Severability of Provisions.

Any provision of this Trust Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Trust Agreement or affecting the validity or enforceability of any of the terms of provisions of this Trust Agreement in any other jurisdiction.

Section 8.05     Entire Agreement.

This Trust Agreement (including the Recitals), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Trust Agreement, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation Order, nothing in this Trust Agreement is intended or will be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Trust Agreement.

Section 8.06     Effect of Death, Incapacity or Bankruptcy of Beneficiary.

The death, incapacity or bankruptcy of a Beneficiary during the terms of this Trust Agreement will not operate to terminate the Trust Agreement, nor will it entitle the representatives or creditors of the deceased Beneficiary to an accounting, or to take any action in the courts or elsewhere for the distribution of the Trust Property or for a partition thereof, nor will it otherwise affect the rights and obligations of any Beneficiary.

Section 8.07     Effect of Trust on Third Parties.

There is no obligation on the part of any purchaser or purchasers from the Creditors Trustee or any agent of the Creditors Trustee, or on the part of any other persons dealing with the Creditors Trustee or any agent of the Creditors Trustee, to see the application of the purchase money or other consideration passing to the Creditors Trustee or any agent of the Creditors Trustee, or to inquire into the validity, expediency or propriety of any such transaction by the Creditors Trustee or any agent of the Creditors Trustee.

Section 8.08     Waiver.

No failure or delay of any party to exercise any right or remedy pursuant to this Trust Agreement will affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy will not constitute a waiver of alternative remedies.

Section 8.09 Relationship Created.

The only relationship created by this Trust Agreement is the relationship between the Creditors Trustee and the Beneficiaries. No other relationship or liability is created. Nothing contained in this Trust Agreement will be construed so as to construe the Beneficiaries or their successors-in-interest as creating an association, partnership, or joint venture of any kind.

Section 8.10 Tax Identification Numbers.

The Creditors Trustee may require any Beneficiary to furnish to the Creditors Trustee, (i) its employer or tax identification number as assigned by the Internal Revenue Service, and (ii) such other records or documents necessary to satisfy the Creditors Trustee's tax report obligations (including, but not limited to, certificates of non-foreign status). The Creditors Trustee may condition the payment of any distribution to any Beneficiary upon receipt of such identification number and requested documents.

Section 8.11 Amendment of Trust Agreement.

This Trust Agreement may be amended from time to time, without modifying the Plan, with the approval of the Creditors Trustee and the Bankruptcy Court.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first written above and Biltmore Associates, Inc. has agreed to serve as Trustee of the Visitalk Creditors Trust.

Visitalk Capital Corporation as successor to VISITALK.COM, INC.

/s/ \_\_\_\_\_  
By: Michael Williams  
Its: President

BILTMORE ASSOCIATES, L.L.C.

/s/ \_\_\_\_\_  
By: Vernon Schweigert  
Its: Managing Member



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