

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**AMENDMENT No. 1  
TO  
FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**ExlService Holdings, Inc.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**541990**  
(Primary Standard Industrial  
Classification Code Number)

**82-0572194**  
(IRS Employer Identification No.)

**350 Park Avenue  
New York, New York 10022  
(212) 277-7100**

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

**Vikram Talwar  
Chief Executive Officer  
ExlService Holdings, Inc.  
350 Park Avenue  
New York, New York 10022  
(212) 277-7100**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Copies to:**

**John C. Kennedy, Esq.  
Kenneth M. Schneider, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000**

**Amit Shashank, Esq.  
General Counsel and Vice President  
ExlService Holdings, Inc.  
350 Park Avenue  
New York, New York 10022  
(212) 277-7100**

**Janet L. Fisher, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
(212) 225-2000**

**Approximate date of commencement of proposed sale to public:** As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Proposed maximum aggregate offering price (1) (2)	Amount of registration fee (3)
Common Stock, par value \$0.001	\$75,000,000	\$9,503

- (1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) of the Securities Act of 1933.
- (2) Including additional shares of common stock which may be purchased by the underwriters at their option.
- (3) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion. Dated January 31, 2005.

## Shares



# ExlService Holdings, Inc.

## Common Stock

This is an initial public offering of \_\_\_\_\_ shares of common stock of ExlService Holdings, Inc., all of which are being offered by us.

Prior to this offering, there has been no public market for the common stock. We currently estimate that the initial public offering price per share will be between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per share. We have applied to have our common stock quoted on the Nasdaq National Market under the symbol "EXLS."

**Investing in our common stock involves risks. See "[Risk Factors](#)" beginning on page 10 to read about factors you should consider before buying shares of our common stock.**

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

	Per Share	Total
Initial public offering price	\$	\$
Underwriting discount and commission	\$	\$
Proceeds, before expenses	\$	\$

To the extent that the underwriters sell more than \_\_\_\_\_ shares of our common stock, they have the option to purchase up to an additional \_\_\_\_\_ shares from us at the public offering price less the underwriting discount. Up to 5% of the shares offered hereby have been reserved for sale at the initial public offering price to specified persons under our directed share program.

The underwriters expect to deliver the shares to purchasers against payment in New York, New York on \_\_\_\_\_, 2005.

**Citigroup**

**Merrill Lynch & Co.**

Prospectus dated \_\_\_\_\_, 2005.

**Goldman, Sachs & Co.**

**Thomas Weisel Partners LLC**

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You should rely only on the information contained in this prospectus. Neither we nor the underwriters have authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. Neither we nor the underwriters are making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus or such other date stated in this prospectus.

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Until \_\_\_\_\_, 2005 (25 days after the date of this prospectus), all dealers that buy, sell or trade our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

### INDUSTRY AND MARKET DATA

Industry and market data used throughout this prospectus were obtained through company research, surveys and studies conducted by third parties, and industry and general publications. The information contained in the June 2003 Gartner Inc. Dataquest Report on BPO entitled "India Will Generate \$13.8 Billion From Offshore BPO Exports in 2007" (the "Gartner Report") represents Gartner's estimates.

## PROSPECTUS SUMMARY

*This summary highlights all material information about us and this offering, but does not contain all of the information you should consider before investing in our common stock. You should read this entire prospectus carefully, including "Risk Factors" and our consolidated financial statements and related notes. This prospectus includes forward-looking statements that involve risks and uncertainties. See "Forward-looking Statements."*

### The Company

#### Our Business

We are a leading provider of offshore business process outsourcing solutions, primarily serving the needs of Global 1000 companies in the banking, financial services and insurance segment. Business process outsourcing involves the transfer of management and execution of one or more business processes or entire business functions to an external provider. We generated revenues of \$43.1 million for the nine months ended September 30, 2004 compared to \$19.0 million for the nine months ended September 30, 2003, representing an increase of 126.8%. We were first profitable in the three months ended September 30, 2003. Substantially all of our revenues for the nine months ended September 30, 2004 were generated by long-term contracts having initial terms ranging from three to seven years. Our two contracts with our largest client, representing 52.2% of our revenues for the nine months ended September 30, 2004, have initial terms that run through 2007 and 2009, respectively.

We combine in-depth knowledge of the banking, financial services and insurance segment with proven expertise in providing integrated business process outsourcing solutions and managing large-scale processes for our U.S. and U.K.-based clients. We have successfully transferred more than 140 processes covering a broad array of products and services from 11 clients to our operations centers. Of these, all but a few were processes for eight clients in the banking, financial services and insurance industry and the remainder were specialized customer support processes for three clients in other industries. In the insurance industry, our service offerings include insurance claims processing, opening, issuing and servicing policies, agency management and premium administration for life, property and casualty insurers. In the banking and financial services industry, our service offerings include collections, cash management, loan servicing and customer support for mortgage banks, retail banks and consumer finance companies. We also offer technical support solutions and specialized advisory services to our clients, including identifying opportunities for business process outsourcing and outsourcing solutions, developing processes and providing business risk compliance services.

Our largest clients are Norwich Union (an Aviva company) and Dell (including Dell Financial Services). Other clients include Allianz, Deloitte & Touche, IndyMac Bank FSB, Prudential Financial Inc., one of the three largest U.S. insurance companies and one of the three largest U.S. banks. Our operations centers are located in India, which enables us to leverage India's large talent pool of highly qualified and educated English-speaking technical professionals, who are able to handle complex processes that require functional skills and industry expertise. By basing our operations in India, we believe we can offer consistently high quality services at substantially lower costs than those available from in-house facilities or U.S. or U.K.-based outsourcing providers. Our total number of employees, substantially all of whom are based in India, has grown from 1,827 as of December 31, 2002 to 4,551 as of September 30, 2004.

#### Our Industry

Business process outsourcing service providers work with clients to develop and deliver business process innovations that transform their businesses or deliver higher performance at lower costs. Outsourcing of business

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processes is a long-term strategic commitment for companies that, once implemented, is generally not subject to cyclical spending or information technology budget reductions. Organizations in the banking, financial services and insurance segment, in particular, outsource their key business processes to third parties to reduce costs, improve process quality, handle increased transaction volumes and ensure redundancy. Increased global demand, cost improvements in international communications and the automation of many business services have created a significant opportunity for offshore business process service providers. The effective use of offshore personnel can offer a variety of benefits, including lower costs and a large pool of highly qualified employees. As a result, many companies are moving selected office processes to providers with the capacity to perform these functions from overseas locations. According to the Gartner Report, offshore business process outsourcing services are expected to generate revenues of \$3.0 billion in 2004, which revenues are expected to grow to \$24.2 billion in 2007, a compound annual growth rate of 100.6%. The Indian business process outsourcing industry is expected to generate revenues of approximately \$2.0 billion in 2004 or 67.0% of the total offshore business process outsourcing market, which revenues are expected to grow to an estimated \$13.8 billion by 2007, a compound annual growth rate of 90.4%.

### **EXL's Competitive Strengths and Business Strategy**

#### ***Competitive Strengths***

We believe we have a number of competitive strengths, including:

*Deep and Comprehensive Processing Experience Within the Banking, Financial Services and Insurance Segment.* With substantially all of our revenues derived from the banking, financial services and insurance segment, we have gained a deep understanding of that segment, especially in complex back-office processing functions. Our expertise stems from our early association with Conseco Inc. ("Conseco") and has allowed us to provide a full range of high-value solutions to our clients.

*Long-term Client Relationships that Result in a High Level of Recurring and Predictable Revenues.* A substantial majority of our business is under long-term contracts with initial terms ranging from three to seven years. Our two contracts with our largest client, representing 52.2% of our revenues for the nine months ended September 30, 2004, can only be terminated for cause during their initial terms which expire in 2007 and 2009, while our other clients can terminate their contracts with us without cause during their initial terms. This provides us with relatively predictable and recurring revenues and reduces our sales and marketing costs relative to project-based service providers.

*Strong Focus on Operations Management and Process Excellence.* Our ability to deliver continuous process improvements and our reputation for superior service delivery have proven to be a strong competitive advantage when developing new client relationships. We use well-known business improvement techniques, including Six Sigma methodology, and continuous incremental improvement, or Kaizen, initiatives, and have developed proprietary tools to identify and continue to deliver process improvements for our clients. We have been awarded an ISO 9001:2000 certification for quality assurance and a BS7799 certification for information security, demonstrating our high standards for quality and information security.

*Robust Infrastructure that Can Be Readily Expanded to Meet the Needs of Our Clients.* We have built a state-of-the-art technological and telecommunications infrastructure, and have invested in employee recruitment, training and retention, which enables us to consistently meet or exceed the growing needs of our clients.

*Experienced Management Team With a Significant Equity Stake.* We pride ourselves on the strength and depth of our management and their continued commitment to our ongoing success. Our top 28 senior managers at or above the level of vice president have an average of approximately ten years of experience in the banking, financial services and insurance segment and extensive working experience with the business practices of

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multinational corporations. In addition, 16 members of our senior management team have purchased and hold a significant equity stake in our company.

### ***Competitive Weaknesses***

As further described in “Risk Factors” beginning on page 10 of this prospectus, our operations face a number of risks. For example, our revenues depend substantially on two clients and a few industries. In addition, wage increases in India may prevent us from sustaining our competitive advantage and may reduce our profit margin. Furthermore, if the business process outsourcing industry does not develop in ways that we currently anticipate due to negative public reaction in the United States, recently proposed legislation or otherwise, or if we fail to effectively manage our rapid infrastructure and personnel growth, there could be a material adverse effect on our business, results of operations, financial condition and cash flows. Finally, the market for outsourcing services is highly competitive, and we expect competition to intensify and increase from a number of sources.

### ***Business Strategy***

Our goal is to become the leading provider of business process outsourcing services in the banking, financial services and insurance segment. Specific elements of our growth strategy include:

*Maintaining Our Focus on Large-scale, Long-term Relationships.* We believe there are significant opportunities for additional growth with our existing clients, and we seek to expand these relationships by increasing the depth and breadth of the services we provide.

*Expanding Our Client Base.* We intend to develop long-term relationships that present recurring revenue opportunities with selected new clients by leveraging our industry experience and expanding our marketing activities. In developing new client relationships, we continue to be highly selective and seek industry-leading clients who are committed to long-term and strategic relationships with us.

*Extending Our Industry Expertise.* We intend to continue to focus on strengthening our full range of processing capabilities for the banking, financial services and insurance segment and other high-potential segments (such as healthcare) by developing more complex and value-enhancing services for our clients.

*Continuing to Focus on Complex Processes.* We intend to differentiate ourselves by providing a full range of business process outsourcing solutions. We will continue to identify opportunities to provide services in complementary segments (such as research and analytical processes) in order to maximize opportunities for cross-selling our service offerings and enhancing client satisfaction.

*Continuing to Invest in Operational Infrastructure.* We will continue to invest in infrastructure, including human resources, process optimization and delivery platforms, to meet our growing client requirements.

*Pursuing Strategic Relationships and Acquisitions.* We will selectively consider strategic relationships with industry leaders or acquisitions or investments that would expand the scope of our existing business process outsourcing services, add new clients or allow us to enter new geographic markets.

### **Information about the Company**

Our pre-predecessor, ExlService.com, Inc. (“EXL Inc.”), a Delaware corporation, was formed on April 9, 1999 and began commercial operations in October 2000. On August 1, 2001, EXL Inc. was acquired by Consec (the “2001 Acquisition”) and operated as Consec’s wholly-owned subsidiary until November 14, 2002. We were formed by a group including Vikram Talwar, Rohit Kapoor, Oak Hill Capital Partners L.P., FTVentures and certain other senior members of our management team, and on November 14, 2002 we purchased EXL Inc. from Consec (the “2002 Acquisition”) and EXL Inc. became our wholly-owned subsidiary. Our other

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subsidiaries are ExlService.com (India) Private Limited (“EXL India”), an Indian corporation, Noida Customer Operations Private Limited, an Indian corporation, ExlService (U.K.) Limited, an entity formed in the United Kingdom, and Exl Support Service Limited, an Indian corporation.

The financial statements included in this prospectus include those of both our company and our predecessor, EXL Inc. Periods prior to August 1, 2001 represent the accounts of EXL Inc. prior to the 2001 Acquisition (the “pre-predecessor”); periods on or after August 1, 2001 and prior to November 15, 2002 represent the accounts of EXL Inc. after the 2001 Acquisition (the “predecessor”); and periods on or after November 15, 2002 represent our accounts after the 2002 Acquisition (the “successor”). Our fiscal year ends on December 31. Prior to the 2001 Acquisition, our fiscal year ended on March 31. Accordingly, for the period prior to the 2001 Acquisition, we are presenting income statement data in this prospectus for the period from April 9, 1999, our predecessor’s inception, to March 31, 2000 for fiscal year 2000 and for the period from April 1, 2000 to March 31, 2001 for fiscal year 2001.

ExlService Holdings, Inc. (“EXL Holdings”) was incorporated in Delaware on October 29, 2002. Our principal executive offices are located at 350 Park Avenue, New York, New York 10022, and our telephone number at that address is (212) 277-7100. Our website address is <http://www.exlservice.com>. The information in our website is not part of, nor is it incorporated into, this prospectus.

Unless the context indicates or requires otherwise, the terms “EXL,” “we,” “our,” “us” and “the company” refer collectively to EXL Holdings and its wholly-owned subsidiaries and all predecessor entities. ProMPT™, SOFT™, MOST™ and ECS™ are unregistered trademarks of EXL.

In this prospectus, certain financial data has been rounded to ensure arithmetical accuracy. Certain U.S. dollar figures in this prospectus have been converted from Indian rupees at a rate of 43.27 rupees to \$1.00, the exchange rate in effect on December 31, 2004.

### **Share Conversion**

Prior to this offering, we had two classes of common stock, our Series A common stock and Series B Common Stock. In accordance with the terms of our certificate of incorporation and our existing stock option plan arrangements, immediately prior to the consummation of this offering, each share of our Series B common stock will be converted automatically and without any action on the part of the holders or our part into one share of our Series A common stock, and each option to purchase shares of our Series B common stock will be adjusted to convert without any action on the part of the holders into an option to purchase the same number of shares of our Series A common stock. In addition, prior to the consummation of this offering, we will increase our total authorized number of shares of capital stock, make certain changes to our charter documents and effect a \_\_\_\_\_ to one stock split (the “Stock Split”). As a result, after this offering, we will only have one class of common stock outstanding, which will be referred to as common stock. Investors will be acquiring common stock in this offering. We refer to the conversion of all our shares of Series B common stock into Series A common stock, the Stock Split and the other transactions described above collectively in this prospectus as the “Share Conversion.”

After the Share Conversion and the consummation of this offering, we will have \_\_\_\_\_ shares of common stock outstanding (or \_\_\_\_\_ shares if the underwriters exercise their option in full) and \_\_\_\_\_ shares of common stock issuable upon the exercise of options to purchase common stock. \_\_\_\_\_ shares of common stock offered hereby will be freely tradable (or \_\_\_\_\_ shares if the underwriters exercise their option in full). Following this offering, we intend to file a registration statement under the Securities Act registering \_\_\_\_\_ shares of our common stock reserved for issuance under our employee stock option plans and \_\_\_\_\_ shares held for resale by our existing stockholders that were previously issued under our employee stock option plans. In addition, we intend to enter into a registration rights agreement with certain of

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our stockholders pursuant to which these holders will have the right, subject to certain conditions and the expiration of the lock-up applicable to those stockholders in connection with this offering, to require us to file registration statements covering \_\_\_\_\_ shares of our common stock or to include those shares in registration statements that we may file on our behalf or on behalf of other stockholders.

### **Share Ownership**

Assuming that the underwriters do not exercise their option to purchase additional shares, immediately following the Share Conversion and the consummation of this offering, Oak Hill Capital Partners L.P. and certain of its related affiliates will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock; FTVentures and certain of its related affiliates will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock; our Vice Chairman and Chief Executive Officer, Vikram Talwar, will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock; our President and Chief Financial Officer, Rohit Kapoor will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock; and certain other members of our management will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock.

### **Risk Factors**

For a discussion of certain risks that should be considered in connection with an investment in our common stock, see “Risk Factors” beginning on page 10.





**Summary Consolidated Financial and Other Data**

The following table sets forth our summary consolidated financial and other data for:

- the following successor periods:
  - the nine months ended September 30, 2004 and 2003,
  - the year ended December 31, 2003, and
  - the period from November 15, 2002 to December 31, 2002, and
- the predecessor period from January 1, 2002 to November 14, 2002.

The summary balance sheet data as of December 31, 2003 and December 31, 2002, and the summary statement of operations data for the year ended December 31, 2003, the period from November 15 to December 31, 2002 and the period from January 1 to November 14, 2002 are derived from our consolidated financial statements which have been audited by Ernst & Young LLP, our independent registered public accounting firm, and are included elsewhere in this prospectus. The summary balance sheet data as of September 30, 2004, and the summary statement of operations data for the nine months ended September 30, 2004 and the nine months ended September 30, 2003 were derived from our unaudited condensed consolidated financial statements for these periods which include all adjustments consisting of normal recurring adjustments that management considers necessary for a fair presentation of the financial position and results of operations for these periods. The results for any interim period are not necessarily indicative of the results that may be expected for the full year.

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You should read the following information in conjunction with “Capitalization,” “Selected Historical Consolidated Financial and Other Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus.

	Successor				Predecessor
	Nine Months Ended September 30, 2004	Nine Months Ended September 30, 2003	Year Ended December 31, 2003	Period from November 15 to December 31, 2002	Period from January 1 to November 14, 2002
	(unaudited)	(unaudited)	(in millions, except employee data)		
<b>Statement of Operations Data:</b>					
Revenues(1)	\$ 43.1	\$ 19.0	\$ 27.8	\$ 3.3	\$ 23.8
Cost of revenues(2)	27.2	12.6	18.4	1.3	11.7
Gross profit	15.9	6.4	9.4	2.0	12.1
Operating expenses:					
General and administrative and selling and marketing expenses(3)	8.8	6.6	9.0	3.0	9.4
Depreciation and amortization	2.7	0.2	0.4	—	3.9
Total operating expenses	11.5	6.8	9.4	3.0	13.3
Income (loss) from operations	4.4	(0.4)	—	(1.0)	(1.2)
Other income (expense):					
Foreign exchange gain	—	0.4	0.4	0.1	—
Interest and other income	0.2	0.2	0.2	—	—
Interest expense	(0.3)	(0.2)	(0.3)	—	—
Goodwill impairment(4)	—	—	—	—	(46.0)
Income (loss) before income taxes and extraordinary item	4.3	—	0.3	(0.9)	(47.2)
Income tax provision	0.3	0.7	0.8	—	0.1
Income (loss) before extraordinary gain	4.0	(0.7)	(0.5)	(0.9)	(47.3)
Extraordinary gain	—	—	—	5.0	—
Net income (loss)	\$ 4.0	\$ (0.7)	\$ (0.5)	\$ 4.1	\$ (47.3)
<b>Other Unaudited Financial and Other Data:</b>					
Adjusted EBITDA(5)	\$ 7.3	\$ 0.4	\$ 1.0	\$ (0.9)	\$ 2.7
Capital expenditures	10.5	1.5	5.4	0.1	4.6
Total employees (at period end)	4,551	2,579	2,626	1,827	1,913

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	At September 30, 2004	At December 31, 2003	At December 31, 2002
	(unaudited)	(in millions)	
<b>Balance Sheet Data:</b>			
Cash and cash equivalents	\$ 22.7	\$ 8.6	\$ 15.7
Working capital	17.4	8.2	13.7
Total assets	49.2	21.9	20.3
Total debt	5.3	5.2	4.7
Series A preferred stock	5.2	4.7	3.8
Stockholders' equity	23.0	4.9	6.2

- (1) In accordance with GAAP, we include the amount of telecommunications and travel-related costs that are billed to and reimbursed by our clients in our revenues.
- (2) Cost of revenues includes non-cash amortization of deferred stock compensation expense relating to our issuance of stock options to employees directly involved in providing services to our clients. Cost of revenues excludes depreciation and amortization related to fixed assets.
- (3) General and administrative and selling and marketing expenses ("SG&A expenses") include non-cash amortization of deferred stock compensation expense relating to our issuance of stock options to our non-operations staff.
- (4) Impairment of goodwill in connection with the 2001 Acquisition recognized by our predecessor.
- (5) EBITDA represents net income (loss) before deductions for interest, income taxes, depreciation and amortization. We have adjusted EBITDA to exclude the impact of goodwill impairment and extraordinary items as we believe these are non-recurring in nature. EBITDA and Adjusted EBITDA are supplemental non-GAAP financial measures used by management, as well as industry analysts, to evaluate operations. Adjusted EBITDA differs from EBITDA and may not be comparable to EBITDA or Adjusted EBITDA as reported by other companies. Our Adjusted EBITDA excludes the impact of the impairment of the goodwill balance of \$46.0 million that we had recorded in 2001 in connection with the Conseco acquisition and which we determined was impaired because of the loss of business from Conseco. Our Adjusted EBITDA also excludes an extraordinary gain of \$5.0 million resulting from the acquisition of the capital stock of Exl Inc. in 2002. We adjusted EBITDA for these items, because we do not believe that they are recurring and because these charges do not require cash settlement. We do not believe these charges to be recurring in nature as we did not incur similar charges in the preceding two years prior to incurring these charges, nor have we incurred similar charges since then. We do not expect these charges to recur within the next two years.

The following is a reconciliation of net income to EBITDA and Adjusted EBITDA (in millions):

	Successor				Predecessor
	Nine Months Ended September 30, 2004	Nine Months Ended September 30, 2003	Fiscal Year Ended December 31, 2003	Period From November 15 to December 31, 2002	Period From January 1 to November 14, 2002
Net income (loss)	\$ 4.0	\$ (0.7)	\$ (0.5)	\$ 4.1	\$(47.3)
Interest expense	0.3	0.2	0.3	—	—
Income taxes	0.3	0.7	0.8	—	0.1
Depreciation and amortization	2.7	0.2	0.4	—	3.9
<b>EBITDA</b>	<b>7.3</b>	<b>0.4</b>	<b>1.0</b>	<b>4.1</b>	<b>(43.3)</b>
Goodwill impairment	—	—	—	—	46.0
Extraordinary item	—	—	—	(5.0)	—
<b>Adjusted EBITDA</b>	<b>7.3</b>	<b>0.4</b>	<b>1.0</b>	<b>(0.9)</b>	<b>2.7</b>

Adjusted EBITDA, as presented, represents a useful means of assessing the performance of our ongoing operating activities, as it reflects our earnings trends adjusted to exclude the impact of one time non-cash charges. We also believe that Adjusted EBITDA is useful to investors as a measure of comparative operating performance, as it is less susceptible to variances in actual performance resulting from depreciation, amortization and other non-cash charges and more reflective of changes in pricing decisions, cost controls and other factors that affect operating performance. Management also uses Adjusted EBITDA to develop incentive compensation plans and to measure operating performance. We are also presenting Adjusted EBITDA because we believe it is useful to investors as a way to measure our ability to incur and service debt, make capital expenditures and meet working capital requirements. Adjusted EBITDA is not intended as an alternative to net income as an indicator of our operating performance, or as an alternative to any other measure of performance in conformity with U.S. generally accepted accounting principles or as an alternative to cash flow from operating activities.

## RISK FACTORS

*Investing in our common stock involves substantial risks. In addition to the other information in this prospectus, you should carefully consider the following factors before investing in our common stock. Any of the risk factors we describe below could adversely affect our business, financial condition or results of operations. The market price of our common stock could decline if one or more of these risks and uncertainties develop into actual events, causing you to lose all or part of the money you paid to buy our shares. Certain statements in "Risk Factors" are forward-looking statements. See "Forward-looking Statements."*

### Risks Related To Our Business

***We have a limited independent operating history and our future business prospects are difficult to evaluate.***

We have a limited operating history. Although we were founded in April 1999 as an independent business process outsourcing services provider, we did not start commercial operations in our first facility until October 2000. In August 2001, our then-largest client, Conseco, acquired us and, until November 2002, we operated as Conseco's subsidiary. For the combined nine-month period in 2001 and the combined 2002 twelve-month period, 94.1% and 94.0% of our revenues, respectively, were derived from Conseco and its affiliates. In November 2002, our ownership again changed, and since that time revenues from Conseco and its affiliates have decreased to a substantially lower level. Revenues from Conseco for the period from November 15, 2002 to December 31, 2002, the year ended December 31, 2003 and the nine months ended September 30, 2004 were \$3.1 million, \$4.9 million, and \$1.2 million, respectively. We have serviced large unaffiliated clients only for a limited time, and we may not continue to succeed in securing or retaining additional business from non-affiliates. In addition, we did not become profitable until the three months ended September 30, 2003 and we incurred losses in each of our financial reporting periods until that quarter. We may incur additional operating in the future, and we may not remain profitable.

***We have a limited number of clients and provide services to few industries. For the nine months ended September 30, 2004, 77.4% of our revenues came from two clients.***

We have derived and believe that we will continue to derive a substantial portion of our revenues from a limited number of large clients. For the nine months ended September 30, 2004, our two largest clients, Norwich Union, a United Kingdom-based company, and Dell (including Dell Financial Services), accounted for 77.4% of our revenues under several contracts. Of that amount, revenues from our largest client, Norwich Union, have grown significantly, from \$7.9 million for the nine months ended September 30, 2003, representing a 41.6% share of our revenues for that period, to \$22.5 million for the nine months ended September 30, 2004, representing a 52.2% share of our revenues for that period. We expect Norwich Union and Dell (including Dell Financial Services) to continue to contribute significantly to our revenues. The initial terms of our two Insurance Services Framework Agreements with Norwich Union are set to expire in July 2007 and June 2009. Norwich Union may terminate these agreements during their initial terms only for cause. After these initial terms, Norwich Union may then terminate these agreements without cause upon six months notice. The initial term of our agreement with Dell expires in November 2005. Dell may terminate its agreement without cause or penalty with 30 days notice. The loss or financial difficulties of any of our large clients would have a material adverse effect on our business, results of operations, financial condition and cash flows.

In addition, our clients, some of which have experienced rapid changes in their prospects, substantial price competition and pressures on their profitability, may demand price reductions, automate their processes or change their outsourcing strategy by moving more work in-house, any of which could reduce our profitability. Any significant reduction in or the elimination of the use of the services we provide to any of our clients, or any requirement to lower our prices, would harm our business.

A substantial portion of our clients are concentrated in the banking, financial services and insurance industries. For the nine months ended September 30, 2004, 72.3% of our revenues were derived from clients in the banking, financial services and insurance industries, including 59.7% that were derived from clients in the insurance industry. Our business and growth largely depend on continued demand for our services from clients

and potential clients in these industries. A downturn in any of these industries, particularly the insurance industry, or a slowdown or reversal of the trend to outsource business processes in any of these industries could decrease demand for our services. Other developments, such as consolidation, particularly involving our clients, could also cause the demand for our services in these industries to decline.

***We have a long selling cycle for our services that requires significant funds and management resources and a long implementation cycle that requires significant resource commitments.***

We have a long selling cycle for our business process outsourcing services, which requires significant investment of capital, resources and time by both our clients and us. Before committing to use our services, potential clients require us to expend substantial time and resources educating them as to the value of our services and assessing the feasibility of integrating our systems and processes with theirs. Our clients then evaluate our services before deciding whether to use them. Therefore, our selling cycle, which generally ranges up to six to twelve months, is subject to many risks and delays over which we have little or no control, including our clients' decision to choose alternatives to our services (such as other providers or in-house offshore resources) and the timing of our clients' budget cycles and approval processes. In addition, we may not be able to successfully conclude a contract after the selling cycle is complete. In 2004, we successfully concluded contracts with four new business process outsourcing clients and nine new advisory services clients.

In addition, implementing our services involves a significant commitment of resources over an extended period of time from both our clients and us. Our clients and future clients may not be willing or able to invest the time and resources necessary to implement our services, and we may fail to close sales with potential clients to which we have devoted significant time and resources, which could have a material adverse effect on our business, results of operations, financial condition and cash flows.

***Once we are engaged by a client, it may take us several months before we start to recognize revenues.***

When we are engaged by a client after the selling process, it takes from four to six weeks to integrate the client's systems with ours, and up to three months thereafter to build up our services to the client's requirements. Implementation processes are subject to a number of potential delays similar to certain of those affecting the selling cycle. Therefore, we do not recognize significant revenues until after we have completed the implementation phase.

***Our operating results may experience significant variability and as a result it may be difficult for us to make accurate financial forecasts.***

Our operating results may vary significantly from period to period. Although our existing agreements that have original terms of three or more years provide us with a relatively predictable revenue base, the long selling cycle for our services, as well as the budget and approval processes of prospective clients, make it difficult to predict the timing of new client acquisitions. The timing of revenue recognition under new client agreements also varies depending on when we complete the implementation phase. Our period-to-period results have in the past and may also in the future fluctuate due to other factors, including client losses, variations in employee utilization rates resulting from changes in our clients' operations, delays or difficulties in expanding our infrastructure (including hiring new employees or constructing new operations centers), changes to our pricing, currency fluctuation and other events identified under "Forward-looking Statements." For example, our annual revenues in 2002 were \$27.1 million, 94.5% of which were generated from Consec. In 2003, our revenues from Consec decreased significantly to 17.7% of total revenues of \$27.8 million, and our cost of revenues increased as a result of unassigned employees who had previously worked on the Consec processes. Our revenues are also affected by changes in pricing under our contracts at the time of renewal or by pricing under new contracts. Furthermore, because the majority of our revenues are denominated in pounds sterling or U.S. dollars while most of our expenses are incurred and paid in Indian rupees, our revenues can decrease or increase significantly if the exchange rates among the rupee, the pound sterling and the U.S. dollar fluctuate significantly.

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Furthermore, Dell, one of our largest clients, experiences seasonal changes in its operations in connection with the year-end holiday season and the school year, which affects our period-to-period results. These factors may make it difficult to make accurate financial forecasts or replace anticipated revenues that we do not receive as a result of delays in implementing our services or client losses. If our actual results do not meet any estimated results that we announce, or if we underperform market expectations as a result of such factors, trading prices for our common stock could be adversely affected.

***Our senior management team is critical to our continued success and the loss of one or more members of our senior management team could harm our business.***

Our future success substantially depends on the continued services and performance of the members of our management team and other key employees. Specifically, the loss of the services of our Vice Chairman and Chief Executive Officer, Vikram Talwar, or of our President and Chief Financial Officer, Rohit Kapoor, could seriously impair our ability to continue to manage and expand our business. There is strong competition for experienced senior management in the industry in which we operate, and we may not be able to retain these officers or key employees. Although we have entered into employment and non-competition agreements with our executive officers, certain terms of those agreements may not be enforceable and in any event these agreements do not ensure the continued service of these executive officers. In addition, we currently do not maintain “key person” insurance that covers any member of our management team. The loss of any of our key employees, particularly to competitors, could have a material adverse effect on our business, results of operations, financial condition and cash flows.

***Our inability to effectively manage our rapid infrastructure and personnel growth could have a material adverse effect on our operations, results of operations and financial condition.***

Since we were founded in April 1999, we have experienced rapid growth and significantly expanded our operations. We have established four operations facilities in India, including a new facility in Pune, India, that was opened in December 2003. We anticipate opening a new operations facility in Noida, India, by mid-2005. Our employees have increased from less than ten in October 2000 to 4,551 on September 30, 2004. We expect to develop and improve our internal systems in the locations where we operate in order to address the anticipated growth of our industry. In addition, we are actively looking at a few specific locations to invest in an operations facility outside of India and are contractually committed to one of our clients to do so by September 2005. We believe expanding our geographic base of operations will provide higher value to our clients by decreasing the risks of operating from a single country (including potential shortages of skilled employees, increases in wage costs during strong economic times and currency fluctuations), while also giving our clients access to a wider talent pool and establishing a base in countries that may be competitive in the future. However, we may not be able to open additional operations facilities or hire additional skilled employees as and when they are required, and we may not be able to develop and improve our internal systems. Our inability to execute our growth strategy, to ensure the continued adequacy of our current systems or to manage our expansion effectively could have a material adverse effect on our business, results of operations, financial condition and cash flows.

***We may fail to attract and retain enough sufficiently trained employees to support our operations, as competition for highly skilled personnel is intense and we experience significant employee turnover rates.***

The business process outsourcing industry is very labor intensive and our success depends to a significant extent on our ability to attract, hire, train and retain qualified employees. The industry, including us, experiences high employee turnover. For the nine months ended September 30, 2004, our turnover rate for employees who had been with us for more than our six-month probationary period was 17.0% for our back-office operations and 54.9% for our non-back-office operations. There is significant competition for professionals in India with skills necessary to perform the services we offer to our clients. Increased competition for these professionals, in the

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business process outsourcing industry or otherwise, could have an adverse effect on us. A significant increase in the turnover rate among our employees in India, particularly among the highly skilled workforce needed to provide business process outsourcing services, would increase our recruiting and training costs and decrease our operating efficiency, productivity and profit margins, and could lead to a decline in demand for our services. High turnover rates generally do not impact our revenues as we factor the attrition rate into our pricing models by maintaining additional employees for each process. However, high turnover rates do increase our cost of revenues and therefore impact our profit margins due to higher recruitment, training and retention costs as a result of maintaining larger hiring, training and human resources departments.

In addition, our ability to maintain and renew existing engagements and obtain new business will depend, in large part, on our ability to attract, train and retain personnel with skills that keep pace with the demand for outsourcing, evolving industry standards and changing client preferences. A lack of sufficiently qualified personnel could also inhibit our ability to establish operations in new markets and our efforts to expand geographically. Our failure either to attract, train and retain personnel with the qualifications necessary to fulfill the needs of our existing and future clients or to assimilate new employees successfully could have a material adverse effect on our business, results of operations, financial condition and cash flows.

### ***Wage increases in India may prevent us from sustaining our competitive advantage and may reduce our profit margin.***

Our most significant costs are the salaries and related benefits of our operations staff and other employees. Wage costs in India have historically been significantly lower than wage costs in the United States and Europe for comparably skilled professionals, which has been one of our competitive advantages. However, because of rapid economic growth in India, increased demand for business process outsourcing to India and increased competition for skilled employees in India, wages for comparably skilled employees in India are increasing at a faster rate than in the United States and Europe, which may reduce this competitive advantage. In addition, as the U.S. dollar declines in value against the Indian rupee, wages in the United States will decrease relative to wages in India, which may further reduce our competitive advantage. We may need to increase the levels of employee compensation more rapidly than in the past to remain competitive in attracting necessary employees. Wage increases in the long term may reduce our profit margins. Additionally, because substantially all of our employees are based in India and paid in Indian rupees, while our revenues are primarily in U.S. dollars and pounds sterling, our employee costs as a percentage of revenues may increase or decrease significantly if the exchange rates among the rupee, the pound sterling and the U.S. dollar fluctuate significantly.

### ***We may disrupt our clients' operations as a result of inadequate service or other factors, including telecommunications or technology downtime or interruptions.***

The services we provide are often critical to our clients' businesses, and any failure to provide those services could result in a claim for substantial damages against us, regardless of our responsibility for that failure. In particular, our dependence on our offshore operations centers requires us to maintain active voice and data communications between our main operations centers in India, our international technology hubs in the United States and the United Kingdom and our clients' offices. Although we maintain redundant facilities and communications links, disruptions could result from, among other things, technical breakdowns, computer glitches and viruses and weather conditions. We also depend on certain significant vendors for facility storage and related maintenance of our main technology equipment and data at those technology hubs. Any failure by these vendors to perform those services, any temporary or permanent loss of our equipment or systems, or any disruptions to basic infrastructure like power and telecommunications could impede our ability to provide services to our clients, have a negative impact on our reputation, cause us to lose clients, reduce our revenues and harm our business.



***We may not be fully insured for all losses we may incur.***

Although we attempt to limit and mitigate our liability for damages arising from negligent acts, errors or omissions through contractual provisions, the limitations of liability set forth in our contracts may not be enforceable in all instances or may not otherwise protect us from liability for damages. In addition, certain liabilities, such as claims of third parties for which we may be required to indemnify our clients, are generally not limited under those agreements. Although we have general liability insurance coverage, including coverage for errors or omissions, that coverage may not continue to be available on reasonable terms or to be available in sufficient amounts to cover one or more large claims, and our insurers may disclaim coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, or changes in our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), could have a material adverse effect on our business, reputation, results of operations, financial condition and cash flows.

***Unauthorized disclosure of sensitive or confidential client and customer data, whether through breach of our computer systems or otherwise, could expose us to protracted and costly litigation and cause us to lose clients.***

We are typically required to collect and store sensitive data in connection with our services, including names, addresses, social security numbers, credit card account numbers, checking and savings account numbers and payment history records, such as account closures and returned checks. In addition, many of our agreements with our clients do not include any limitation on our liability to them with respect to breaches of our obligation to keep the information we receive from them confidential. We take precautions to protect confidential client and customer data. However, if any person, including any of our employees, penetrates our network security or otherwise misappropriates sensitive data, we could be subject to significant liability and lawsuits from our clients or their own customers for breaching contractual confidentiality provisions or privacy laws. Penetration of the network security of our data centers could have a negative impact on our reputation, which could harm our business.

***Our industry may not develop in ways that we currently anticipate, due to negative public reaction in the United States, recently proposed legislation or otherwise.***

We have based our strategy of future growth on certain assumptions regarding our industry and future developments in the market for financial services. For example, we believe that there will continue to be changes in product and service requirements, and investments in the products offered by our clients will continue to increase. However, the trend to outsource business processes may not continue and could reverse. Offshore outsourcing has become a politically sensitive topic in the United States. Recently, many organizations and public figures have publicly expressed concern about a perceived association between offshore outsourcing providers and the loss of jobs in the United States. In addition, there has been recent publicity about the negative experience of certain companies that use offshore outsourcing, particularly in India. Current or prospective clients may elect to perform such services themselves or may be discouraged from transferring these services to offshore providers to avoid any negative perception that may be associated with using an offshore provider. Any slowdown or reversal of existing industry trends would harm our ability to compete effectively with competitors that operate out of facilities located in the United States. In other countries, such as the United Kingdom, there has also been some negative publicity and concern expressed regarding the possible effect of job losses caused by outsourcing.

A variety of U.S. federal and state legislation has been proposed that, if enacted, could restrict or discourage U.S. companies from outsourcing their services to companies outside the United States. For example, legislation has been proposed that would require offshore providers to identify where they are located. Because most of our clients are located in the United States, any expansion of existing laws or the enactment of new legislation restricting offshore outsourcing could adversely impact our ability to do business with U.S. clients and have a material and adverse effect on our business, results of operations, financial condition and cash flows. In addition,

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it is possible that legislation could be adopted that would restrict U.S. private sector companies that have federal or state government contracts from outsourcing their services to offshore service providers. Although our clients do not currently have federal or state government contracts, this could affect our ability to attract or retain clients that have such contracts in the future.

***We face significant competition from U.S.-based and non-U.S.-based outsourcing and information technology companies and from our clients, who may perform outsourcing services themselves, either in-house, in the U.S. or through offshore groups or other arrangements.***

The market for outsourcing services is highly competitive, and we expect competition to intensify and increase from a number of sources. We believe that the principal competitive factors in our markets are price, service quality, sales and marketing skills, the ability to develop customized solutions and technological and industry expertise. We face significant competition for our services from our clients' own in-house groups, including, in some cases, in-house groups operating offshore. For example, Norwich Union, our largest client, has the option under one of our contracts to assume the operations of one of our facilities in Pune, India. We also face competition from non-U.S.-based outsourcing and information technology ("IT") companies (including those in the United Kingdom and India) and U.S.-based outsourcing and IT companies. In addition, the trend toward offshore outsourcing, international expansion by foreign and domestic competitors and continuing technological changes will result in new and different competitors entering our markets. These competitors may include entrants from the communications, software and data networking industries or entrants in geographic locations with lower costs than those in which we operate. Some of these existing and future competitors have greater financial, personnel and other resources, longer operating histories, a broader range of service offerings, greater technological expertise, more recognizable brand names and more established relationships in industries that we currently serve or may serve in the future. In addition, some of our competitors may enter into strategic or commercial relationships among themselves or with larger, more established companies in order to increase their ability to address client needs, or enter into similar arrangements with potential clients. Increased competition, our inability to compete successfully against competitors, pricing pressures or loss of market share could result in reduced operating margins, which could harm our business, results of operations, financial condition and cash flows.

***Our client contracts contain certain termination and other provisions that could have an adverse effect on our business and results of operations.***

Our two main contracts with our largest client, Norwich Union, which represented 52.2% of our revenues in the nine months ended September 30, 2004, cannot be terminated without cause before their initial expiration in July 2007 and June 2009. However, after the initial term expires, they can be terminated without cause or penalty by Norwich Union upon six months notice. "Cause" under the Norwich contracts includes our failure to perform services agreed upon in a specific work order adequately, disposal of our material assets, our filing for bankruptcy or a change of control where our new controlling party is a named competitor of Norwich Union. Our other client contracts which represented 47.8% of our revenues for the nine months ended September 30, 2004, can be terminated by our clients with or without cause, with 30 days to six months notice and in some cases without penalty. The largest of these contracts, our agreement with Dell, which represented 25.2% of our revenues for the nine months ended September 30, 2004, can be terminated without cause or penalty upon 30 days notice. Many of our client contracts do not commit our clients to provide us with a specific volume of business, and any failure to meet a client's expectations could result in a cancellation or non-renewal of a contract. We may not be able to replace any client that elects to terminate or not renew its contract with us, which would reduce our revenues.

Furthermore, under one of our agreements with Norwich Union, our largest client, Norwich Union has the option from February 2007 through February 2011 to assume the operations of one of our facilities in Pune, India, by paying us an amount that will approximate the net asset value of that facility on the date of transfer plus the aggregate amount of certain foregone profits. In addition, under our other agreement with Norwich Union, Norwich Union also has the option to purchase certain of the assets of our operating subsidiary, EXL India, for the book

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value of those assets if we are in a material default of our agreement and that default affects the insurance services provided by more than 300 of our full-time employees or prejudices or is likely to prejudice the reputation of Norwich Union or a U.K. client of Norwich Union, or if there is a change of control that is not approved by Norwich Union. The exercise of either of these options would result in both a loss of revenues and a loss of our employees who are at that time working in the related facilities. The agreement also provides that we cannot provide similar services to certain Norwich Union competitors without the approval of Norwich Union.

***Oak Hill Capital Partners, FTVentures, certain of their respective affiliates, Vikram Talwar, Rohit Kapoor and certain other members of management will continue to exercise significant influence over us, and their interests in our business may be different than yours.***

Almost all of the issued and outstanding shares of our common stock are currently beneficially owned by Oak Hill Capital Partners L.P., FTVentures and certain of their respective affiliates, our Vice Chairman and Chief Executive Officer, Vikram Talwar, our President and Chief Financial Officer, Rohit Kapoor, and certain other members of management. Assuming that the underwriters do not exercise their option to purchase additional shares, immediately following this offering, Oak Hill Capital Partners L.P. and certain of its related affiliates will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock; FTVentures and certain of its related affiliates will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock; Mr. Talwar will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock; Mr. Kapoor will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock; and certain other members of our management will own \_\_\_\_\_ shares (or \_\_\_\_\_ %) of our outstanding common stock. Accordingly, each of these parties can exercise significant influence over our business policies and affairs and all matters requiring a stockholders' vote, including the composition of our board of directors, the adoption of amendments to our certificate of incorporation and the approval of mergers or sales of substantially all of our assets. This concentration of ownership also may delay, defer or even prevent a change in control of our company and may make some transactions more difficult or impossible without the support of these stockholders. The interests of these stockholders may conflict with your interests.

***We may not succeed in identifying suitable acquisition candidates or integrating any acquired business into our operations, which could have a material adverse effect on our operations, results of operations and financial condition.***

One of our strategies is to broaden our geographic presence, gain new clients, enter new streams of services and expand capacity both organically and through strategic acquisitions. We may not, however, succeed in identifying suitable acquisition candidates available for sale at reasonable prices, have access to the capital required to finance potential acquisitions or be able to consummate any acquisition. In addition, our management may not be able to successfully integrate any acquired business into our operations, and any acquisition we do complete may not result in long-term benefits to us. Acquisitions involve a number of risks, including diversion of management's attention, ability to finance the acquisition on attractive terms, failure to retain key personnel, legal liabilities and the need to amortize acquired intangible assets, any of which could have a material adverse effect on our business, results of operations, financial condition and cash flows. Future acquisitions are likely to result in the incurrence of indebtedness or the issuance of additional equity securities.

***Failure to adhere to the regulations that govern our business could have an adverse impact on our operations.***

Our clients are often subject to regulations that may require that we comply with certain rules and regulations in performing services for them that would not otherwise apply to us. Debt collection services, for example, are subject to the Fair Debt Collection Practices Act, which regulates debt collection and includes licensing requirements. In addition, many U.S. states require a debt collector to apply for, be granted and maintain a license to engage in debt collection activities in a state. We are currently licensed (or exempt from licensing requirements) to provide debt collection services in all but one U.S. state that have non-exempt requirements and have separate "per-customer" exemptions with respect to our ongoing collection obligations.

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Other laws and regulations that apply to certain portions of our business include the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act of 1996, the Truth in Lending Act, the Fair Credit Billing Act and FDIC rules and regulations. If we do not maintain our licenses or other qualifications to provide our services, we may not be able to provide services to existing customers or be able to attract new clients and could lose revenues, which could have a material adverse effect on our business. In addition, our failure to comply with any applicable laws and regulations could subject us to civil fines and criminal penalties.

***We will incur increased costs as a result of being a public company subject to the Sarbanes-Oxley Act of 2002, and our management faces challenges in implementing those requirements.***

As a public company, we will incur significant additional legal, accounting and other expenses that we did not incur as a private company. The Sarbanes-Oxley Act of 2002, as well as new rules subsequently implemented by the Securities and Exchange Commission (the "Commission") and the Nasdaq National Market, have required more regulation and more corporate governance practices of public companies. We expect that our legal and financial compliance costs will increase and that a significant portion of management's time will be diverted to comply with these rules. For example, we are in the process of creating additional board committees and are reviewing and adopting comprehensive new policies regarding internal control over financial reporting and disclosure controls and procedures. We are also evaluating our internal controls systems in accordance with Section 404 of the Sarbanes-Oxley Act. If we do not implement the requirements of Section 404 in a timely manner or with adequate compliance, we may not be able to accurately report our financial results or prevent fraud and might be subject to sanctions or investigation by regulatory authorities, such as the Commission. Any such action could harm our business or investors' confidence in our company, and could cause our stock price to fall. We will also incur additional costs associated with our reporting requirements as a public company. We also expect these new rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified candidates to serve on our board of directors or as executive officers.

### **Risks Related to India and the International Nature of our Business**

***Our financial condition could be negatively affected if the government of India reduces or withdraws tax benefits and other incentives it currently provides to companies within our industry, or if the same are not available for other reasons.***

Under the Indian Finance Act, 2000, we currently benefit from a ten-year holiday from Indian corporate income taxes. As a result, our service operations have been subject to relatively lower tax liabilities. The tax holiday allowed us to recognize income tax expense of \$0.3 million for the nine months ended September 30, 2004 compared to \$1.0 million that we would have incurred if the tax holiday had not been available for that period (without accounting for double taxation treaty set-offs). The Finance Act, 2000 phases out the tax holiday over a ten-year period from fiscal 2000 through fiscal 2009. Our current tax holidays expire by location by 2009. When our tax holiday expires or terminates, our tax expense will materially increase.

U.S. and Indian transfer-pricing regulations require that any international transaction involving associated enterprises be at an arm's length price. Transactions among our subsidiaries and us may be considered such transactions. If the applicable income tax authorities review any of our tax returns and determine that the transfer price we applied was not appropriate, we may incur increased tax liability, including accrued interest and penalties, which would cause our tax expense to increase, possibly materially, thereby reducing our profitability and cash flows.

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### ***A substantial portion of our assets and operations are located in India, and we are subject to regulatory, economic, political and military uncertainties in India.***

Our primary operating subsidiaries are incorporated in India, and virtually all of our assets and our professionals are located in India. We intend to continue to develop and expand our offshore facilities in India. In the early 1990s, India experienced significant inflation, low growth in gross domestic product and shortages of foreign currency reserves. The Indian government, however, has exercised and continues to exercise significant influence over many aspects of the Indian economy. India's government has provided significant tax incentives and relaxed certain regulatory restrictions in order to encourage foreign investment in specified sectors of the economy, including the business process outsourcing industry. Certain of those programs, which have benefited us, include tax holidays, liberalized import and export duties and preferential rules on foreign investment and repatriation. We cannot assure you that liberalization policies will continue. Various factors, including a collapse of the present coalition government due to the withdrawal of support of coalition members, could trigger significant changes in India's economic liberalization and deregulation policies, disrupt business and economic conditions in India generally and our business in particular. Our financial performance and the market price of our shares may be adversely affected by changes in inflation, exchange rates and controls, interest rates, government of India policies (including taxation policies), social stability or other political, economic or diplomatic developments affecting India in the future.

### ***Terrorist attacks and other acts of violence involving India, the United States or other countries could adversely affect the financial markets, result in a loss of client confidence and adversely affect our business, results of operations, financial conditions and cash flows.***

Terrorist attacks and other acts of violence or war, including those involving India, the United States or other countries, may adversely affect worldwide financial markets and could potentially lead to economic recession, which could adversely affect our business, results of operations, financial condition and cash flows. South Asia has, from time to time, experienced instances of civil unrest and hostilities among neighboring countries, including India, Pakistan and China. In recent years there have been several instances of military confrontations along the Indo-Pakistan border. There continues to be potential for hostilities between India and Pakistan due to recent terrorist activities, troop mobilizations along the border and the geopolitical climate along the border. Although this has not been the case to date, such political tensions could create a perception that there is a risk of disruption of services provided by India-based companies, which could have a material adverse effect on the market for our services. Furthermore, if India were to become engaged in armed hostilities, particularly hostilities that were protracted or involved the threat or use of nuclear weapons, we might not be able to continue to operate.

### ***Restrictions on entry visas may affect our ability to compete for and provide services to clients in the United States, which could have a material adverse effect on future revenues.***

The vast majority of our employees are Indian nationals. The ability of some of our executives to work with and meet our U.S. and European clients and our clients from other countries depends on the ability of our senior managers and employees to obtain the necessary visas and entry permits. In response to recent terrorist attacks and global unrest, U.S. and European immigration authorities have increased the level of scrutiny in granting visas. Immigration laws in those countries may also require us to meet certain levels of compensation and comply with other legal requirements as a condition to obtaining or maintaining entry visas. These restrictions have significantly lengthened the time requirements to obtain visas for our personnel, which has in the past resulted, and may continue to result, in delays in the ability of our personnel to meet with our clients. In addition, immigration laws are subject to legislative change and varying standards of application and enforcement due to political forces, economic conditions or other events, including terrorist attacks. We cannot predict the political or economic events that could affect immigration laws, or any restrictive impact those events could have on obtaining or monitoring entry visas for our professionals. If we are unable to obtain the necessary visas for personnel who need to get to our clients' sites, or if such visas are delayed, we may not be able to provide

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services to our clients or to continue to provide these services on a timely basis, which could have a material adverse effect on our business, results of operations, financial condition and cash flows.

### ***Currency fluctuations among the Indian national rupee, the pound sterling and the U.S. dollar could have a material adverse effect on our results of operations.***

Although substantially all of our revenues are denominated in pounds sterling (52.0% for the nine months ended September 30, 2004) or U.S. dollars (48.0% for that period), most of our expenses (74.0% for that period) are incurred and paid in Indian rupees. We report our financial results in U.S. dollars. The exchange rates among the Indian rupee, the pound sterling and the U.S. dollar have changed substantially in recent years and may fluctuate substantially in the future. The average Indian rupee/U.S. dollar exchange rate for the nine months ended September 30, 2004 was approximately 45:1 (based on the noon buying rate in the City of New York for cable transfers as certified for customs purposes by the Federal Reserve Bank of New York), representing appreciation of 4.3% compared to the average exchange rate for 2003. The average Indian rupee/pound sterling exchange rate for the nine months ended September 30, 2004 was approximately 83:1 (based on the Bloomberg Composite Rate), representing depreciation of 9.2% compared to the average exchange rate for 2003. The average U.S. dollar/pound sterling exchange rate for the nine months ended September 30, 2004 was approximately 1.8:1 (based on the noon buying rate in the City of New York for cable transfers as certified for customs purposes by the Federal Reserve Bank of New York), representing depreciation of 10.3% compared to the average exchange rate for 2003. Although we take steps to hedge a substantial portion of our India rupee-U.S. dollar foreign currency exposures, our results of operations may be adversely affected if the rupee fluctuates significantly against the pound sterling or the U.S. dollar, the pound sterling depreciates against the U.S. dollar or our hedging strategy is unsuccessful.

### ***Investors may have difficulty effecting service of process or enforcing judgments obtained in the United States against our subsidiaries in India or our executive officers.***

Our primary operating subsidiaries are organized in India and the majority of our executive officers reside outside of the United States. Most of our assets are located in India. As a result, you may be unable to effect service of process upon our affiliates who reside in India outside their jurisdiction of residence. In addition, you may be unable to enforce against these persons outside the jurisdiction of their residence judgments obtained in courts of the United States, including judgments predicated solely upon the federal securities laws of the United States.

Section 44A and Section 13 of the Indian Civil Procedure Code, 1908 (“Civil Code”) govern recognition and enforcement of foreign judgments. Section 44A of the Civil Code provides for recognition and enforcement of a foreign judgment without having to file an original suit in India, provided such judgments have been rendered by courts in a country or territory outside India which the Government of India has declared to be a reciprocating territory. We have been advised by our Indian counsel that the United States and India do not currently have a treaty providing for reciprocal recognition and enforcement of judgments (other than certain arbitration awards) in civil and commercial matters. Therefore, a final judgment for the payment of money rendered by any federal or state court in United States based on civil liability, whether or not it is predicated upon the federal securities laws of the United States, would not be enforceable in India as such.

However, if the party in whose favor such final judgment is rendered brings a new suit in a competent court in India based on a final judgment that has been obtained in the United States, Section 13 of the Civil Code provides that the foreign judgment will be conclusive as to certain matters. The suit must be brought in India within three years of the date of the foreign judgment. It is unlikely, however, that a court in India would award damages on the same basis as a court in United States, if an action is brought in India. Furthermore, it is also unlikely that an Indian court would enforce judgments obtained in the United States if it viewed the amount of damages awarded as excessive or inconsistent with Indian practice.

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In addition, the party seeking to enforce a judgment obtained in the United States in India would also be required to obtain approval from the Reserve Bank of India under the Foreign Exchange Management Act, 1999 to execute such a judgment or to repatriate any money recovered in an Indian court.

### **Risks Related to this Offering**

***Because the initial public offering price per ordinary share is substantially higher than our book value per ordinary share, purchasers in this offering will immediately experience a substantial dilution in net tangible book value.***

Purchasers of our common stock will experience immediate and substantial dilution in net tangible book value per share from the initial public offering price per share. After giving effect to the sale of the \_\_\_\_\_ shares of common stock we have offered hereby, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, and the application of the net proceeds therefrom, our as adjusted net tangible book value as of September 30, 2004 would have been \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per share of common stock. This represents an immediate dilution in net tangible book value of \$ \_\_\_\_\_ per share to new investors purchasing shares of our common stock in this offering. A calculation of the dilution purchasers will incur is provided under "Dilution."

***Substantial future sales of shares of our common stock in the public market could cause our stock price to fall.***

Upon consummation of this offering, we will have outstanding \_\_\_\_\_ shares of common stock. Of these shares, the \_\_\_\_\_ shares of common stock offered hereby will be freely tradable without restriction in the public market, unless purchased by our affiliates. Upon completion of this offering, our existing stockholders will own \_\_\_\_\_ shares of our common stock, which will represent approximately \_\_\_\_\_ % of our outstanding common stock (approximately \_\_\_\_\_ % if the underwriters exercise their option in full). Immediately following the consummation of this offering, the holders of approximately \_\_\_\_\_ shares of common stock will be entitled to dispose of their shares pursuant to the volume and other restrictions of Rule 144 under the Securities Act and the holders of approximately \_\_\_\_\_ shares of common stock will be entitled to dispose of their shares following the expiration of an initial 180-day "lock-up" period (360 days for Vikram Talwar, Rohit Kapoor, Norwich Union and Prudential Financial) pursuant to the volume and other restrictions of Rule 144. In connection with this offering, we intend to enter into a registration rights agreement with Oak Hill Capital Partners L.P., FTVentures, certain of their respective affiliates, Vikram Talwar and Rohit Kapoor. We have also agreed to provide registration rights to Norwich Union, TCV V, L.P. and TCV V Member Fund. Pursuant to these agreements, these holders will have the right, subject to some conditions, to require us to file registration statements covering \_\_\_\_\_ shares of our common stock (including shares issuable upon the exercise of outstanding options) which they will own upon consummation of this offering or to include those shares in registration statements that we may file for ourselves or other stockholders. Following their registration and sale under the applicable registration statement, those shares will become freely tradeable. By exercising their registration rights and selling a large number of shares, these holders could cause the price of our common stock to decline. In addition, options to purchase \_\_\_\_\_ shares of common stock will be outstanding upon consummation of this offering. Following this offering, we intend to file a registration statement under the Securities Act registering \_\_\_\_\_ shares of our common stock reserved for issuance under our employee stock option plans and \_\_\_\_\_ shares held for resale by our existing stockholders that were previously issued under our employee stock option plans.

***We do not intend to pay dividends in the foreseeable future.***

We have never declared or paid any cash dividends on our common stock. In the foreseeable future, we intend to retain any earnings to finance the development and expansion of our business, and we do not anticipate paying any cash dividends on our common stock.

***Delaware law and our amended and restated certificate of incorporation and by-laws will contain certain anti-takeover provisions that could delay or discourage business combinations and takeover attempts that stockholders may consider favorable.***

Our amended and restated certificate of incorporation and by-laws, which we intend to adopt prior to the completion of this offering, will contain provisions that may make it more difficult, expensive or otherwise discourage a tender offer or a change in control or takeover attempt by a third-party that is opposed by our board of directors. These provisions will include a classified board, provisions barring stockholders from calling a special meeting of stockholders or requiring one to be called or from taking action by written consent and provisions that set forth advance notice procedures for stockholders' nominations of directors and proposals of topics for consideration at meetings of stockholders. These provisions may have the effect of delaying or preventing a change of control or changes in management that stockholders consider favorable. Additionally, because we are incorporated in Delaware, we are subject to Section 203 of the Delaware General Corporation Law. Section 203 may prohibit large stockholders, in particular those owning 15.0% or more of our outstanding voting stock, from merging or combining with us. These provisions of our amended and restated certificate of incorporation, by-laws and Delaware law could discourage potential takeover attempts and reduce the price that investors might be willing to pay for shares of our common stock in the future which could reduce the market price of our stock.

***The stock price may be volatile, and you may be unable to resell your shares at or above the offering price or at all.***

Prior to this offering, there has been no public market for our common stock, and an active trading market may not develop or be sustained after this offering. The initial public offering price of the common stock offered hereby was determined through our negotiations with the underwriters and may bear no relationship to the market price of the common stock after this offering. The market price of our common stock after this offering will be subject to significant fluctuations in response to, among other factors, variations in our operating results, market conditions specific to the business process outsourcing services industry and developments relating to India.



## FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. You should not place undue reliance on those statements because they are subject to numerous uncertainties and factors relating to our operations and business environment, all of which are difficult to predict and many of which are beyond our control. Forward-looking statements include information concerning our possible or assumed future results of operations, including descriptions of our business strategy. These statements often include words such as “may,” “will,” “should,” “believe,” “expect,” “anticipate,” “intend,” “plan,” “estimate” or similar expressions. These statements are based on assumptions that we have made in light of our experience in the industry as well as our perceptions of historical trends, current conditions, expected future developments and other factors we believe are appropriate under the circumstances. As you read and consider this prospectus, you should understand that these statements are not guarantees of performance or results. They involve known and unknown risks, uncertainties and assumptions. Although we believe that these forward-looking statements are based on reasonable assumptions, you should be aware that many factors could affect our actual financial results or results of operations and could cause actual results to differ materially from those in the forward-looking statements. These factors include but are not limited to:

- our dependence on a limited number of clients in a limited number of industries,
- our ability to attract and retain clients,
- our ability to grow our business or effectively manage growth,
- our ability to hire and retain enough sufficiently trained employees to support our operations,
- telecommunications or technology disruptions,
- negative public reaction in the United States or United Kingdom to offshore outsourcing,
- future regulatory actions and conditions in our operating areas,
- regulatory, legislative and judicial developments,
- increasing competition in the business process outsourcing industry,
- technological innovation,
- political or economic instability in India,
- worldwide economic and business conditions, and
- our ability to successfully consummate strategic acquisitions.

These and other factors are more fully discussed in the “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” sections and elsewhere in this prospectus. These risks could cause actual results to differ materially from those implied by forward-looking statements in this prospectus.

All information contained in this prospectus is materially accurate and complete as of the date of this prospectus. You should keep in mind, however, that any forward-looking statement made by us in this prospectus, or elsewhere, speaks only as of the date on which we make it. New risks and uncertainties come up from time to time, and it is impossible for us to predict these events or how they may affect us. We have no obligation to update any forward-looking statements in this prospectus after the date of this prospectus, except as required by federal securities laws. In light of these risks and uncertainties, you should keep in mind that any event described in a forward-looking statement made in this prospectus or elsewhere might not occur.

## USE OF PROCEEDS

We estimate that our net proceeds from this offering will be approximately \$            million, after deducting the underwriting discount and commission and estimated offering expenses of approximately \$            million.

We intend to use the proceeds from this offering:

- to redeem all outstanding shares of Series A preferred stock, the aggregate principal amount of which was \$4.6 million plus accrued dividends of \$0.9 million at September 30, 2004;
- to repay all outstanding senior promissory notes payable to stockholders, the aggregate principal amount of which was \$4.9 million plus accrued interest of \$0.4 million at September 30, 2004; and
- for working capital and general corporate purposes.

The Series A preferred stock is held by, and the senior promissory notes are payable to, certain of our directors, officers and significant stockholders. See “Certain Relationships and Related Transactions—Stock and Note Purchase Agreement.”

The senior promissory notes to be repurchased mature on December 13, 2007. The interest on \$4,674,000 in aggregate principal amount of the notes accrues every six months from December 13, 2002 through maturity and the interest on \$272,403 in aggregate principal amount of the notes accrues every six months from December 13, 2003 through maturity, in each case, at a rate equal to the greater of two and two-hundredths of a percent (2.02%) per semi-annum or LIBOR and must be paid on December 13, 2007 or on the day of any prepayment.

We have broad discretion as to the application of these proceeds. Prior to application, we may hold any net proceeds in cash or invest them in short-term securities. You will not have an opportunity to evaluate the economic, financial or other information on which we base our decisions regarding the use of these proceeds.

## DIVIDEND POLICY

We have never declared or paid any dividends on our common stock. For the foreseeable future, we intend to retain any earnings to finance the development and expansion of our business, and we do not anticipate paying any cash dividends on our common stock. Any future determination to pay dividends will be at the discretion of our board of directors and will be dependent upon then existing conditions, including our financial condition and results of operations, capital requirements, contractual restrictions, business prospects and other factors that our board of directors considers relevant.

## CAPITALIZATION

The following table sets forth our capitalization as of September 30, 2004:

- on an actual basis, and
- on an as-adjusted basis, giving effect to:
  - the sale of \_\_\_\_\_ shares of our common stock in this offering at an assumed public offering price of \$ \_\_\_\_\_ (the midpoint of the range set forth on the cover page of this prospectus), after deducting the underwriting discount and the estimated offering expenses,
  - the application of the net proceeds of this offering as described under “Use of Proceeds,” and
  - the Share Conversion as described under “Certain Relationships and Related Transactions—Transactions Entered Into in Connection with this Offering—Share Conversion.”

	As of September 30, 2004	
	Actual	As Adjusted
	(dollars in millions)	
Cash and cash equivalents	\$ 22.7	\$ _____
Senior promissory notes payable to stockholders	\$ 5.3	
Series A preferred stock, par value \$.001 per share; 45,833.36 shares authorized and, as adjusted, no shares authorized; 45,424 shares issued and outstanding and, as adjusted, no shares issued and outstanding (1)	5.5	
Stockholders' equity (deficit):		
Series A common stock, par value \$.001 per share, 10,196,878 shares authorized and, as adjusted, no shares authorized; 10,081,778 shares issued and outstanding and, as adjusted, no shares issued and outstanding	—	
Series B non-voting common stock, par value \$.001 per share, 990,854 shares authorized and, as adjusted, no shares authorized; 528,657 shares issued and, as adjusted, no shares issued and outstanding	—	
Common stock, par value \$.001 per share, no authorized shares and, as adjusted, _____ shares authorized; no shares issued and outstanding and, as adjusted, _____ shares issued and outstanding (2)	—	
Additional paid-in capital	17.2	
Deferred stock based compensation	(0.5)	
Retained earnings	6.6	
Accumulated other comprehensive loss	(0.3)	
Treasury stock	—	
Total stockholders' equity	23.0	
Total capitalization	\$ 33.5	\$ _____

- (1) The carrying value of the Series A preferred stock at September 30, 2004 is net of unamortized deferred compensation of \$110,837 and unamortized issuance costs of \$187,500. The as adjusted value reflects the acceleration of the vesting of such preferred stock and recognition of related amortization expenses.
- (2) Does not include options to purchase an aggregate of \_\_\_\_\_ shares of common stock that are outstanding under our stock option plans or otherwise or that are to be granted effective upon consummation of this offering under our stock option plans.

## DILUTION

If you invest in our common stock, you will be diluted to the extent the initial public offering price per share of our common stock exceeds the net tangible book value per share of our common stock immediately after this offering.

Our net tangible book value as of September 30, 2004 was approximately \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per share of common stock (after giving effect to the Share Conversion). The net tangible book value per share represents the amount of our net worth, or total tangible assets less total liabilities, divided by \_\_\_\_\_ shares of our common stock outstanding as of that date (after giving effect to the Share Conversion).

After giving effect to the Share Conversion, the issuance and sale of \_\_\_\_\_ shares of our common stock in this offering and our receipt of approximately \$ \_\_\_\_\_ million in net proceeds from such sale, based on an assumed public offering price of \$ \_\_\_\_\_ per share (the midpoint of the range set forth on the cover page of this prospectus), and after deducting the underwriting discount and commission and the estimated expenses of the offering, our as adjusted net tangible book value per share as of September 30, 2004 would have been approximately \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per share. This amount represents an immediate increase in net tangible book value of \$ \_\_\_\_\_ to existing stockholders and an immediate dilution in net tangible book value of \$ \_\_\_\_\_ per share to new investors purchasing shares of our common stock in this offering. Dilution per share is determined by subtracting the net tangible book value per share as adjusted for this offering from the amount of cash paid by a new investor for a share of our common stock. The following table illustrates the per share dilution:

Initial public offering price per share	\$ _____
Net tangible book value per share as of September 30, 2004 (adjusted for the Share Conversion but excluding this offering)	\$ _____
Increase in net tangible book value per share attributable to new investors	_____
As adjusted net tangible book value per share after this offering	_____
Dilution per share to new investors	\$ _____

The following table summarizes as of September 30, 2004, after giving effect to the Share Conversion and this offering as described above:

- the total number of shares of common stock purchased from us,
- the total consideration paid to us before deducting underwriting discounts and commissions of \$ \_\_\_\_\_ and estimated offering expenses of approximately \$ \_\_\_\_\_, and
- the average price per share paid by existing stockholders and by new investors who purchase shares of common stock in this offering at the assumed initial public offering price of \$ \_\_\_\_\_ per share.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders		%	\$	%	\$
New investors					
Total		100.0%	\$	100.0%	\$

The foregoing tables do not include options to purchase an aggregate of \_\_\_\_\_ shares of common stock that are outstanding under our stock option plans or otherwise or that are to be granted effective upon the consummation of this offering under our stock option plans. See “Management—Executive Compensation—Stock Option Plans.”

## SELECTED CONSOLIDATED FINANCIAL AND OTHER DATA

The table below presents our selected historical consolidated financial and other data for:

- the following successor periods:
  - the nine months ended September 30, 2004 and 2003,
  - the year ended December 31, 2003,
  - the period from November 15, 2002 to December 31, 2002,
- the following predecessor periods:
  - the period from January 1, 2002 to November 14, 2002,
  - the period from August 1, 2001 to December 31, 2001, and
- the following pre-predecessor periods:
  - the period from April 1, 2001 to July 31, 2001,
  - the fiscal year ended March 31, 2001, and
  - the period from April 9, 1999 to March 31, 2000.

The selected balance sheet data as of December 31, 2003 and December 31, 2002, and the selected statement of operations data for the year ended December 31, 2003, the period from November 15 to December 31, 2002, the period from January 1 to November 14, 2002, the period from August 1 to December 31, 2001 and the period from April 1 to July 31, 2001 were derived from our consolidated financial statements which have been audited by Ernst & Young LLP, our independent registered public accounting firm, and are included elsewhere in this prospectus. The balance sheet data as of September 30, 2004, December 31, 2001, March 31, 2001 and March 31, 2000 and the income statement data for the nine months ended September 30, 2004, the nine months ended September 30, 2003, the fiscal year ended March 31, 2001 and the period from April 9, 1999 to March 31, 2000 were derived from our unaudited consolidated financial statements for these periods which include all adjustments consisting of normal recurring adjustments that management considers necessary for a fair presentation of the financial position and results of operations for these periods. The results for any interim period are not necessarily indicative of the results that may be expected for the full year.

Our fiscal year ends on December 31. Prior to the 2001 Acquisition, our fiscal year ended on March 31. Accordingly, for the period prior to the 2001 Acquisition, we are presenting income statement data in this prospectus for the period from April 9, 1999, our pre-predecessor's inception, to March 31, 2000 for fiscal year 2000 and for the period from April 1, 2000 to March 31, 2001 for fiscal year 2001.

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The information set forth below should be read in conjunction with “Capitalization,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus.

	Successor				Predecessor		Pre-predecessor		
	Nine Months Ended September 30, 2004	Nine Months Ended September 30, 2003	Year Ended December 31, 2003	Period from November 15 to December 31, 2002	Period from January 1 to November 14, 2002	Period from August 1 to December 31, 2001	Period from April 1 to July 31, 2001	Fiscal Year Ended March 31, 2001	Period from April 9, 1999 to March 31, 2000
	(unaudited)	(unaudited)						(unaudited)	(unaudited)
(in millions, except share and per share data)									
<b>Statement of Operations Data:</b>									
Revenues(1)	\$ 43.1	\$ 19.0	\$ 27.8	\$ 3.3	\$ 23.8	\$ 8.7	\$ 3.2	\$ 0.8	\$ 0.1
Cost of revenues(2)	27.2	12.6	18.4	1.3	11.7	4.6	2.2	1.1	0.2
Gross profit	15.9	6.4	9.4	2.0	12.1	4.1	1.0	(0.3)	(0.1)
Operating expenses:									
General and administrative expenses(3)	7.7	5.8	7.9	3.0	8.8	2.7	2.2	2.9	0.2
Selling and marketing expenses	1.1	0.8	1.1	—	0.6	0.3	—	3.4	0.2
Depreciation and amortization	2.7	0.2	0.4	—	3.9	1.0	0.4	0.4	—
Total operating expenses	11.5	6.8	9.4	3.0	13.3	4.0	2.6	6.7	0.4
Income (loss) from operations	4.4	(0.4)	—	(1.0)	(1.2)	0.1	(1.6)	(7.0)	(0.5)
Other income (expense):									
Foreign exchange gain (loss)	—	0.4	0.4	0.1	—	(0.1)	—	—	—
Interest and other income	0.2	0.2	0.2	—	—	—	—	0.2	—
Interest expense	(0.3)	(0.2)	(0.3)	—	—	—	—	—	—
Goodwill impairment(4)	—	—	—	—	(46.0)	—	—	—	—
Income (loss) before income taxes and extraordinary item	4.3	—	0.3	(0.9)	(47.2)	—	(1.6)	(6.8)	(0.5)
Income tax provision	0.3	0.7	0.8	—	0.1	—	—	—	0.2
Income (loss) before extraordinary gain	4.0	(0.7)	(0.5)	(0.9)	(47.3)	—	(1.6)	(6.8)	(0.7)
Extraordinary gain	—	—	—	5.0	—	—	—	—	—
Net income (loss)	4.0	(0.7)	(0.5)	4.1	(47.3)	—	(1.6)	(6.8)	(0.7)
Dividends and accretion on preferred stock	(0.5)	(0.4)	(0.5)	(0.1)	—	—	—	—	—
Net income (loss) to common stockholders	\$ 3.5	\$ (1.1)	\$ (1.0)	\$ 4.0	\$ (47.3)	\$ —	\$ (1.6)	\$ (6.8)	\$ (0.7)
Basic and diluted earnings (loss) per share to common stockholders:									
Basic	\$ 0.35	\$ (0.12)	\$ (0.10)	\$ 0.43	\$ (4.95)	\$ —	\$ (0.16)	\$ (0.71)	\$ (0.07)
Diluted	\$ 0.34	\$ (0.12)	\$ (0.10)	\$ 0.43	\$ (4.95)	\$ —	\$ (0.16)	\$ (0.71)	\$ (0.07)
Weighted average number of shares used in computing earnings per share:									
Basic	10,160,691	9,713,411	9,784,420	9,555,462	9,555,462	9,555,462	9,555,462	9,555,462	9,555,462
Diluted	10,445,060	9,713,411	9,784,420	9,555,462	9,555,462	9,555,462	9,555,462	9,555,462	9,555,462

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	At September 30, 2004	At December 31, 2003	At December 31, 2002	At December 31, 2001	At March 31, 2001	At March 31, 2000
	(unaudited)			(unaudited)	(unaudited)	(unaudited)
	(in millions)					
<b>Balance Sheet Data:</b>						
Cash and cash equivalents	\$ 22.7	\$ 8.6	\$ 15.7	\$ 2.5	\$ 4.1	\$ 2.3
Working capital	17.4	8.2	13.7	(5.6)	4.0	2.4
Total assets	49.2	21.9	20.3	65.1	7.8	2.8
Total debt	5.3	5.2	4.7	—	—	0.1
Series A preferred stock	5.2	4.7	3.8	—	—	—
Stockholders' equity	23.0	4.9	6.2	51.8	6.9	2.4

- (1) In accordance with GAAP, we include the amount of telecommunications and travel-related costs that are billed to and reimbursed by our clients in our revenues. Revenues include reimbursable expenses of \$3,076,185 for the nine months ended September 30, 2004, \$476,553 for the nine months ended September 30, 2003, \$555,372 for the fiscal year ended December 31, 2003, \$2,470 for the period from November 15 to December 31, 2002, \$69,096 for the period from January 1 to November 14, 2002, \$56,838 for the period from August 1 to December 31, 2001, and \$0 for all other periods presented.
- (2) Cost of revenues includes non-cash amortization of deferred stock compensation expense relating to our issuance of stock options to employees directly involved in providing services to our clients. Cost of revenues excludes depreciation and amortization related to fixed assets.
- (3) General and administrative expenses include non-cash amortization of deferred stock compensation expense relating to our issuance of stock options to our non-operations staff.
- (4) Impairment of goodwill in connection with the 2001 Acquisition recognized by our predecessor.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion in conjunction with "Selected Consolidated Financial and Other Data" and our consolidated financial statements and the related notes included elsewhere in this prospectus. Some of the statements in the following discussion are forward-looking statements. See "Forward-looking Statements."*

### Overview

We are a leading provider of offshore business process outsourcing ("BPO") solutions, primarily serving the needs of Global 1000 companies in the banking, financial services and insurance ("BFSI") segment. We provide integrated front-, middle- and back-office process outsourcing solutions and manage large-scale processes for our U.S.-based and U.K.-based clients. We also offer various specialized advisory and other services to our clients. A significant portion of our business relates to processes that we believe are integral to our clients' operations, and the close nature of our relationships with our clients allows us to develop strong strategic long-term relationships with them.

We market our services directly through our sales and marketing team, which operates out of New York City and London, and our business development team, which operates out of Noida, India. We currently operate four operations facilities in India and anticipate opening a new 500-seat facility in Noida, India, by mid-2005 and an offshore BPO operation outside of India by September 2005.

### Revenues

We generate revenues principally from contracts to provide BPO or advisory services. For the nine months ended September 30, 2004, we had revenues of \$43.1 million compared to \$19.0 million for the nine months ended September 30, 2003, representing an increase of 126.8%. In 2003, our revenues attributable to clients other than Conesco were \$22.9 million compared to \$1.6 million for 2002. Prior to 2003, our revenues were generated principally from Conesco. We attribute our revenue growth to a number of factors, including the growth of our client base, the increase in the size, number and complexity of projects for our clients, and the addition of new services, including advisory services. We anticipate continued revenue growth as we expand our service offerings, acquire new clients and existing clients provide us with more business.

We provide our clients with a range of BPO services, including insurance services, banking and financial services, finance and accounting services and collection services. Our clients transfer the management and execution of their processes or business functions to us. As part of this transfer, we hire and train employees to work at our operations centers on the relevant BPO service, implement a process migration to that operations center and then provide services either to that client or directly to that client's customers. Each client contract has different terms based on the scope, deliverables and complexity of the engagement.

We enter into long-term agreements with our clients of typically between three and seven years. A substantial majority of our agreements with our BFSI clients have terms of over three years. Although these agreements provide us with a relatively predictable revenue base, the long selling cycle for our BPO services, as well as the budget and approval processes of prospective clients, make it difficult to predict the timing of new client acquisitions. Revenues under new client contracts also vary depending on when we complete the selling cycle and the implementation phase.

We serve clients mainly in North America and the United Kingdom, with these two regions generating approximately 48.0% and approximately 52.0% of our revenues, respectively, for the nine months ended September 30, 2004. See "[Foreign Exchange—Exchange Rates](#)."



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We have two separate contracts with our largest client, Norwich Union, which together represented \$22.5 million, or 52.2% of our revenues, for the nine months ended September 30, 2004. These contracts can only be terminated for cause during their initial terms, which expire in 2007 and 2009, while our other clients can terminate their contracts without cause during their initial terms. Since we collect revenues on contracts as services are provided, terminated contracts are only subject to collection for portions of the contract completed through the time of termination and payment of applicable penalties. In an effort to avoid early or abrupt contract terminations, we tailor the terms of our contracts according to client needs, review our ability and our clients' ability to perform on a contract, monitor the progress of all contracts and consider any conditions that might lead to a contract termination.

We recognize revenues from services provided under our client contracts on a cost-plus, time-and-materials or unit-price basis. Under cost-plus arrangements, we apply a mark-up (based on the service levels we achieve) to the contractually agreed direct and apportioned indirect costs we incur and invoice the client for the marked-up cost. Time-and-materials arrangements typically involve billings based on productive minutes or hours as we perform the related services. Unit-price arrangements involve billings based on productive units (such as the number of e-mail responses) as we deliver the services to the client. In connection with unit-priced contracts, if we do not estimate the resources and time required for a unit-price project accurately or do not meet our contractual obligations within the required timeframe, we could incur a material adverse effect on our business, results of operations, financial condition and cash flows.

Revenues also include amounts representing reimbursable expenses that are billed to and reimbursed by our clients and typically include telecommunications and travel-related costs. The amount of reimbursable expenses that we incur, and any resulting revenues, can vary significantly from period to period depending on each client's situation and on the type of services provided.

In addition, Dell, one of our largest clients, experiences seasonal changes in its operations in connection with the year-end holiday season and the school year, which affects our period-to-period results.

We bear the risk of inflation and fluctuations in currency exchange rates with respect to our contracts, and our operating results could be negatively affected by adverse changes in wage inflation rates and foreign currency exchange rates. Although we take steps to hedge a substantial portion of our Indian rupee-U.S. dollar foreign currency exposures, our results of operations may be adversely affected if there is significant fluctuation among the rupee, the pound sterling and the U.S. dollar or if our hedging strategy is unsuccessful. See “—Qualitative and Quantitative Disclosures About Market Risk—Components of Market Risk—Exchange Rate Risk,” “—Expenses—Cost of Revenues” and “—Foreign Exchange—Exchange Rates.” As a result of these factors, our operating results may vary significantly from period to period.

We derive a significant portion of our revenues from a limited number of large clients. During the nine months ended September 30, 2004 and the nine months ended September 30, 2003, the revenues from our five largest clients grew to \$38.6 million and \$18.7 million, respectively, accounting for 89.6% and 98.4% of our revenues, respectively. During the same periods, revenues from our contracts with our two largest current clients, Norwich Union and Dell (including Dell Financial Services), accounted for 77.4% and 67.8% of our revenues, respectively. As a result of our shift in focus to clients other than Conesco following the 2002 Acquisition and the subsequent bankruptcy of Conesco, commencing in March 2003 our revenues from other clients have increased significantly while revenues from Conesco have decreased significantly. For the nine months ended September 30, 2004, revenues from Conesco represented less than 3.0% of our revenues, compared to 23.7% of our revenues for the nine months ended September 30, 2003. We added four new clients for our services in 2003 and 13 new clients in 2004.

Norwich Union has the option from February 2007 through February 2011 under one of its contracts with us to assume the operations of one of our facilities in Pune, India, by paying us an amount that will approximate the

net asset value of that facility on the date of transfer plus the aggregate amount of certain foregone profits. The exercise of this option would result in both a loss of revenues and the loss of all of our employees who are at that time working under that contract. We expect that any decline in revenues that we would experience if Norwich Union exercises this option would be partially offset by a decrease in expenses associated with the operation of the Pune facilities. For more information, see “Certain Relationships and Related Transactions—Agreements with Norwich Union—Option to Purchase Stock of NCOP.”

### *Expenses*

#### *Cost of Revenues*

Our cost of revenues primarily consists of:

- employee costs, which include salary, retention and other compensation expenses; recruitment and training costs; non-cash amortization of deferred stock compensation expense; and traveling and lodging costs, and
- costs relating to our facilities and communications network, which include telecommunications and IT costs; facilities and customer management support; operational expenses for our outsourcing centers; and rent expenses.

Our most significant cost of revenues is employee compensation, recruitment, training and retention. Salary levels in India, employee turnover rates and our ability to efficiently manage and utilize our employees significantly affect our cost of revenues. See “—Foreign Exchange—Exchange Rates.” We make every effort to manage employee and capacity utilization and continuously monitor service levels and staffing requirements. Although we generally have been able to reallocate our employees as client demand has fluctuated, a contract termination or significant reduction in work assigned to us by a major client could cause us to experience a higher-than-expected number of unassigned employees, which would increase our cost of revenues as a percentage of revenues until we are able to reduce or reallocate our headcount. A significant increase in the turnover rate among our employees in India, particularly among the highly skilled workforce needed to execute BPO services, would increase our recruiting and training costs and decrease our operating efficiency, productivity and profit margins. In addition, cost of revenues also includes a non-cash amortization of deferred stock compensation expense relating to our issuance of stock options to employees directly involved in providing services to our clients.

We expect our cost of revenues to increase as we add additional professionals in India in 2004 and 2005 to service additional business and as wages continue to increase in India. See “Risk Factors—Risks Related to our Business—Wage increases in India may prevent us from sustaining our competitive advantage and may reduce our profit margin” and “—We may fail to attract and retain enough sufficiently trained employees to support our operations, as competition for highly skilled personnel is intense and we experience significant employee turnover rates.”

Cost of revenues is also affected by our long selling cycle and implementation period for our BPO services, which require significant commitments of capital, resources and time by both our clients and us. Before committing to use our services, potential clients require us to expend substantial time and resources educating them as to the value of our services and assessing the feasibility of integrating our systems and processes with theirs. In addition, once we are engaged by a client in a new contract, our cost of revenues may represent a higher percentage of revenues until the implementation phase for that contract of three to four months is completed. We also expect cost of revenues to increase when we add new operations facilities due to increases in telecommunications and rent expenses and other facilities operating costs. As we increase the size, number and complexity of projects for our clients and broaden our client base and as our business volumes increase, however, we expect to benefit from economies of scale and a more effective utilization of resources, which we expect will decrease our related cost of revenues.

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### *SG&A Expenses*

Our general and administrative expenses are comprised of expenses relating to salaries of senior management and other support personnel, legal and other professional fees, telecommunications, utilities and other miscellaneous administrative costs. Selling and marketing expenses primarily consist of salaries of sales and marketing personnel, travel and brand building. We expect SG&A expenses to continue to increase in absolute dollars to support our planned growth. We also expect our accounting, insurance and legal fees to increase after the consummation of this offering as a result of being a public company. SG&A expenses also include non-cash amortization of deferred stock compensation expense related to our issuance of stock options to senior management, members of our board of directors and advisory board, other support personnel and consultants.

### *Depreciation and Amortization*

Depreciation and amortization pertains to depreciation and amortization of our tangible assets, including network equipment, cabling, computers, office furniture and equipment, motor vehicles and leasehold improvements. Non-cash amortization of deferred stock compensation expenses are not included in depreciation and amortization, but are included as an element of compensation expenses as described above.

### *Other Income (Expense)*

Other income (expense) includes interest income and expense and foreign exchange gains or losses.

## **Foreign Exchange**

### ***Exchange Rates***

Although a substantial portion of our revenues are denominated in pounds sterling (52.0% for the nine months ended September 30, 2004) or U.S. dollars (48.0% for that period), most of our expenses (74.0% for that period) are incurred and paid in the Indian rupee. The exchange rates among the Indian rupee, the pound sterling and the U.S. dollar have changed substantially in recent years and may fluctuate substantially in the future. The results of our operations are affected as the rupee appreciates or depreciates against the U.S. dollar or the pound sterling. See “—Qualitative and Quantitative Disclosures About Market Risk—Components of Market Risk—Exchange Rate Risk.”

In addition, we report our financial results in U.S. dollars and a substantial portion of our revenues is earned in pounds sterling. Accordingly, our results of operations are adversely affected as the pound sterling depreciates against the U.S. dollar. See “—Qualitative and Quantitative Disclosures About Market Risk—Components of Market Risk—Exchange Rate Risk.”

### ***Currency Regulation***

According to the prevailing foreign exchange regulations in India, an exporter of BPO services which is registered with a software technology park or an export processing zone in India, such as EXL India, is required to realize its export proceeds within a period of twelve months from the date of exports. Similarly, in the event that such exporter has received any advance against exports in foreign exchange from its overseas customers, it will have to render the requisite services so that the advances so received are earned within a period of twelve months. If EXL India did not meet these conditions, it would be required to obtain permission to export foreign currency from the Reserve Bank of India.

EXL Holdings receives payments under most of our client contracts and is invoiced by EXL India in respect of services that EXL India provides to our clients under these contracts. EXL India holds the foreign currency it

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receives, primarily from EXL Holdings, in an export earners foreign currency account. All foreign exchange requirements, including import of capital goods, expenses incurred during foreign traveling of employees and discharge of foreign exchange can be met using the foreign currency in that account. As and when funds are required in India, these funds are transferred to an ordinary rupee account.

We also maintain certain foreign currency accounts outside India with the prior approval of the Reserve Bank of India to meet our foreign exchange requirements outside India.

### **Income Taxes**

The Indian Finance Act, 2000 provides EXL India with a ten-year holiday from Indian corporate income taxes as an entity exporting IT services from designated software technology parks and export processing zones in India. The Finance Act, 2000 phases out the tax holiday over a ten-year period from fiscal 2000 through fiscal 2009. Accordingly, facilities set up in India on or before March 31, 2000 have a ten-year tax holiday, new facilities set up on or before March 31, 2001 have a nine-year tax holiday and so forth until March 31, 2009. After March 31, 2009, the tax holiday will no longer be available to new facilities. EXL India provides BPO services from its two wholly-owned export oriented units situated in Noida and Pune. The income derived from the services rendered from these facilities is not subject to taxes in India until March 31, 2009.

As a result of the tax holiday, our BPO service operations have been subject to relatively lower tax liabilities. The tax holiday allowed us to recognize income tax expense of \$0.3 million for the nine months ended September 30, 2004 compared to \$1.0 million that we would have incurred if the tax holiday had not been available for that period (without accounting for double taxation treaty set-offs). When our tax holiday expires or terminates, our tax expense will materially increase. While we have incurred losses under applicable Indian tax laws, we have decided not to carry forward these losses.

U.S. and Indian transfer-pricing regulations require that any international transaction involving associated enterprises be at an arm's-length price. Transactions among our subsidiaries and us may be considered such transactions. Accordingly, we determine the pricing among our associated enterprises on the basis of detailed functional and economic analysis involving benchmarking against transactions among entities that are not under common control. If the applicable income tax authorities review any of our tax returns and determine that the transfer price we applied was not appropriate, we may incur increased tax liability, including accrued interest and penalties.

EXL Holdings is subject to U.S. income taxes on the profits it recognizes in the United States.

### **Acquisition History**

Our pre-predecessor, EXL Inc., was formed on April 9, 1999 and began commercial operations in October 2000. On August 1, 2001, EXL Inc. was acquired by Consec in the 2001 Acquisition and operated as Consec's wholly-owned subsidiary, providing services principally to Consec and its affiliates until November 14, 2002. Consec accounted for the acquisition using the purchase method. All purchase accounting adjustments recorded by Consec were pushed down to the financial statements of our predecessor as the acquisition by Consec created a new accounting basis for our predecessor. Accordingly, our predecessor recognized goodwill of \$46.0 million. Our predecessor subsequently recorded a goodwill impairment charge of \$46.0 million.

We were formed by a group including Vikram Talwar, Rohit Kapoor, Oak Hill Capital Partners L.P., FTVentures and certain other members of our senior management team. On November 14, 2002 we purchased EXL Inc. from Consec in the 2002 Acquisition and EXL Inc. became our wholly-owned subsidiary. We accounted for the 2002 Acquisition using the purchase method in accordance with SFAS No. 141 "Business Combination" ("SFAS 141"). The fair value of the net assets acquired exceeded the cost. In accordance with

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SFAS 141, we allocated the excess of the fair value over the cost to the non-current assets acquired. Such allocation resulted in reducing the carrying value of fixed assets to zero, and we recognized the remaining excess of the fair value of the net assets acquired over cost of approximately \$5.0 million as an extraordinary gain in our consolidated financial statements. As a result, the net carrying value of the fixed assets we acquired in the 2002 Acquisition were recorded at zero value in our books, causing depreciation expense to decline significantly after the 2002 Acquisition.

### **Critical Accounting Policies**

We consider the policies discussed below to be critical to an understanding of our financial statements, as their application places the most significant demands on management's judgment regarding matters that are inherently uncertain. These policies include revenue recognition, estimating tax liabilities and stock-based compensation. These accounting policies and the associated risks are set out below. Future events may not develop exactly as forecast, and estimates routinely require adjustment.

#### ***Revenue Recognition***

We derive revenues from BPO and advisory services provided on a cost-plus, time-and-materials or unit-priced basis. We recognize revenues as services are rendered, provided that persuasive evidence of an arrangement exists, there are no remaining obligations with respect to the services rendered and collection is considered probable. We invoice clients in accordance with agreed rates and billing arrangements. We recognize revenues from the last billing date to the balance sheet date as unbilled revenues, and we recognize billings in excess of revenues earned or advances received from clients as deferred income.

Under cost-plus arrangements, we apply a mark-up (based on the service levels we achieve) to the contractually agreed direct and apportioned indirect costs we incur and invoice the client for the marked-up cost. Time-and-materials arrangements typically involve billings based on productive time as we perform the related services. Unit-price arrangements involve billings based on productive units as we deliver the services to the client.

#### ***Income Taxes***

As part of the process of preparing our consolidated financial statements, we estimate our income taxes in each of the jurisdictions in which we operate. Tax estimates include decisions regarding the timing and amount of deductions and the allocation of income among various tax jurisdictions. Based on our evaluation of our tax position and the information presently available to us, we believe we have adequately accrued for probable exposures as of September 30, 2004. To the extent we are able to prevail in matters for which accruals have been established or are required to pay amounts in excess of our reserves, our effective tax rate in a given financial statement period may be materially impacted.

Applicable transfer pricing regulations require that any international transaction involving associated enterprises be at an arm's-length price. Transactions amongst our subsidiaries and us may be considered such transactions. Accordingly, we determine the pricing among our associated enterprises on the basis of detailed functional and economic analysis involving benchmarking against transactions among entities that are not under common control.

We recognize deferred tax assets and liabilities for future tax consequences attributable to temporary differences between the financial statements carrying amounts of existing assets and liabilities and their respective tax bases and operating loss carry forwards. We measure deferred tax assets and liabilities using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are

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expected to be recovered or settled. We recognize the effect on deferred tax assets and liabilities of a change in tax rates in income in the period that includes the enactment date.

We determine if a valuation allowance is required or not on the basis of an assessment of whether it is more likely than not that a deferred tax asset will be realized. Accordingly, we have provided a valuation allowance against our entire net deferred tax asset. This assessment takes into consideration tax planning strategies, including levels of historical taxable income and assumptions regarding the availability and character of future taxable income over the periods in which the deferred tax assets are deductible. The effect of a change in judgment concerning the realizability of deferred tax assets would be included in income from continuing operations.

### ***Stock-based Compensation***

We have adopted the disclosure-only provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"). Under SFAS 123, we are permitted to measure compensation costs for stock options using the intrinsic value method prescribed by Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"). Under APB 25, compensation expense is generally not recognized when both the exercise price is the same as the market price and the number of shares to be issued is set on the date the employee stock option is granted. We have chosen to use the intrinsic value method to measure our compensation costs. If we had used the fair value method, we would have recognized additional compensation expense. See Note 2 to our consolidated financial statements.

In the past, we awarded a limited number of stock options to employees at exercise prices that were below fair market value. For these options, we record deferred stock-based compensation charges in the amount by which the exercise price of an option is less than the deemed fair value of our common stock at the date of grant. We amortize the deferred compensation charges ratably over the vesting period of the underlying option awards. We use the fair value method under SFAS 123 to account for options granted to non-employees.

### ***Pension Plan Liability***

We provide our employees in India with benefits under a defined benefit plan (the "Gratuity Plan"). The Gratuity Plan provides a lump sum payment to vested employees on retirement or on termination of employment in an amount based on the respective employee's salary and years of employment with us. We determine our liability under the Gratuity Plan by actuarial valuation using the projected unit credit method. Under this method, we determine our liability based upon the discounted value of salary increases until the date of separation arising from retirement, death, resignation or other termination of services. Critical assumptions used in measuring the plan expense and projected liability under the projected unit credit method include the discount rate, expected return on assets and the expected increase in the compensation rates. We evaluate these critical assumptions at least annually. We periodically evaluate and update other assumptions used in the projected unit credit method involving demographic factors, such as retirement age and turnover rate, to reflect our experience. The future mortality rates used are consistent with those published by the Life Insurance Corporation of India.

The discount rate enables us to state expected future cash flows at a present value on the measurement date. The discount rate we use is equal to the yield on high-quality fixed income investments in India at the measurement date. A lower discount rate increases the present value of benefit obligations and therefore increases gratuity expense. Since our Gratuity Plan is unfunded, we have not assumed any returns on assets. A 100 basis point decrease/increase in the discount rate would have the impact of increasing/decreasing the projected benefit obligation at December 31, 2003 and decreasing/increasing earnings for the year ended December 31, 2003 by \$0.02 million. Similarly, a 100 basis point decrease/increase in the rate of compensation increases would have the impact of decreasing/increasing the projected benefit obligation at December 31, 2003 and increasing/decreasing earnings for that year by \$0.02 million.

**Results of Operations**

In the following discussion and analysis, we have combined financial information for the period from April 1, 2001 to July 31, 2001 (pre-predecessor) and the period from August 1, 2001 to December 31, 2001 (predecessor) included elsewhere in this prospectus for clarity in comparing our results for 2001 and 2002. We have also combined financial information for the period from January 1, 2002 to November 14, 2002 (predecessor) and the period from November 15, 2002 to December 31, 2002 (successor) included elsewhere in this prospectus for clarity purposes in comparing our results for 2002 to both 2001 and 2003. The presentation of this unaudited combined consolidated financial information is not a recognized presentation under GAAP and is not indicative of our operating results for the nine months ended December 31, 2001 or the year ended December 31, 2002, respectively.

The following table summarizes our results of operations (dollars in millions):

	Nine Months Ended September 30, 2004	Nine Months Ended September 30, 2003	Year Ended December 31, 2003	Combined Year Ended December 31, 2002	Combined Nine Months Ended December 31, 2001
	(unaudited)	(unaudited)		(unaudited)	(unaudited)
Revenues(1)	\$ 43.1	\$ 19.0	\$ 27.8	\$ 27.1	\$ 11.9
Cost of revenues(2)	27.2	12.6	18.4	13.0	6.8
Gross profit	15.9	6.4	9.4	14.1	5.1
Operating expenses:					
General and administrative and selling and marketing expenses(3)	8.8	6.6	9.0	12.4	5.2
Depreciation and amortization	2.7	0.2	0.4	3.9	1.4
Total operating expenses	11.5	6.8	9.4	16.3	6.6
Income (loss) from operations	4.4	(0.4)	—	(2.2)	(1.5)
Other income (expense):					
Foreign exchange gain (loss)	—	0.4	0.4	0.1	(0.1)
Interest and other income	0.2	0.2	0.2	—	—
Interest expense	(0.3)	(0.2)	(0.3)	—	—
Goodwill impairment(4)	—	—	—	(46.0)	—
Income (loss) before income taxes and extraordinary item	4.3	—	0.3	(48.1)	(1.6)
Income tax provision	0.3	0.7	0.8	0.1	—
Income (loss) before extraordinary gain	4.0	(0.7)	(0.5)	(48.2)	(1.6)
Extraordinary gain	—	—	—	5.0	—
Net income (loss)	\$ 4.0	\$ (0.7)	\$ (0.5)	\$ (43.2)	\$ (1.6)

- (1) In accordance with GAAP, we include the amount of telecommunications and travel-related costs that are billed to and reimbursed by our clients in our revenues.
- (2) Cost of revenues includes non-cash amortization of deferred stock compensation expense relating to our issuance of stock options to employees directly involved in providing services to our clients. Cost of revenues excludes depreciation and amortization related to fixed assets.
- (3) SG&A expenses include non-cash amortization of deferred stock compensation expense relating to our issuance of stock options to our non-operations staff.
- (4) Impairment of goodwill in connection with the 2001 Acquisition recognized by our predecessor.

**Nine Months Ended September 30, 2004 Compared to Nine Months Ended September 30, 2003**

**Revenues.** Revenues increased approximately 126.8% from \$19.0 million for the nine months ended September 30, 2003 (including \$0.6 million of reimbursable expenses) to \$43.1 million for the nine months ended September 30, 2004 (including \$3.1 million of reimbursable expenses) primarily as a result of the growth of our client base, the increase in size and number of services we provided and the addition of new services, such

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as advisory services. We added seven new clients for our services, including advisory services, during the nine months ended September 30, 2004 compared to two new clients during the nine months ended September 30, 2003. Revenues generated from new clients were \$7.9 million for the nine months ended September 30, 2003 accounting for 41.6% of revenues as compared to \$3.7 million for the nine months ended September 30, 2004 accounting for 8.6% of revenues. These increases were partially offset by a decline in revenues from Consec, principally as a result of Consec's reduced business activity following its bankruptcy in late 2002. For the nine months ended September 30, 2004, Consec contributed 3.0% of revenues compared to 23.7% of revenues for the nine months ended September 30, 2003. Revenues from new clients is an indicator of successful marketing efforts and does not represent a trend in our results of operations. We measure our revenues from new clients as revenues generated from new clients added and not as an increase in revenues from our existing clients.

**Cost of Revenues.** Cost of revenues increased 115.9% from \$12.6 million for the nine months ended September 30, 2003 (including \$0.6 million of reimbursable expenses) to \$27.2 million for the nine months ended September 30, 2004 (including \$3.1 million of reimbursable expenses). The increase was primarily attributable to an increase in the salaries and personnel expenses associated with the growth in the number of our employees in operations from 2,323 at September 30, 2003 to 3,887 at September 30, 2004. Salaries and personnel expenses increased from \$7.6 million for the nine months ended September 30, 2003 to \$16.1 million for the nine months ended September 30, 2004. Cost of revenues also increased due to an increase in reimbursable expenses primarily as a result of substantially increased client-site training.

Facilities operating costs increased from \$1.5 million for the nine months ended September 30, 2003 to \$3.5 million for the nine months ended September 30, 2004 primarily as a result of our increased workforce and the addition of our Pune facility, which became operational in January 2004. Our technology and telecom operating costs increased 60.7% from \$2.8 million for the nine months ended September 30, 2003 to \$4.5 million for the nine months ended September 30, 2004 primarily as a result of our increased business volume.

As a percentage of revenues, cost of revenues decreased from 66.3% for the nine months ended September 30, 2003 to 63.1% for the nine months ended September 30, 2004 due to improved employee utilization.

**Gross Profit.** Gross profit increased 148.4% from \$6.4 million for the nine months ended September 30, 2003 to \$15.9 million for the nine months ended September 30, 2004. As a percentage of revenues, gross profit increased from 33.7% for the nine months ended September 30, 2003 to 36.9% for the nine months ended September 30, 2004.

**SG&A Expenses.** SG&A expenses increased 33.3% from \$6.6 million for the nine months ended September 30, 2003 to \$8.8 million for the nine months ended September 30, 2004. This increase was primarily due to increased salary and personnel expenses relating to our non-operations staff incurred to expand our sales efforts and organizational infrastructure. Salary and personnel expenses increased from \$3.8 million for the nine months ended September 30, 2003 to \$5.4 million for the nine months ended September 30, 2004. SG&A expenses declined as a percentage of revenues from 34.7% for the nine months ended September 30, 2003 to 20.4% for the nine months ended September 30, 2004. We believe that the rate of increase in our SG&A expenses was lower than the corresponding increase in our revenues as a result of our more effective utilization of resources and increased economies of scale.

**Depreciation and Amortization.** Depreciation and amortization increased significantly from \$0.2 million for the nine months ended September 30, 2003 to \$2.7 million for the nine months ended September 30, 2004. The 2002 Acquisition of EXL Inc. from Consec resulted in negative goodwill. In accordance with SFAS 141, we allocated the excess of the fair value over cost to the fixed assets and other non current assets acquired thereby reducing their carrying value to zero as of November 15, 2002. Accordingly there was minimal depreciation for the nine months ended September 30, 2003. Depreciation for the nine months ended September 30, 2004 includes depreciation on fixed assets acquired for our Pune facility, which became operational in January 2004.



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**Income/(Loss) From Operations.** Income from operations has improved from a loss of \$0.4 million for the nine months ended September 30, 2003 to income of \$4.4 million for the nine months ended September 30, 2004. The increase in operating margin was primarily due to increased revenues from clients other than Conseco resulting from our sales and marketing efforts during 2003.

**Other Income/(Expenses).** Other income for the nine months ended September 30, 2003 was \$0.4 million as compared to expenses of \$0.1 million for the nine months ended September 30, 2004, primarily due to exchange rate fluctuations and a decline in interest income resulting from lower average cash balances in our bank accounts and lower interest rates.

**Provision for Income Taxes.** The provision for income taxes, which was for U.S. federal alternative minimum tax, decreased from \$0.7 million for the nine months ended September 30, 2003 to \$0.3 million for the nine months ended September 30, 2004.

**Net Income/(Loss).** Net income was \$4.0 million for the nine months ended September 30, 2004 as compared to a net loss of \$0.7 million for the nine months ended September 30, 2003.

### **Year Ended December 31, 2003 Compared to Combined Year Ended December 31, 2002**

**Revenues.** Although our revenues increased 2.6% from \$27.1 million for 2002 (including \$0.1 million of reimbursable expenses) to \$27.8 million for 2003 (including \$0.6 million of reimbursable expenses), we experienced a significant shift in our revenues mix from 2002 to 2003. In 2003, our revenue sources diversified geographically to include clients in the United Kingdom (representing 43.0% of our 2003 revenues) primarily as a result of our entry into a large contract with Norwich Union, whereas in 2002 all of our revenues were derived from North American clients. Revenues generated from new clients, including Norwich Union, grew from \$ 0.1 million in 2002 to \$12.0 million in 2003, accounting for 43.2% of our revenues in 2003 compared to 0.4% in 2002. These increases were, however, partially offset by a decline in revenues from Conseco. The overall contribution of Conseco to our revenues decreased from 94.0% in 2002 to 18.0% in 2003 as a result of the 2002 Acquisition and the bankruptcy of Conseco in late 2002.

**Cost of Revenues.** Cost of revenues increased by 41.5% from \$13.0 million in 2002 (including \$0.1 million of reimbursable expenses) to \$18.4 million in 2003 (including \$0.6 million of reimbursable expenses). This increase in cost of revenues was primarily due to an increase in personnel costs from \$6.6 million in 2002 to \$11.2 million in 2003. In 2003, because of a significant decline in Conseco operations, a large number of our employees were redeployed to new client processes, resulting in additional redeployment and training costs. In addition, in 2003, we substantially increased the scope and scale of services provided to two of our largest clients. As a result, even though revenues did not increase, salary costs increased due to large-scale investment in hiring, recruitment and training of new staff and training and redeployment of existing staff. The number of our employees in operations increased from 1,541 at December 31, 2002 to 2,321 at December 31, 2003.

**Gross Profit.** Gross profit decreased 33.3% from \$14.1 million in 2002 to \$9.4 million in 2003 primarily due to the reduction in the volume of services we provided to Conseco as a result of our shift in focus to new clients following the 2002 Acquisition and the bankruptcy of Conseco in late 2002. As a percentage of revenues, gross profit decreased from 52.0% in 2002 to 33.8% in 2003.

**SG&A Expenses.** SG&A expenses decreased 27.4% from \$12.4 million in 2002 to \$9.0 million in 2003 due to increased expenses in 2002 resulting from the 2002 Acquisition and the agreements relating to the winding down of Conseco operations at the end of 2002. Due to increased expenses and decreased revenues resulting from the 2002 Acquisition and the winding down of Conseco operations at the end of 2002, SG&A expenses decreased as a percentage of revenues from 45.8% in 2002 to approximately 32.4% in 2003.

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**Depreciation and Amortization.** Depreciation and amortization decreased by 89.7% from \$3.9 million in 2002 to \$0.4 million in 2003. In 2003, all of our depreciation was attributable to depreciation of our facilities capitalized after the 2002 Acquisition. As a result of the 2002 Acquisition, we recognized negative goodwill. In accordance with SFAS 141, we allocated the excess of the fair value over cost to the fixed assets and other non-current assets acquired, thereby reducing the carrying value of those assets to zero. As a result, depreciation in 2003 declined significantly in comparison to 2002.

**Net Income/(Loss).** Net income improved from a loss of \$43.2 million for the year ended December 31, 2002 to a loss of \$0.4 million for the year ended December 31, 2003.

**Provision for Income Taxes.** The provision for income taxes increased from \$0.1 million in 2002 to \$0.8 million primarily as a result of an additional provision of \$0.7 million for U.S. federal alternative minimum taxes in 2003. To compute the alternative minimum taxes, the Internal Revenue Service has prescribed various adjustments that serve to either increase or decrease regular taxable income. One of these adjustments is the adjusted current earnings or "ACE" adjustment, which required us to recalculate the adjusted basis of each of our assets for tax purposes in connection with the 2002 acquisition.

### **Combined Year Ended December 31, 2002 Compared to Combined Nine Months Ended December 31, 2001**

The accounting period of the combined year ended December 31, 2002 is not comparable with the accounting period of the combined nine months ended December 31, 2001 due to the different accounting basis and the difference in the length of the accounting periods.

**Revenues.** Revenues increased 127.7% from \$11.9 million (including \$0.1 million of reimbursable expenses) for the nine month period ended December 31, 2001 to \$27.1 million (including \$0.1 million of reimbursable expenses) for the year ended December 31, 2002 primarily as a result of the increase in the volume of services we provided to Conseco and the different lengths of accounting periods. Revenues from Conseco were 94.1% of revenues for the nine months ended December 31, 2001 and 94.0% of revenues for the year ended December 31, 2002.

**Cost of Revenues.** Cost of revenues decreased from 57.1% of revenues in the nine months ended December 31, 2001 to 48.0% of revenues in the year ended December 31, 2002. This decrease was mainly due to better utilization of our resources as Conseco business volumes increased following the 2001 Acquisition.

**Gross Profit.** Gross profit increased from 42.9% of revenues in the nine months ended December 31, 2001 to 52.0% of revenues in the year ended December 31, 2002 primarily as a result of the better utilization of resources and increase in the volume of services we provided to Conseco.

**SG&A Expenses.** SG&A expenses increased from 43.7% of revenues in the nine months ended December 31, 2001 to 45.8% of revenues in the year ended December 31, 2002 due primarily to increased expenses during year 2002 resulting from the 2002 Acquisition and the agreements relating to the winding down of Conseco operations.

**Depreciation and Amortization.** Depreciation and amortization increased from 11.8% of revenues in the nine months ended December 31, 2001 to 14.4% of revenues in the year ended December 31, 2002 due to an increase in our asset base resulting from the expansion of our operations in late 2001 and 2002.

### **Liquidity and Capital Resources**

Historically, our capital requirements have principally been for establishing offshore operations facilities in India. We expect this to continue for the foreseeable future. We have financed our operations primarily through sales of equity and some debt securities and, more recently, through cash flows from operations. In connection

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with the 2002 Acquisition in December 2002, we sold promissory notes, preferred stock and common stock to a group of our stockholders and certain members of our management for an aggregate of \$10.1 million. In July 2004, we issued and sold 526,316 shares of our Series A common stock (            shares after giving effect to the Share Conversion) to our client, Norwich Union, for an aggregate purchase price in cash of \$12.5 million. At September 30, 2004, we had \$22.7 million in cash and cash equivalents on hand.

Generally, factors that affect our earnings—for example, pricing, volume of services, costs and productivity—affect our cash flows provided by operations similarly. However, while management of working capital, including timing of collections and payments, affects operating results only indirectly, the impact on working capital and cash flows provided by operating activities can be significant. Cash flows provided by operating activities increased to \$11.9 million for the nine months ended September 30, 2004 compared to cash used in operating activities of approximately \$2.6 million for the nine months ended September 30, 2003 due to several factors. First, net income increased to \$4.0 million for the nine months ended September 30, 2004 compared to a loss of \$0.7 million for the nine months ended September 30, 2003 as a result of our higher business volumes and better utilization of committed resources. In addition, our working capital for the nine months ended September 30, 2004 increased by \$4.7 million as compared to a decrease of \$2.3 million for the nine months ended September 30, 2003. The improvement in working capital is the result of \$7.1 million of advances we received from Norwich Union, a \$2.4 million decrease in accounts receivable as a result of improved collection from our clients and an increase in accrued expenses and other liabilities of \$2.3 million due to the timing in payment of certain liabilities. Cash used in operating activities in 2003 was \$1.9 million compared to \$2.1 million for the combined 2002 period.

Cash used in investing activities has been mainly for our purchase of fixed assets, including telecommunications equipment and leasehold improvements, and development of our four operating facilities in India. Cash used in investing activities increased to \$10.5 million for the nine months ended September 30, 2004 from \$1.5 million for the nine months ended September 30, 2003 as a result of the development of our operating facilities in Pune, which have a capacity of approximately 1,400 seats, including 400 seats in Center IV. We spent a significant portion of this money on leasehold improvements and technology and telecommunications infrastructure. Cash used in investing activities was \$5.4 million in 2003 compared to inflow of cash from investing activities of \$2.3 million for the combined 2002 period. The inflow in the combined 2002 period was primarily a result of cash aggregating \$7.0 million acquired in the acquisition of EXL Inc. during the period.

Cash provided by financing activities increased to \$12.5 million for the nine months ended September 30, 2004 from \$0.6 million for the nine months ended September 30, 2003, primarily as a result of the investment of \$12.5 million in us by Norwich Union in July 2004 in return for 526,316 shares of our Series A common stock. Cash provided by financing activities decreased to \$0.6 million in 2003 compared to \$21.3 million for the combined 2002 period. In the combined 2002 period, we received capital contributions aggregating \$12.0 million from Conesco and \$10.1 million of proceeds from new investors after the 2002 Acquisition in return for common shares, preferred shares and senior long-term debt.

We made capital expenditures of approximately \$10.5 million for the nine months ended September 30, 2004, \$5.4 million in 2003 and approximately \$4.8 million for the combined 2002 period. We currently expect our annual capital expenditures to be approximately \$11.3 million in 2004, of which \$10.5 million had been made as of September 30, 2004. Capital expenditures for the nine months ended September 30, 2004 relate primarily to the opening of our new operating facilities in Pune, India, which have a capacity of approximately 1,400 seats.

We expect to incur approximately \$11.0 million to \$13.0 million of capital expenditures in 2005. Capital expenditures in 2005 will be used primarily to develop a new 500-seat facility in Noida, India, and another facility, consisting of approximately 500 seats, outside of India. The Noida, India facility is scheduled to open by mid-2005. We are contractually committed to one of our clients to establish and maintain a viable offshore BPO operation outside of India by September 2005, either on our own or through a relationship (such as joint venture,

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partnership or alliance) with other parties where we maintain at least 26% of the controlling interest. This new facility must be capable of providing the services currently being performed for that client in India at a comparable cost to us and must be comparable in size to the existing facility from which the client services are being provided. We are presently evaluating a number of different locations for this facility. We anticipate that we will utilize cash flow from operating activities to finance the capital expenditures related to these two facilities. Capital expenditures we make to serve our clients' needs represent primarily leasehold improvements to buildout facilities, telecommunications equipment, and computer hardware and software we purchase in connection with managing client operations. We currently have no individually large outstanding commitments for these capital expenditures. The timing and volume of such capital expenditures in the future will be affected by new contracts we may enter into or the expansion of our existing contracts. Therefore, we cannot reasonably predict our capital expenditures beyond 2005.

We expect to use cash from operating activities to maintain and expand our business. As we have focused on expanding our cash flow from operating activities, we have made significant capital investments, primarily related to capital expenditures related to new facilities. We anticipate that we will continue to rely upon cash flows from operating activities to finance our capital expenditures and working capital needs.

We intend to use the proceeds from this offering to redeem all outstanding shares of our Series A preferred stock, the aggregate principal amount of which plus accrued but unpaid dividends was \$5.5 million at September 30, 2004, and repay all outstanding stockholders' promissory notes, the aggregate principal amount of which plus accrued but unpaid interest was \$5.3 million at September 30, 2004, and for working capital and general corporate purposes. We believe that cash flow from operations and the net proceeds from this offering will be sufficient to meet our ongoing capital expenditure, working capital and other cash needs over the next two years. If we have significant growth through acquisitions or require additional operating facilities to service customer contracts, we may need to obtain additional financing.

### Contractual Obligations

The following table sets forth our contractual obligations as of September 30, 2004:

	Payments Due by Period (in millions)				Total
	Less than 1 year	1-3 years	4-5 years	After 5 years	
Long-term debt	—	—	\$ 5.3	—	\$5.3
Capital leases	\$ 0.2	\$ 0.4	—	—	0.6
Operating leases	0.5	0.5	—	—	1.0
Purchase obligations	1.9	—	—	—	1.9
Service and supply contracts	0.6	—	—	—	0.6
Total contractual cash obligations	\$ 3.2	\$ 0.9	\$ 5.3	—	\$9.4

We have entered into an Insurance Services Framework Agreement and related Virtual Shareholders' Agreement with Norwich Union pursuant to which we have granted Norwich Union the option from February 2007 through February 2011 to assume the operations of one of our facilities in Pune, India, upon the payment of an amount that will approximate the net asset value of that facility on the date of transfer plus the aggregate amount of certain foregone profits. The exercise of this option would result in both a loss of revenues and the loss of all of our employees who are at that time working under that contract. We expect that any decline in revenues that we would experience if Norwich Union exercises this option would be partially offset by a decrease in expenses associated with the operation of the Pune facilities. See "Certain Relationships and Related Transactions—Agreements with Norwich Union—Option to Purchase Stock of NCOP."

EXL India has been established as an "Export—Oriented Undertaking" enterprise under the Export Import Policy, a policy formulated by the government of India that has provided us with certain incentives on the import

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of capital goods. Under this policy, EXL India must achieve certain export ratios and realize revenues attributable to exports of \$70.8 million over a period of five years from 2000 to 2005. EXL India has consistently generated the required levels of export revenues since 2000. For 2004 and 2005, EXL India is required to have export revenues of \$23.2 million. As of September 30, 2004, EXL India had already exceeded this target. In the event that EXL India is unable to achieve its commitments over the specified period, it may be required to refund these incentives along with penalties and fines. Under the policy, EXL India was entitled to import capital goods with a value of \$24.3 million, free of any import duties. We have not utilized \$16.2 million of the duty-free imports allowance, which is due to expire in March 2005.

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

As of September 30, 2004, we had no off-balance sheet arrangements or obligations.

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

#### ***General***

Market risk is the loss of future earnings, to fair values or to future cash flows that may result from a change in the price of a financial instrument. The value of a financial instrument may change as a result of changes in the interest rates, foreign currency exchange rates, commodity prices, equity prices and other market changes that affect market risk sensitive instruments. Market risk is attributable to all market sensitive financial instruments including foreign currency receivables and payables.

Our exposure to market risk is a function of our borrowing activities and revenue generating activities in foreign currency. The objective of market risk management is to avoid excessive exposure of our earnings and equity to loss. Most of our exposure to market arises out of our foreign currency accounts receivable.

#### ***Risk Management Procedures***

We manage market risk through our treasury operations. Our senior management and our board of directors approve our treasury operation's objectives and policies. The activities of our treasury operations include management of cash resources, implementing hedging strategies for foreign currency exposures, borrowing strategies, if any, and ensuring compliance with market risk limits and policies.

#### ***Components of Market Risk***

***Exchange Rate Risk.*** Our exposure to market risk arises principally from exchange rate risk. Although substantially all of our revenues are denominated in pounds sterling or U.S. dollars, approximately 74.0% of our expenses are incurred and paid in the Indian rupee. The exchange rates among the Indian rupee, the pound sterling and the U.S. dollar have changed substantially in recent years and may fluctuate substantially in the future. See "—Foreign Exchange—Exchange Rates."

Our exchange rate risk primarily arises from our foreign currency revenues, receivables and payables. Based upon our level of operations during the nine months ended September 30, 2004 and excluding any hedging arrangements that we had in place during that period, a 5.0% appreciation/depreciation in the pound sterling against the U.S. dollar would have increased/decreased revenues for the nine months ended September 30, 2004 by approximately \$1.1 million. Similarly, a 5.0% depreciation in the Indian rupee against the U.S. dollar would have decreased our expenses incurred and paid in rupees during the nine months ended September 30, 2004 by approximately \$1.3 million. Conversely, a 5.0% appreciation in the Indian rupee against the U.S. dollar would have increased our expenses incurred and paid in rupees during the nine months ended September 30, 2004 by approximately \$1.5 million.

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We have sought to reduce the effect of Indian rupee-U.S. dollar exchange rate fluctuations on our operating results by purchasing forward foreign exchange contracts to cover a portion of outstanding accounts receivable designated in foreign currencies. We entered into forward exchange contracts during the year ended December 31, 2003 and during the nine months ended September 30, 2004. None of these contracts were outstanding at December 31, 2003. Forward exchange contracts with a notional amount of \$7.5 million were outstanding at September 30, 2004. The fair value of such contracts at September 30, 2004 was \$0.2 million. The forward foreign exchange contracts typically mature within nine months, must be settled on the day of maturity and may be cancelled subject to the payment of any gains or losses in the difference between the contract exchange rate and the market exchange rate on the date of cancellation. We use these instruments as economic hedges and not for speculative purposes. We may not purchase contracts adequate to insulate ourselves from Indian rupee-U.S. dollar foreign exchange currency risks. In addition, any such contracts may not perform adequately as a hedging mechanism. We may, in the future, adopt more active hedging policies, and have done so in the past.

**Interest Rate Risk.** Our exposure to interest rate risk arises principally from interest bearing instruments including preferred stock and senior promissory notes payable to stockholders. We have \$4.6 million in aggregate principal amount of our Series A preferred stock and \$4.9 million in aggregate principal amount of senior promissory notes outstanding as of September 30, 2004. Interest on the principal amount of stockholders' promissory note is payable on maturity and accrues at a rate equal to the greater of 2.02% semiannually or LIBOR. Holders of our preferred stock are entitled to receive annual dividends, as and when declared by ExlService Holdings out of funds legally available in an amount equal to 10.0% of the liquidation preference per share. Such dividends are payable, at our election, in cash or in the form of an additional liquidation preference and accrue annually, but are to be paid only upon redemption, liquidation or as otherwise declared by us. Because we intend to use the proceeds from this offering to redeem all of our outstanding Series A preferred stock, plus accrued but unpaid dividends to the date of redemption and repay all of our outstanding stockholders' promissory notes, plus accrued but unpaid interest to the date of repayment, we do not expect our exposure to interest rate fluctuations to be significant following this offering.

### **Recent Accounting Pronouncements**

In January 2003, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation ("FIN") No. 46, "Consolidation of Variable Interest Entities, an interpretation of Accounting Research Bulletin No. 51" ("FIN 46"). The primary objectives of FIN 46 are to provide guidance on the identification of entities for which control is achieved through means other than through voting rights ("variable interest entities" or "VIEs") and how to determine when and which business enterprise should consolidate the VIE. This new model for consolidation applies to an entity in which either: (a) the equity investors (if any) do not have a controlling financial interest; or (b) the equity investment at risk is insufficient to finance that entity's activities without receiving additional subordinated financial support from other parties. In addition, FIN 46 requires that both the primary beneficiary and all other enterprises with a significant variable interest in a VIE make additional disclosures. The adoption of FIN 46 has not had any significant impact on our results of operations or financial position.

In May 2003, FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity" ("SFAS 150"), which establishes standards for how an issuer of financial instruments classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances) if, at inception, the monetary value of the obligation is based solely or predominantly on a fixed monetary amount known at inception, variation in something other than the fair value of the issuer's equity shares or variations inversely related to changes in the fair value of the issuer's equity shares. SFAS 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of SFAS 150 has not had any significant impact on our results of operations or financial position.

## BUSINESS

### Overview

We are a leading provider of offshore BPO solutions, primarily serving the needs of Global 1000 companies in the BFSI segment. Business process outsourcing involves the transfer of management and execution of one or more business processes or entire business functions to an external provider. We generated revenues of \$43.1 million for the nine months ended September 30, 2004 compared to \$19.0 million for the nine months ended September 30, 2003, representing an increase of 126.8%. We believe we are well-positioned to continue our growth within the expanding BFSI segment of the BPO services market, leveraging our expertise in this industry and our ability to provide services worldwide.

We combine in-depth knowledge of the BFSI segment with proven business expertise in providing integrated BPO solutions and managing large-scale processes for our U.S.-based and U.K.-based clients. We have successfully transferred more than 140 processes covering a broad array of products and services from 11 clients to our operations centers. Of these, all but a few were processes for eight clients in the BFSI industry and the remainder were specialized customer support processes for three clients in other industries. In the insurance industry, our service offerings include insurance claims processing, opening, issuing and servicing policies, agency management and premium administration for life, property and casualty insurers. In the banking and financial services industry, our service offerings include collections, cash management, loan servicing, research and reconciliation, finance and accounting processes and customer support for mortgage banks, retail banks and consumer finance companies. We also offer technical support solutions and specialized advisory services to our clients, including identifying BPO opportunities and outsourcing solutions, developing processes and providing business risk compliance services. We use these strategic solutions as part of our marketing strategy to expand our client base and to migrate clients into our longer-term BPO service offerings.

Substantially all of the revenues from our BPO business for the nine months ended September 30, 2004, were generated under long-term contracts having initial terms ranging from three to seven years. Agreements with our largest client, representing 52.2% of our revenues for the nine months ended September 30, 2004, have initial terms that run through 2007 and 2009. Our largest clients are Norwich Union and Dell (including Dell Financial Services), which together under several contracts accounted for 77.4% of our total revenues for the nine months ended September 30, 2004. Other clients include Allianz, Deloitte & Touche, IndyMac Bank FSB, Prudential Financial Inc., one of the three largest U.S. insurance companies and one of the three largest U.S. banks. A significant portion of our business relates to processes that are integral to our clients' operations, and the close nature of these relationships allows us to develop strong strategic and long-term relationships with them.

Our operations platforms are supported by a state-of-the-art infrastructure that can be expanded to meet each client's needs. We market our services directly through our sales and marketing team, which operates out of New York City and London, England, and our business development team, which operates out of Noida, India. We have senior managers with extensive experience in the BFSI segment as well as the business practices of leading multi-national corporations. Our operations centers are located in India, which enables us to leverage India's large talent pool of highly qualified and educated English-speaking technical professionals, who are able to handle complex processes that require functional skills and industry expertise. By basing our operations in India, we believe we can offer consistently high quality services at substantially lower costs than those available from in-house facilities or U.S. or U.K.-based outsourcing providers. In addition, we are contractually committed to investing in an operations facility outside of India by September 2005, which we believe will enhance our global delivery model and provide higher value to our clients through risk diversification and access to a wider talent pool.

We believe our reputation for operational excellence is widely recognized by our clients and is an important competitive advantage. We use Six Sigma, a data-driven methodology for eliminating defects in any process, to identify process inefficiencies and improve productivity in client and support processes. We also deliver

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continued process enhancements by soliciting and implementing process improvements from employees and through our proprietary software tools. As part of our commitment to quality, we have been awarded an ISO 9001:2000 certification for quality assurance and a BS7799 certification for information security, demonstrating our high standards for quality and information security. We have been certified by the Customer Operations Performance Center, Inc. ("COPC") in BPO and electronic transactions for our Noida operations and expect to be certified for our collections transactions in the first quarter of 2005.

### **History**

We were founded in 1999 by a group of experienced professionals including Vikram Talwar, the former Chief Executive Officer and Managing Director of Ernst & Young Consulting India and the former Country Manager for Bank of America in India and other Asian countries, and Rohit Kapoor, the former Business Head for South Asian clients at Deutsche Bank Private Bank and a former head of non-resident Indian banking at Bank of America. Mr. Talwar is our Vice Chairman and Chief Executive Officer and Mr. Kapoor is our President and Chief Financial Officer.

In August 2001, we were acquired by Conseco and operated as its wholly-owned subsidiary and in-house business processing service provider for the following 14 months. Through this relationship, we gained a deep understanding of the financial services sector, especially back-office processing functions and debt collections. In November 2002, Messrs. Talwar and Kapoor, Oak Hill Capital Partners L.P., FTVentures and certain members of our senior management team purchased EXL Inc. from Conseco in the 2002 Acquisition and EXL Inc. became our wholly-owned subsidiary.

### **The BPO Industry**

BPO service providers work with clients to develop and deliver business process innovations that transform their business or deliver higher performance at lower costs. Outsourcing can enable organizations to enhance profitability and increase efficiency and reliability, permitting them to concentrate on their core areas of competence. BPO is a long-term strategic commitment for companies that, once implemented, is generally not subject to cyclical spending or information technology budget reductions. According to the 2004 report of the National Association of Software and Service Companies (the "NASSCOM Report"), BPO engagements are typically structured on a multi-year contract basis and are generally renewed.

Demand for offshore BPO services has grown substantially in recent years. According to the most recent Gartner Report, offshore BPO services are expected to generate revenues of \$3.0 billion in 2004, which revenues are expected to grow to approximately \$24.2 billion in 2007, a compound annual growth rate of 100.6%. The Indian BPO industry is expected to receive approximately \$2.0 billion in 2004, or 67.0% of the total offshore BPO market, which revenues are expected to grow to an estimated \$13.8 billion by 2007, a compound annual growth rate of 90.4%. The main forces driving this growth are the need to control costs and increase operating efficiencies, service capabilities and competitive advantages. Companies also use outsourcing to drive revenue growth by expanding service offerings that otherwise would be too costly to administer or through enhanced receivable collections that would not be cost-efficient to pursue using internal staff. According to a 2002 report published by NASSCOM, Indian BPO service providers can offer clients cost savings of approximately 40-50% and higher free cash flows through reduced investments in physical infrastructure, telecommunication and equipment. We believe the demand for BPO services will be primarily led by industries that are transaction-driven and that require significant customer interactions, such as BFSI, telecommunications, healthcare and retail. The high cost of servicing a large number of small customer accounts makes outsourcing a compelling strategic alternative for these industries.

### ***The BFSI Segment***

The BFSI segment is characterized by intense competition among traditional players and new entrants, as well as rapid technological innovation. As a result of these challenges, we believe that the BFSI segment is



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adopting BPO more rapidly than other industries. Organizations in the BFSI segment continue to outsource their key business processes to third parties to reduce costs, improve process quality, handle increased transaction volumes and ensure redundancy. In selecting BPO vendors, the BFSI segment remains focused on vendor responsiveness, customer service and quality and an ability to smoothly transition complex processes and develop customized solutions.

### ***Trend Towards Offshore Delivery of BPO Services***

Global demand for high-quality, lower-cost BPO services from external providers, combined with operational and cost improvements in international telecommunications and the automation of many business services, have created a significant opportunity for BPO service providers that are able to take advantage of an offshore talent pool. The effective use of offshore personnel can offer a variety of benefits, including lower costs and a large pool of highly qualified employees. As a result, many companies are moving selected front-, middle- and back-office processes to providers with the capacity to perform these functions from overseas locations. According to the NASSCOM Report, U.S. businesses dominate the demand for offshore outsourcing services, accounting for a substantial majority of the total market. Europe, with the United Kingdom being the dominant participant, and Japan account for the majority of the remainder of the market.

Over the past decade, India has emerged as a preferred location for organizations planning to outsource services ranging from insurance claims processing, payroll processing, medical transcription, customer relationship management and supply chain management to back-office operations such as accounting and data processing, filtering and organization. This is primarily due to its large talent pool of highly qualified and educated English-speaking technical professionals. India currently accounts for the largest share of the offshore BPO market.

### **EXL's Competitive Strengths**

We believe we have the competitive strengths necessary to maintain and improve our position as a leading provider of BPO services in the BFSI segment. Our key competitive strengths include:

#### ***Deep and Comprehensive Processing Experience Within the BFSI Segment***

With substantially all of our revenues derived from the BFSI segment, we have gained a deep understanding of that segment, especially in complex back-office processing functions. Our expertise stems from our early association with Conseco and has allowed us to provide a full range of high-value solutions to our clients. Because we believe that the BFSI segment is adopting BPO more rapidly than other industries, we intend to continue to focus on strengthening our capabilities for the BFSI segment and other high-potential segments (such as healthcare) by developing more complex services for our clients. We believe we are among the first global BPO service providers to have migrated from single or discrete transaction processes to a full range of functional solutions. We have successfully transferred more than 140 processes covering a broad array of products and services to our operations centers, including policy servicing, research and issuance, agency management and premium administration for clients in the life insurance, property and casualty insurance, health insurance and retirement services areas. In addition, we have developed substantial knowledge of the regulatory requirements applicable to the BFSI segment which operate as a significant barrier to new entrants. For example, we are one of the few offshore BPO service providers that can provide third party administrator insurance services in 44 states of the United States, having been licensed or exempted from, or not subject to, licensing in each of those states. In addition, we are also licensed to operate debt collection services in all but two states in the United States where such licenses are required, which makes us an attractive service provider to future clients. We believe that we are well-positioned to capitalize on the growth in this segment and to leverage the expertise we have gained in this area to steadily broaden and diversify our client base.

#### ***Long-term Client Relationships that Result in a High Level of Recurring and Predictable Revenues***

We have established long-term relationships with our clients for whom we manage a wide variety of processes. Substantially all of our revenues for the nine months ended September 30, 2004 were generated by

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long-term contracts with initial terms ranging from three to seven years. For clients whose processes we have fully migrated, this provides us with relatively predictable and recurring revenues, and reduces our sales and marketing costs relative to project-based service providers. Our client relationships typically evolve from providing a single, discrete process into providing a series of complex, integrated processes across multiple business lines.

### ***Strong Focus on Operations Management and Process Excellence***

Our success to date reflects our strong focus on operations management and ongoing process improvement. We use Six Sigma methodology to identify and eliminate inefficiencies in client and support processes and have created a dedicated team of full-time Six Sigma-trained “black belts” and “green belts,” who have substantial expertise in applying the methodology. We have also implemented Kaizen initiatives to solicit and implement process improvements from employees at all levels and to leverage the learning and experiences of each of our employees. In addition, we have developed proprietary tools, including our Process Management and Performance Tracking (ProMPT) system, to identify and deliver continued process enhancements to our clients, and a Staff Optimization and Forecasting Tool (SOFT) for effective workforce management of our client processes. We have been awarded ISO 9001:2000 and BS7799 certifications for quality assurance and information security, demonstrating our high standards for quality and information security. We have been certified by the COPC in BPO and electronic transactions for our Noida operations and expect to be certified for our collections transactions in the first quarter of 2005.

### ***Robust Infrastructure that Can Be Readily Expanded to Meet the Needs of Our Clients***

We have built a state-of-the-art infrastructure and have invested in our employees in an effort to consistently meet or exceed the growing needs of our clients. We have invested significant resources in employee recruitment, training and retention, enabling us to grow from approximately 1,827 employees as of December 31, 2002 to 4,551 employees as of September 30, 2004. Substantially all of our new employees are based in India. We already have the ability to hire and train 400 employees per month and have assembled what we believe is a highly qualified employee base among offshore independent BPO service providers. Of our employees, 99.5% have either college degrees or diplomas. We believe that our focus on hiring, training and retaining our employees should enable us to continue to deliver high quality solutions to our clients.

We have developed an extensive technological infrastructure with a focus on redundancies, scalability and, most importantly, information security. Our locations in India, the United States and the United Kingdom are connected using a combination of leased domestic and international telecommunications links with redundant capacity. Industry standard network management systems monitor the systems on an uninterrupted 24 hours a day, seven days a week, or “24/7” basis. The robustness of our telecommunications network has allowed us to achieve an average network availability of 99.9% for day-to-day operations.

### ***Experienced Management Team With a Significant Equity Stake***

We pride ourselves on the strength and depth of our management and their continued commitment to our ongoing success. Our top 28 senior managers at or above the level of vice president have an average of approximately ten years of experience in the BFSI segment and extensive working experience with the business practices of multinational corporations. Vikram Talwar, our Vice Chairman and Chief Executive Officer, co-founded our company after being Chief Executive Officer and Managing Director of Ernst & Young Consulting India and spending 26 years at Bank of America in a variety of senior management roles, including Country Manager in India and other Asian countries. Our other cofounder and current President and Chief Financial Officer, Rohit Kapoor, has over 11 years of experience working with Deutsche Bank and Bank of America in the United States and India. We have a committed management team that has a significant equity stake in our company. Sixteen members of our senior management team have purchased and hold 28.0% of our

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common stock on a fully diluted basis at the time of the 2002 Acquisition and, together with other members of senior management, have stock options covering approximately        shares.

### **Business Strategy**

Our goal is to become the leading provider of BPO services in the BFSI segment. Specific elements of our growth strategy include:

#### ***Maintaining Our Focus on Large-scale, Long-term Relationships***

We expect to maintain our focus on large-scale, long-term client relationships. We believe there are significant opportunities for additional growth with our existing clients, and we seek to expand these relationships by increasing the depth and breadth of the services we provide. This strategy should allow us to use our in-depth client-specific knowledge to provide more fully integrated BPO solutions and develop closer relationships with our clients. Working with a small number of large-scale, long-term relationships also allows us to focus on quality and to devote the time and resources necessary to provide savings and fully satisfy the needs of our clients.

#### ***Expanding Our Client Base***

We intend to develop long-term relationships that present recurring revenue opportunities with selected new clients by leveraging our industry experience and expanding our marketing activities in a manner designed to strengthen, encourage and accelerate long-term relationship building. We continue to target Global 1000 companies that have the most complex and diverse processes and accordingly stand to benefit significantly from the use of BPO. In developing these relationships, our primary focus will be to continue to provide complex and integrated BPO solutions to clients in the United States and United Kingdom, which together represent a substantial majority of the total BPO market. In developing new client relationships, we continue to be highly selective and seek industry-leading clients who are committed to long-term and strategic relationships with us.

#### ***Extending Our Industry Expertise***

The manner in which we have developed has given us expertise in transferring and servicing more than 140 processes in the BFSI segment. This expertise continues to distinguish us from other offshore providers of BPO services to the BFSI segment and has established our reputation as a leading provider of BPO services. We intend to continue to focus on strengthening our full range of processing capabilities for the BFSI segment. We also intend to expand the scope of our service offerings in the BFSI segment and other high-potential segments (such as healthcare) by developing more complex and value-enhancing services for our clients. In addition, examples of attractive segments where we intend to focus our future development include mortgage processing, property lease management for real estate investment trusts and trade sales and processing for investment banks.

#### ***Continuing to Focus on Complex Processes***

We intend to differentiate ourselves by providing a full range of integrated BPO solutions. We will continue to identify opportunities to provide services in complementary segments (such as research and analytical processes) in order to maximize opportunities for cross-selling our service offerings and enhancing client satisfaction. Examples of our newest processes include managing insurance receivables, processing total loss claim cases, handling third-party claims cases and processing suspected fraud and high-value claim cases. We will also continue to develop additional advisory and related services in order to expand our client base further and migrate clients into our longer-term BPO service offerings. For example, in 2005 we plan to offer additional analytical services, including data filtering, organization and synthesis, management information system reporting, trend and variance analysis, statistical and econometric modeling and economic and financial markets research.

***Continuing to Invest in Operational Infrastructure***

We will continue to invest in infrastructure, including human resources, process optimization and delivery platforms, to meet our growing client requirements. We intend to further refine and supplement the innovative methods we use to recruit, train and retain our skilled employees. We will continue to focus on recruiting highly qualified employees and to develop our employees' leadership skills through specialized programs, rigorous promotion standards, industry-specific training and competitive compensation packages that include incentive-based compensation. We also intend to continue our focus on process excellence by building on our extensive use of Six Sigma methodology to identify and eliminate inefficiencies, focusing on initiatives to solicit and implement process improvements from employees at all levels and continuing to develop proprietary tools to identify and deliver continued process enhancements. We believe that doing so will enable us to increase the volume of business from our clients and provide higher value solutions. Finally, we are expanding our facilities in Noida, India, which we expect will be operational by mid-2005. In addition, we are contractually committed to one of our clients to establish and maintain a viable offshore BPO operation outside of India by September 2005, either on our own or through a relationship (such as joint venture, partnership or alliance) with other parties where we maintain at least 26% of the controlling interest. This new facility must be capable of providing the services currently being performed for that client in India at a comparable cost to us and must be comparable in size to the existing facility from which the client services are being provided. We are actively looking at a few specific locations. We will evaluate other locations worldwide for further service delivery capabilities based on client preferences and needs, and infrastructure availability.

***Pursuing Strategic Relationships and Acquisitions***

We will selectively consider strategic relationships with industry leaders that add new long-term client relationships or enhance the depth and breadth of our BPO solutions. We will also selectively consider acquisitions or investments that would expand the scope of our existing BPO services, add new clients or allow us to enter new geographic markets.

We may also broaden our global presence by continuing to expand our relationships with existing clients outside the United States and the United Kingdom and by adding new long-term relationships with leading multinational corporations.

**Services**

***BPO Services***

Our BPO solutions are structured around the following main strategic business units: insurance services, banking and financial services, finance and accounting services, collection services and technical support services.

***Insurance Services.*** Within the life insurance, property and casualty insurance, health insurance and retirement services business lines, we provide services in the areas of claims processing, premium and benefit administration, agency management, account reconciliation, policy research, policy servicing, policy issuance and customer service. We have acquired significant experience in transferring and managing processes in these areas and have successfully transferred and managed more than 110 processes and 200 sub-processes.

***Banking and Financial Services.*** We have significant domain expertise in servicing and processing various banking products including residential mortgage lending, consumer finance, retail banking, credit cards, transaction services and other banking services. Our activities include customer service, transaction processing, underwriting support, documentation management and collateral monitoring.

***Finance and Accounting Services.*** We provide certain finance and accounting services, including accounts payables, research, reconciliation of accounts and lock-box accounting. We intend to expand our

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services in this segment to include expense accounting, debit and credit accounting, account consolidation, departmental accounting, account balancing, accounting statements, budgeting and management information systems reporting.

**Collection Services.** We provide early and mid-stage collection activities, generally using automated dialing systems and our proprietary ExI Collections System (ECS). In addition, we use our proprietary skip-tracing tool to access location information instantly via multiple websites in order to trace people who have moved or absconded without notice to avoid paying debts. We are one of the few vendors in India with experience with a wide range of collection processes, including credit card receivables, large mortgage loan payments and business-to-business insurance premium collections, as well as extensive dialer management experience, both on our proprietary systems and client systems.

**Technical Support Services.** We provide a large array of technical service solutions, including e-mail management, customer service and web- and voice-based technical helpdesk functions.

We continuously seek to offer improved service delivery by means of detailed daily feedback through our ProMPT system and reporting with our clients.

Across the BPO services described above, we have successfully transferred and managed more than 140 processes and 200 sub-processes, including the following:

### Insurance Processes

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#### Life Insurance

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- *Administration of Insurance Agents*  
Licensing and contracting renewals, terminations, correspondence, commissions and brokerage amounts, debt management, administrating unclaimed monies by insurance agents
- *New Business Processing*  
Prescreening and acquiring new customers, underwriting, underwriting support, delivery requirements follow-up, policy issuance, fund application, refunds, non-sufficient funds, customer enquiries
- *Administration of Current Policies*  
Title and address changes, certificate reissue, endorsement, policy transfers, quotes and reinstatements, loans, exchanges, withdrawals, dividends, surrenders, maturities, direct debit instructions, customer service
- *Premium Administration*  
Application of premium, loan and interest adjustment, daily premium balancing, suspended policy research, payment mode changes, customer correspondence and service
- *Claims Processing*  
Examination, adjudication, settlement, tax compliance and compliance with state laws, customer correspondence and service

#### Property and Casualty Insurance

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- *New Business Processing*  
Sales and conversion, quote acceptance, establishing new policies, policy upgrades, sales of multiple products
- *Administration of Current Policies*  
Customer service, lapses and renewals, mid-term adjustments
- *Claims Processing*  
First notification of loss, initial reporting of claims and account initiation, customer service, technical claims, documentation, claims based on third party fault, total loss, scheduling on-site engineers' inspection visits
- *Premium*  
Payment mode changes, collection

**Banking and Financial Services Processes**

<b>Consumer Finance</b>	<b>Retail Banking and Credit Cards</b>	<b>Mortgage Lending</b>
<ul style="list-style-type: none"><li>• Consumer finance processing including verification, tracking and recording</li><li>• Inbound customer service</li><li>• Collections</li><li>• Loan payoff</li><li>• Telemarketing</li></ul>	<ul style="list-style-type: none"><li>• Customer service</li><li>• Query resolution</li><li>• Address change request</li><li>• E-mail response</li><li>• Collections</li></ul>	<ul style="list-style-type: none"><li>• Loan underwriting support</li><li>• Loan verification</li><li>• Property tax servicing</li><li>• New loan set-up</li><li>• Rate modification</li><li>• Mortgage customer service</li><li>• Seller/broker queries</li><li>• Document management</li></ul>
<b>Finance and Accounting</b>	<b>Collections Services</b>	
<ul style="list-style-type: none"><li>• Accounts payable management</li><li>• Vendor invoice processing</li><li>• Validation and payment</li></ul>	<ul style="list-style-type: none"><li>• Collections from individuals</li><li>• Collections from businesses</li><li>• Automated dialing systems</li><li>• Tracking debtors</li></ul>	

**Technical Support and Customer Service Processes**

- Technical help desk
- Voice, e-mail and blended processes
- Customer service, including changes in delivery date and desktop configuration, returns, billing issues, pre-sales information, concessions and discount vouchers for loyal customers, catalogue requests
- Fulfilling orders, including e-mail queries and online orders

**Advisory Services**

In addition to our BPO services, we provide the following advisory services, which have enabled us to expand our client base and to migrate clients into our longer-term BPO service offerings.

**BPO Opportunity and Solution Identification.** We have developed MOST, a unique methodology for identifying BPO opportunities, migrating those processes and developing appropriate BPO solutions that we can customize to meet our clients' requirements.

**Process Reengineering.** We use our Six Sigma improvement methodology and process management expertise to help clients improve their processes. We improve effectiveness and decrease costs for our clients by consolidating, streamlining and reengineering their processes and platforms, which we believe encourages them to migrate and outsource processes to us.

**Process Mapping and Documentation.** We provide consulting services to our clients in order to manage, control and improve process-oriented activities. As part of these services, we document their processes using our methodology and define and measure the performance evaluation standards of the processes. We have extensive process mapping experience spanning over 500 end-to-end processes.

**Business Risk Analysis and Sarbanes-Oxley Compliance.** Our Business Process Risk Services ("BPRS") division provides services, technologies and solutions to identify, prioritize and manage our clients' business process risks. Through a core team comprised of more than 65 certified accountants, internal auditors and process and technology experts, our BPRS division provides compliance, technology and risk management solutions and makes recommendations to improve existing business processes and controls. The BPRS division also evaluates internal controls and provides internal controls testing solutions to facilitate compliance with the requirements of the Sarbanes-Oxley Act of 2002. We believe that clients of our BPRS division may also look to outsource or co-source some of their internal audit functions and seek IT risk management and IT advisory services.

## Representative Projects

The following examples illustrate the types of business needs that we address.

### *U.S. Mortgage Bank*

**Client:** A U.S. bank in the business of financing single-family homes. This client also offers home equity loans and invests in single-family mortgage-related assets. This client was seeking a cost-competitive outsourcing partner with substantial financial services industry knowledge and the ability to meet high-quality standards.

**Our Approach:** As part of our BPO opportunity and solution identification, we first sought to understand the various business processes conducted by the client and the challenges associated with those processes. We applied our Six Sigma-based process transfer methodology, performed pilot migrations, trained employees in India and implemented quality control processes and process management procedures prior to initiating operations from our facilities.

**Services Overview:** Since December 2001, we have provided a wide range of services to this client, which have increased both in volume and complexity. Commencing with a new customer service process designed to reduce first payment defaults, we graduated to early- and then late-stage collections for the client's mortgage loan portfolio. We then began to perform an even more complex process designed to pre-empt the refinancing of mortgages in a declining interest rate environment by proactively offering rate modifications to existing prime borrowers. The services we provide now include:

- *Customer Information Verification*  
Loan underwriting support, internet research, voice, e-mail and voice/email processes, multi-skilled agents to ensure productivity
- *Loan Processing*  
Loan data validation, back office transaction support, multi-skilled agents to ensure productivity
- *Underwriting Conditions*  
Loan underwriting support, voice, e-mail and voice/email processes, broker inquiries, multi-skilled agents to ensure productivity
- *Collections*  
Automated dialing systems, tracking debtors
- *Document Management*  
Collection of title policy documents, facsimile and e-mail
- *Tax Servicing*  
Property tax servicing and maintenance, e-mail
- *Rate Modification*  
Telemarketing campaigns, customer retention
- *Broker Due Diligence*  
Research on eligibility of new brokers, license status, verification of existing brokers via web research
- *Customer Service and Loan Verification*

Selected services that we helped provide include:

- introducing a substantial degree of automation to improve certain key processes (such as call list queuing, transaction documentation, tracking debtors with our proprietary skip-tracing tool, web research and performance tracking),
- re-engineering key processes before migrating them to our sites in India, and
- formulating and standardizing desktop procedures for various banking functions.

**Growth in Relationship:** Since we first began providing services to this client in 2001, we have demonstrated our ability to provide a wide range of end-to-end solutions for processes of increasing complexity. Our relationship with this client has grown from one process to include more than twelve different processes being serviced by nearly 200 employees. The processes we manage for this client include mortgage origination, mortgage loan collections and mortgage servicing, each of which has been outsourced to us under contracts with initial terms of three years. Over 60% of our employees who work for this client are deployed on complex transaction processing activities.

**U.K. Insurance Company**

**Client:** One of the largest insurance companies in the world and a leading insurer in the U.K. market. This client sought an alternative to its captive U.K. customer service center. Our mandate included re-engineering their processes in their automotive, household and life insurance operations to improve efficiency and productivity.

**Our Approach:** We initially invested in training designed to familiarize our new staff with U.K. culture and the basics of general insurance and financial service market operations in the United Kingdom and obtaining the proper certifications in order to meet industry regulatory requirements. We customized our recruitment strategy to screen candidates for aptitude, cultural adaptability and strong analytical and decision-making skills. We then implemented our Six Sigma-based migration methodology for transferring processes from the client site while complying with U.K. insurance regulatory practices. To ensure a successful transfer, we had client subject matter experts present onsite in India during training and the pilot phases of process migration. To improve performance quality, we solicited feedback from process managers, quality control executives, select-end customers and the client’s employees. We continue to implement Six Sigma-based initiatives in this client’s processes to improve quality.

**Services Overview:** We provide a range of insurance BPO services to this client:

**New Business Processing**

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- *Motor*  
Sales, conversion, quote acceptance, cross-selling, establishing new policies, policy upgrades
- *Household*  
Establishing new policies
- *Commercial Insurance*  
Establishing new policies

**Claims Processing**

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- *Motor*  
Customer service, claims progress and finalization (including total loss and third party cases), scheduling on-site engineers’ inspection visits, claim payments, routing claims to appropriate department
- *Household*  
First notification of loss, initial reporting of claims and account initiation, status checks, customer service, routing claims to appropriate department

**Administration of Current Policies**

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- *Motor*  
Customer service, address changes, servicing policy requests, mid-term adjustments, policy lapses and renewals, conversion
- *Household*  
Mid-term adjustments, policy lapses and renewals, conversion
- *Commercial Insurance*  
Mid-term adjustments, policy lapses and renewals
- *Life Insurance*  
Maturities, direct debit instructions, indexing, change of address, customer service

**Accounting**

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- *Customer Accounts*  
Direct debit instructions, set up changes and new account processing, cancellations, reconciliation of accounts, correspondence with brokers, underwriters and customers
- *Collections*

Selected services that we helped provide include the following:

- designing and currently undertaking processes for accounting, reconciliation, collections and overall administration for insurance customer accounts, and providing insurance claims progress, initiation, and finalization for automobile and household related claims,
- deploying a dialer-based solution that improved the answer rate during peak hours while maintaining a constant number of full-time employee equivalents,
- adding services on weekends and developed processes to reduce turnaround and handle times and improve sales conversion percentages, resulting in improved productivity,
- fixing the backlog of outstanding actions required for claim settlement,



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- developing a tool for evaluating customer experience that enabled us to understand process performance and customer issues on an ongoing basis rather than depending on periodic surveys, and
- improving customer experience and sales conversion rates using Six Sigma methodologies.

**Growth in Relationship:** We have developed what we consider to be strong and deep customer relationships with this client. We entered into our first outsourcing contract with this client for automotive and household insurance services in March 2003. We have currently deployed over 1,800 employees at two locations in India who are engaged in 27 processes pertaining to this contract (up from about 270 employees engaged in one process deployed in March 2003). In January 2004, we entered into a second outsourcing contract from this client for life insurance services. These contracts had initial terms of three and five years, respectively.

### **Sales and Marketing**

We market our services directly through our sales and marketing team, which operates out of New York City and London, England, and our business development team, which operates out of Noida, India.

Our sales, marketing and business development group is responsible for new client acquisition, client relationship management, public relations and participation in industry forums and conferences in the United States, the United Kingdom and India. Our sales, marketing and business development group identifies prospective clients based on selective criteria that apply our industry expertise to the prospective client's business lines, goals and operating constraints, and qualify the long-term relationship potential with the client. Our client relationships typically evolve from a single, discrete process into a series of additional complex, integrated processes across multiple business lines.

Our U.S. and U.K. sales and marketing professionals operate collaboratively with our business development professionals based in India. Our sales and marketing professionals focus on identifying, qualifying and initiating discussions with prospective clients, while our business development team frames solutions, prepares responses to requests for proposals, hosts client visits to our facilities and coordinates due diligence investigations into client processes. We currently have six sales and marketing professionals, of whom five are based in the United States and one in the United Kingdom. Each member of our sales and marketing team has significant experience in offshore outsourcing and has expertise in identifying outsourcing opportunities and process migration in the BFSI segment. Our business development team consists of 15 professionals. We intend to expand our sales and marketing team in the U.S. to at least eight persons and in the U.K. to at least two persons by the end of the first quarter of 2005.

Our sales, marketing and business development group works actively with our service delivery team as the sales process moves closer to the prospective client's selection of a BPO service provider. The account manager or sales executive works with the service delivery team to define the scope, solutions, assumptions and execution strategies for a proposed project and to develop project estimates and pricing and sales proposals. Senior management reviews and approves each proposal. The selling cycle varies depending on the type of service required and generally ranges from six months to over a year.

Members of our sales, marketing and business development group remain actively involved in a project through the execution phase as relationship management representatives. Supporting each relationship manager is a corporate sponsor, executive steering committee, operations leadership team and, in some cases, a dedicated human resources and infrastructure team. Relationship managers are also responsible for business expansion and revenue growth from their accounts.

### **Clients**

We currently have a total of 18 clients. Our largest clients are Norwich Union and Dell (including Dell Financial Services), which together accounted for approximately 77.4% of our total revenues for the nine months ended September 30, 2004. Other BPO clients include Prudential Financial Inc., IndyMac Bank FSB, Deloitte & Touche, Conesco, one of the three largest U.S. insurance companies and one of the three largest U.S. banks. Our

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advisory clients include Allianz, Sunterra Resorts, Keogh, Stanley Toole and United Technologies. While we are developing relationships with new clients and expect to continue to diversify our client base, we believe that the loss of either of our two largest clients could have a material adverse effect on our financial condition. See “Risk Factors—Risks Related to Our Business—We have a limited number of clients and provide services to few industries.”

Our long-term relationships with our clients typically evolve from providing a single, discrete process into providing a series of complex, integrated processes across multiple business lines. We enter into long-term agreements with our clients of typically between three and seven years. A substantial majority of our agreements with our BFSI clients have terms of over three years. Each agreement is individually negotiated with the client. We have two separate contracts with our largest client, Norwich Union, which together represented \$22.5 million, or 52.2% of our revenues, for the nine months ended September 30, 2004. These contracts cannot be terminated without cause or penalty for their initial terms of three and five years, respectively. After the initial term expires, these contracts can be terminated without cause or penalty by Norwich Union upon six months notice. Our other client contracts can be terminated by our clients with or without cause, with 30 days to six months notice and in some cases without penalty. See “Risk Factors—Risks Related to Our Business—Our client contracts contain certain termination and other provisions that could have an adverse effect on our business and results of operations.”

In addition, our agreements generally limit our liability to our clients to a maximum amount, subject in many cases to certain exceptions such as indemnification for third-party claims and breaches of confidentiality. In order to tailor to the specific needs of our clients, we enter into contracts with varying terms. For example, under one of our contracts with Norwich Union, Norwich Union has the option beginning in February 2007 and continuing through February 2011 to pay us an amount that will approximate the net asset value of our Pune facilities on the date of transfer plus the aggregate amount of certain foregone profits and assume the operations of these facilities, together with all of our employees who at that time are working under that contract. See “Certain Relationships and Related Transactions—Agreements with Norwich Union—Option to Purchase Stock of NCOP.”

### **Competition**

Competition in the BPO services industry is intense and growing. See “Risk Factors—Risks Related to Our Business—We face significant competition from a variety of sources.”

Many companies, including certain of our clients, choose to perform some or all of their customer service, technical support, collections and back-office processes internally. Their employees provide these services as part of their regular business operations. Some companies have moved portions of their in-house customer management functions offshore, including to offshore affiliates. We believe our key advantage over in-house business processes is that we give companies the opportunity to focus on their core products and services while we focus on service delivery and operational excellence. We believe that clients who operate a hybrid business model—partnering with external BPO providers while handling other BPO functions in-house—have the opportunity to benchmark the performance of their internal BPO operations against ours.

We compete against the BPO divisions of large IT service companies and against global BPO services companies located in the United States, such as Accenture, ACS and IBM, and in the United Kingdom, such as Capita, Liberata and Xchanging. Many of these companies provide a wide array of products and services including broad-based IT, software, consulting and outsourcing services. Although many of these companies have established, or are establishing, offshore operations, they generally have a large base of higher-cost domestic operations. We also compete against the BPO divisions of numerous IT service companies located in India such as HCL Technologies, Infosys, Mphasis, Satyam, Tata Consultancy Services and Wipro Technologies. Many of these companies provide broad-based IT, software, consulting and outsourcing services. In addition, there are numerous BPO service companies based in offshore locations such as India, such as ICICI Onesource and WNS Global Services.

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We compete against these entities by establishing ourselves as a pure BPO service provider with deep industry expertise in the BFSI segment, which enables us to respond rapidly to market trends and the evolving needs of our clients in this segment, and a lower cost base than global BPO services companies. See “—Business Strategy—Extending Our Industry Expertise.”

We expect that competition will increase and potentially include companies from other countries that have lower personnel costs than those currently in India. A significant part of our competitive advantage has historically been a wage cost advantage relative to companies in the United States and Europe and the ability to attract and retain highly experienced and skilled employees. We believe, however, that as a result of rising wage costs in India, our ability to compete effectively will increasingly depend on our ability to provide high quality, on-time, complex solutions that require expertise in certain technical areas and to expand geographically.

### **Intellectual Property**

We generally use our clients’ software systems and third-party software platforms to provide our services. We customarily enter into licensing and nondisclosure agreements with our clients with respect to the use of their software systems and platforms. Our contracts usually provide that all intellectual property created for use of our clients will automatically be assigned to our clients.

Our principal intellectual property consists of proprietary software and the know-how of our management. In addition to our EXL logo, we have four unregistered trademarks: MOST, ECS, ProMPT and SOFT. We have developed MOST, an opportunity identification and migration methodology for processes, which we have used in connection with a substantial majority of our process migrations. Our proprietary software includes collections software called ECS, our web-enabled ProMPT system and our SOFT system. ProMPT assists our managers in process management and performance evaluation, including tracking individual performance of agents, team leaders and other employees, and we use SOFT to implement process-oriented workforce management for client operations. We have recently launched a new version of ProMPT, which includes advanced analytics capacity and process control capabilities, and other enhanced features. We consider our business processes and implementation methodologies to be confidential, proprietary information, and to include trade secrets that are important to our business. Clients and business partners sign a nondisclosure agreement requiring confidential treatment of our information. Our employees are also required to sign confidentiality agreements as a condition to their employment.

### **Technology**

We have a well-developed international telecommunications capacity. We have fiber connectivity from India to the United States and the United Kingdom. Our networking and telecommunications hubs are situated in Sunnyvale, California, and New York. Our business continuity management plan includes plans to eliminate certain risks inherent in critical applications by building redundancies and resilience into the connectivity and telecom infrastructure, network, systems, power availability, transportation, physical security, and trained manpower availability, as well as utilizing distributed computing.

To increase stable data and telecommunications capacity, we lease bandwidth from a number of different providers, including AT&T, MCI, Teleglobe and Cable & Wireless internationally; Qwest Communications, Broadwing, AT&T, PacBell, MCI and Sprint in the United States; and VSNL, Bharti and Tata Indicom in India. These leases provide us with a combined capacity of 16 megabits-per-second (“Mbps”) of fiber and 10 Mbps of satellite capacity internationally, 16 Mbps of fiber capacity in the United States and 11 Mbps of fiber capacity in India, which we believe is adequate for our business. We have implemented closed user group connectivity across all processing centers and technology hubs which should allow seamless transition from one center to the other in case of an outage. The robustness of our telecommunications network has allowed us to achieve an average network availability of 99.9% for day-to-day operations.

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We have the following systems in place to protect the privacy of our clients and their customers and to ensure compliance with the laws and regulations governing our activities:

- our information security policy complies with International Standards (BS 7799/ISO 17799) and covers critical requirements of the U.S. Federal Deposit Insurance Corporation (“FDIC”) Safe Harbor Provisions and the Gramm-Leach-Bliley Act,
- specific provisions for complying with the Health Insurance Portability and Accountability Act, the EU Privacy Directive and other client-specific needs,
- information systems teams dedicated to each client for the development, implementation and coordination of policies and procedures specific to that client’s processes, and
- periodic audits of both our information systems policy and implemented controls.

### **Process Compliance and Management**

We have an independent quality compliance team to monitor, analyze, provide feedback on and report process performance and compliance. In addition, we have a customer experience team to assess and improve end customer experience for all processes. Currently, we have over 200 quality compliance analysts and customer experience analysts.

We report process performance on ProMPT, our proprietary process management and performance tracking solution. ProMPT is a web-based service accessible by both our clients and us that provides digital dashboards for evaluating process management and performance at any level within an organization, including tracking the individual performance of agents, team leaders and other employees. ProMPT provides Six Sigma-based process analysis, including trend analysis, distribution analysis and cause-and-effect analysis and tracking. We have recently launched a new version of ProMPT, which includes advanced analytics capacity and process control capabilities, and other enhanced features.

### **Employees**

As of September 30, 2004, we had 4,551 full-time employees, substantially all of whom are based in India. We have 12 employees at our corporate headquarters in New York, and six sales and marketing employees in the United States and the United Kingdom. Our employees are not unionized. We have never experienced any work stoppages and believe that our employee relations are good.

#### ***Hiring and Recruiting***

Our employees are critical to the success of our business. Accordingly, we focus heavily on recruiting, training and retaining our professionals.

We have developed effective strategies and a strong track record in recruiting. We have 36 employees devoted to recruiting located throughout India in areas where we expect that our recruitment efforts will be effective. Some of the strategies we have adopted to increase efficiency in our hiring practices include online voice assessment, dedicated recruitment offices across the country and subsidized housing for new employees who travel from neighboring cities to work at our operations centers. Our hiring policies focus on identifying high-quality employees who demonstrate a high propensity for learning, contribution to client services and growth. Candidates must undergo numerous tests and interviews before we extend offers for employment. We also conduct extensive background checks on candidates, including criminal background checks. Our recruitment process meets COPC compliance standards. In 2003, we received approximately 32,000 applications for employment and hired approximately 2,600 new professionals. We also have an employee referral program that provides us with a cost effective way of accessing qualified potential employees.

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We offer our professionals competitive compensation packages that include significant incentive-based compensation and offer a variety of benefits, including free transport to and from home, subsidized meals, free access to recreational facilities and subsidized housing within close proximity to our operations centers. For the nine months ended September 30, 2004, our turnover rate for employees who had been with us for more than our six month probationary period was 17.0% for our back-office BPO operations and 54.9% for our non-back-office BPO operations. See “Risk Factors—Risks Related to Our Business—We may fail to attract and retain enough sufficiently trained employees to support our operations, as competition for highly skilled personnel is intense and we experience significant employee turnover rates.”

### ***Training and Development***

We dedicate significant resources to the training and development of our professionals. We have approximately 75 full-time certified trainers currently capable of training over 400 employees every month. Our training process adheres to COPC standards. Training works in tandem with recruitment, operations and quality control to create an end-to-end process for value addition, skill evaluation, enhancement and certification. We also use training to provide continuity by linking skill assessment at the point of recruitment to subsequent assessment and on-the-job training.

We customize our training design to country, client and service, closely collaborating with the client throughout the training process. Training for new employees includes culture, voice and accent training. We also have ongoing training that includes refresher training programs and personality development programs. In addition, we develop our employees’ leadership skills through leadership development programs, other talent identification mechanisms and significant monetary and non-monetary incentives.

### ***Workforce Management***

SOFT is our proprietary platform for implementing process-oriented workforce management for client operations. We customize SOFT to cater to each process’s unique requirements, and use SOFT to forecast work volume, schedule resources and management and analyze workforce management.

### **Properties**

Our corporate headquarters are located in New York City. We operate four operations centers in India with a current installed capacity of approximately 3,600 workstations that operate on an uninterrupted 24/7 basis and are staffed on a three-shift basis. Our networking and telecom hubs are located in Sunnyvale, California and in New York City. We lease all of our properties, and each of our leases is renewable at our option. The following table describes each of our material properties and lease expiration dates as of September 30, 2004.

<b>Facility</b>	<b>Location</b>	<b>Space</b>	<b>Number of Workstations</b>	<b>Lease Expiration</b>
Corporate Headquarters	New York City	8,940 sq. ft.	n/a	March 30, 2009
Operations Center I	Noida, India	50,000 sq. ft.	586	March 14, 2005
Operations Center II	Noida, India	39,700 sq. ft.	387	May 17, 2008
Operations Center III (including corporate offices)	Noida, India	68,800 sq. ft.	582	May 7, 2006
Operations Center IV-A	Pune, India	42,559 sq. ft. 43,802 sq. ft.	409 590	July 31, 2013 February 16, 2014
Operations Center IV-B (1)	Pune, India	61,802 sq. ft. 43,802 sq. ft.	532 561	December 2, 2013 January 31, 2014

(1) Approximately 105,604 square feet of space (including approximately 1,092 agent workstations) in our Operations Center IV-B are subject to a purchase option held by our client Norwich Union. This option is exercisable at any time from February 2007 through February 2011. See “Certain Relationships and Related Transactions—Agreements with Norwich Union—Option to Purchase Stock of NCOP.”

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All of our operations centers are equipped with fiber and/or satellite connectivity. In addition, all four operations centers have backups to their power supply.

We intend to expand our operations center facilities in Noida and enter into a lease for an additional 80,000 square feet of space. We expect this new center will be opened by mid-2005. In addition, we are contractually committed to one of our clients to establish and maintain a viable offshore BPO operation outside of India by September 2005, either on our own or through a relationship (such as joint venture, partnership or alliance) with other parties where we maintain at least 26% of the controlling interest. This new facility must be capable of providing the services currently being performed for that client in India at a comparable cost to us and must be comparable in size to the existing facility in which the client services are being provided. We are actively looking at a few specific locations.

### **Regulation**

Because of the diversity and highly complex nature of our service offerings, our operations are subject to a variety of rules and regulations and several U.S. and foreign federal and state agencies regulate aspects of our business. In addition, our clients may contractually require that we comply with certain rules and regulations, even if those rules and regulations do not actually apply to us. Failure to comply with any applicable laws and regulations could result in restrictions on our ability to provide our products and services, as well as the imposition of civil fines and criminal penalties, which could have a material adverse effect on our operations.

We are one of the few offshore BPO service providers that can provide TPA insurance services in 44 states of the United States, having been licensed or exempted from, or not subject to, licensing in each of those states, which may help make us an attractive service provider to future clients.

Our debt collection services are subject to the Fair Debt Collection Practices Act, which regulates debt collection practices and includes licensing requirements. In addition, many states require a debt collector to apply for, be granted and maintain a license to engage in debt collection activities within a state. We are currently licensed (or exempt from licensing requirements) to provide debt collection services in all but one state in the United States that have non-exempt requirements and have separate “per-customer” exemptions with respect to our ongoing collection obligations.

Our operations are also subject to compliance with a variety of other laws and regulations that apply to certain portions of our business such as the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act of 1996, the Truth in Lending Act, the Fair Credit Billing Act, the Fair Debt Collections Practices Act and FDIC rules and regulations. Our client contracts specify what particular regulatory requirements we must meet in connection with the BPO solutions we provide. We train our employees regarding the applicable laws and regulations.

Regulation of our business by the Indian government affects our business in several ways. We benefit from certain tax incentives promulgated by the Indian government, including a ten-year tax holiday from Indian corporate income taxes for the operation of most of our Indian facilities, which will expire by location in 2009. As a result of these incentives, our operations have been subject to lower Indian tax liabilities. Our subsidiaries in India are also subject to certain currency transfer restrictions. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Income Tax” and “—Foreign Currency.”

### **Legal Proceedings**

In the course of our normal business activities, various lawsuits, claims and proceedings may be instituted or asserted against us. We believe that the disposition of matters instituted or asserted will not have a material adverse effect on our consolidated financial position, results of operations or cash flows.

## MANAGEMENT

### Directors and Executive Officers

The following table sets forth information regarding our directors and executive officers as of January 1, 2005.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Vikram Talwar	55	Chief Executive Officer and Vice Chairman of the Company
Rohit Kapoor	40	President and Chief Financial Officer and Director of the Company
Pavan Bagai	43	Vice President, Strategic Business of EXL India
Vikas Bhalla	33	Vice President, Quality and Process Excellence of EXL India
Rakesh Chopra	52	Country Manager India of EXL India
Deepak Dhawan	52	Vice President, Human Resources of EXL India
Narasimha Kini	36	Vice President, Advisory Services of EXL India
Shiv Kumar	37	Chief Sales and Marketing Officer of EXL Inc.
Jagadeesh Menon	44	Chief Technology Officer of EXL India
Vinay Mittal	42	Vice President, Finance of EXL India
Amit Shashank	34	General Counsel and Vice President of EXL Inc.
Lalit Vj	40	Vice President and Business Leader Insurance Operations of EXL India
Steven Gruber	47	Chairman of the Board of Directors of the Company
Bradford E. Bernstein	38	Director of the Company
James C. Hale, III	52	Director of the Company

*Vikram Talwar* co-founded EXL Inc. in April 1999 and has served as our Chief Executive Officer and Vice Chairman of our board of directors since November 2002 and as Chief Executive Officer of EXL Inc. since April 1999. Prior to founding EXL Inc., Mr. Talwar served in various capacities at Bank of America including Country Manager in India and other Asian countries from 1970 to 1996 and served as Chief Executive Officer and Managing Director of Ernst & Young Consulting India from 1998 to 1999.

*Rohit Kapoor* co-founded EXL Inc. in April 1999 and has served as our President and Chief Financial Officer and director since November 2002 and as President and Chief Financial Officer of EXL Inc. since August 2000. Prior to founding EXL Inc., Mr. Kapoor served as the business head of Deutsche Bank from July 1999 to July 2000. From 1991 to 2000, Mr. Kapoor served in various capacities at Bank of America in the United States and Asia, including India.

*Pavan Bagai* has served as Vice President, Strategic Business of EXL India since November 2004. He previously served as Vice President and Head of Operations of EXL India from December 2003 to October 2004 and as Vice President, Operations from July 2002 to December 2003. From 1985 until joining EXL India, Mr. Bagai served in various capacities in several key business areas at the Bank of America, including corporate banking, finance, capital markets and trading in various markets across Asia and Europe, including India.

*Vikas Bhalla* has served as Vice President, Quality and Process Excellence of EXL India since April 2002. He served as Director Quality Initiatives of EXL India from May 2001 to April 2002. From May 1998 to May 2001, Mr. Bhalla served in various capacities at GE Plastics India, including as the Quality Leader and E-Business Leader for GE Plastics India.

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*Rakesh Chopra* has served as Country Manager India of EXL India since December 6, 2004. He previously served as Regional Vice President and General Manager, Global Service Centers—Asia at American Express. Prior to that Mr. Chopra spent 11 years at GE in various general management roles including Chief Financial Officer of GE Plastics, Chief Executive Officer of GE Capital Business Process Management Services Ltd, Chief Financial Officer for GE Capital India and Senior Vice President and Business Leader at GECIS. At EXL India, Rakesh will be responsible for operations and client service delivery.

*Deepak Dhawan* has served as Vice President, Human Resources of EXL India since June 2002. Mr. Dhawan served in various capacities at Eicher Goodearth Ltd., an automobile and engineering company, from June 1994 to June 2002, including as Executive Vice President Human Resource & Strategic Planning and has over 25 years of management experience in industrial relations, personnel and training.

*Narasimha Kini* has served as Vice President, Advisory Services for EXL India since January 2004. He was Head Internal Controls of EXL India from April 2001 to December 2003. Before joining us, Mr. Kini served as Finance Manager at Al-Futtaim Wills Faber (Pvt) Ltd, an insurance broker and consulting company, from July 1999 to January 2001.

*Shiv Kumar* has served as Chief Sales and Marketing Officer of EXL Inc. since March 2004. Mr. Kumar heads our global sales and marketing function. Prior to joining EXL India, Mr. Kumar was Vice President of HCL Technologies America Inc., an offshore IT services company, from November 1987 to February 2004. Mr. Kumar has over 16 years of experience in the areas of client relationship management, sales, marketing, capital transactions and business development spanning various IT & BPO services.

*Jagadeesh Menon* has served as Chief Technology Officer of EXL India since April 2004. Mr. Menon served as Vice President Technology & Operations at eFunds International India (Pvt) Ltd, a BPO company, from September 1999 to April 2004 and has 20 years of experience in the area of technology for the financial services and BPO sectors.

*Vinay Mittal* has served as Vice President, Finance of EXL India since December 2003. Mr. Mittal heads our finance function. Prior to joining EXL India, he served in various capacities at Max India Ltd, a life insurance, healthcare and IT company, from October 1998 to April 2003, including as Vice President and Chief Investment Officer at Max India Ltd, where he led private equity investments in the IT and IT enabled service sectors, and as Chief Financial Officer of Max IT from April 2001 to December 2002.

*Amit Shashank* has served as General Counsel and Vice President of EXL Inc. since June 2004. Prior to joining EXL Inc., Mr. Shashank was an attorney with the law firm of Shearman & Sterling LLP from January 1997.

*Lalit Vij* has served as Vice President and Business Leader, Insurance Operations of EXL India since November 2004. Previously he served as the Vice President and Business Leader for Aviva Operations of EXL India from December 2003 to November 2004. He was the Vice President Operations of EXL India from November 2000 to December 2003. Mr. Vij was a Service Delivery Leader at American Express from June 1996 to November 2000.

*Steven Gruber* has served as Chairman of our board of directors since November 2002. Since February 1999, Mr. Gruber has been a Managing Partner of Oak Hill Capital Management, Inc., the investment advisor to Oak Hill Capital Partners, L.P. Since April 1990, Mr. Gruber has been a Managing Director of Oak Hill Partners, Inc. (including its predecessor entities) and the Manager of Acadia Partners, L.P. Additionally, since February 1994, he has been a Managing Partner of Insurance Partners Advisors L.P. Mr. Gruber serves on the boards of directors of American Capital Access Holdings Limited, American Skiing Company, Blackboard Inc., Travel Centers of America, Inc. and Williams Scotsman Holdings, Inc.



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*Bradford E. Bernstein* has served as a director since November 2002. Since May 2003, Mr. Bernstein has been a Partner at FTVentures. From 1999 to 2003, Mr. Bernstein was a Partner at Oak Hill Capital Management, Inc., the investment advisor to Oak Hill Capital Partners, L.P. From 1992 to 1999, Mr. Bernstein served in various capacities, including as a Managing Director, at Oak Hill Partners, Inc. He serves on the board of directors of several private companies.

*James C. Hale, III* has served as a director since November 2002. Since July 1998, Mr. Hale has served as a General Partner and Managing Member of FTVentures, a venture capital firm. Prior to joining FTVentures, Mr. Hale served in various capacities at Montgomery Securities from 1982 to 1998, and most recently as Senior Managing Director and Director of Financial Technology of Montgomery Securities. Mr. Hale serves as a director of Caplin Systems, iPhrase Technologies, Verus Financial Management, Xign and Duke University Management Company.

### **Board Structure and Compensation**

#### ***Composition of our Board of Directors***

Our board of directors currently consists of six directors. We are planning to appoint one additional director to the board of directors who would be deemed independent under applicable federal securities laws and the listing standards of the Nasdaq National Market before the consummation of this offering. This offering is conditioned upon us amending and restating our charter documents prior to its consummation. Our amended and restated by-laws will provide that our board of directors consists of no less than            or more than            persons. The exact number of members on our board of directors will be determined from time to time by resolution of a majority of our full board of directors. Upon consummation of this offering, our board will be comprised of            directors and will be divided into three classes as described below, with each director serving a three-year term and one class being elected at each year's annual meeting of stockholders. Messrs.            will serve initially as Class I directors (with a term expiring in 2005). Messrs.            will serve initially as Class II directors (with a term expiring in 2006). Messrs.            will serve initially as Class III directors (with a term expiring in 2007).

#### ***Committees of the Board***

Upon consummation of this offering, our board of directors will have three standing committees: an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. We will be required to have one independent director on each of these committees during the 90-day period beginning on the date of effectiveness of the registration statement filed with the Commission in connection with this offering and of which this prospectus is a part. After such 90-day period and until one year from the date of effectiveness of the registration statement, we are required to have a majority of independent directors on each of these committees. Thereafter, each of these committees is required to be comprised entirely of independent directors. The following is a brief description of our committees.

***Audit Committee.*** Our Audit Committee assists the board in monitoring the integrity of our financial statements, our independent auditors' qualifications and independence, the performance of our audit function and independent auditors, and our compliance with legal and regulatory requirements. The Audit Committee has direct responsibility for the appointment, compensation, retention (including termination) and oversight of our independent auditors, and our independent auditors report directly to the Audit Committee. The Audit Committee will also review and approve all related-party transactions in accordance with the rules of the Nasdaq National Market.

Messrs.            and            are the current members of our Audit Committee. Prior to the consummation of this offering, we will appoint an additional director to the Audit Committee who will qualify as an audit committee financial expert under the rules of the Commission implementing Section 407 of the Sarbanes-Oxley Act of 2002, and will meet the independence and the experience requirements of the Nasdaq National Market and

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the federal securities laws. In addition, following the consummation of this offering, our board of directors will appoint new independent members to the Audit Committee to replace Messrs. \_\_\_\_\_ and \_\_\_\_\_.

**Compensation Committee.** Our Compensation Committee reviews and recommends policies relating to compensation and benefits of our directors and employees and is responsible for approving the compensation of our Chief Executive Officer and other executive officers. Our Compensation Committee also administers the issuance of stock options under our equity incentive plans. The Compensation Committee is also responsible for producing the annual report on executive compensation required to be included in our annual proxy materials under the federal securities laws. Messrs. \_\_\_\_\_ and \_\_\_\_\_ are the current members of our Compensation Committee. Messrs. \_\_\_\_\_ and \_\_\_\_\_ currently meet the independence requirements of the Nasdaq National Market and the federal securities laws. In addition, prior to the consummation of this offering, we will appoint an additional independent director to the Compensation Committee.

**Nominating and Corporate Governance Committee.** Our Nominating and Corporate Governance Committee nominates candidates for election to our board of directors and develops and recommends to the board of directors corporate governance guidelines that are applicable to us. Messrs. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ are the current members of our Nominating and Corporate Governance Committee and meet the independence requirements of the Nasdaq National Market and the federal securities laws.

### **Compensation Committee Interlocks and Insider Participation**

None of our executive officers serves as a member of the board of directors or compensation committee of any entity that has one or more executive officers who serve on our board of directors or compensation committee.

### **Directors' Compensation**

The following compensation will apply following the consummation of this offering. Directors who are not executive officers will receive an annual fee of \$20,000. The Chairman of our board of directors will receive an annual fee of \$25,000. In addition, directors will receive a fee of \$2,000 for each board meeting they attend (\$1,000 if they attend telephonically). In addition, each member of a board committee will receive a fee of \$1,000 for each committee meeting they attend (\$500 if they attend telephonically). Directors are reimbursed for out-of-pocket expenses incurred in connection with attending meetings of the board of directors and its committees. In addition, non-employee directors will receive a one-time grant of options to purchase \_\_\_\_\_ shares which will vest ratably over four years.

### **Advisory Board**

We have established an advisory board whose function is to provide the board of directors and senior management with advice on strategic direction and business development initiatives. Our advisory board does not constitute a part of our corporate governance structure and is currently composed of Messrs. Allen J. Gula and Simon Machell. Members of our advisory board are appointed from time to time by our board of directors.

*Allen J. Gula, Jr.* currently serves as an Advisor to the co-CEOs of Franklin Resources, a global asset management company. From August 1999 to July 2002, Mr. Gula served as the Co-President and Chief Information Officer of Franklin Resources. Prior to August 1999, he was an Executive Vice President at KeyCorp and Chairman/Chief Executive Officer for Key Services Corporation. In addition, Mr. Gula is a director and advisory board member of several privately held companies.

*Simon Machell* has been Customer Service Director & Chairman of Aviva Offshore Services PLC since 2000 where he reports directly to the Chief Executive Officer of Norwich Union Insurance. From 1994 to 2000,

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he was Head of Finance and Claims Director at Norwich Union PLC. Mr. Machell has wide-ranging experience as a management consultant in the financial services field and is qualified as a chartered accountant.

Each member of the advisory board has received options to purchase 5,000 shares in the aggregate of our Series B common stock ( shares on a pro forma basis after giving effect to the Share Conversion).

### Executive Compensation

#### *Summary Compensation Table*

The following table sets forth the cash and non-cash compensation paid by or incurred on our behalf to our Chief Executive Officer and four other most highly compensated executive officers for the two years ended December 31, 2004 and December 31, 2003.

Name and Principal Position	Year	Annual Compensation			Long-Term Compensation Awards		
		Salary(\$)	Bonus(\$)	Other Annual(\$)(1)	Restricted Stock(\$)	Number of Securities Underlying Options/SARs(#)	All Other Compensation (\$)
Vikram Talwar	2004	334,893	300,000	117,772	—	—	6,274(3)
Chief Executive Officer	2003	312,499	175,000(2)	99,811	—	—	1,653(3)
Rohit Kapoor	2004	370,967	300,000	—	—	—	6,093(3)
President and Chief Financial Officer	2003	312,499	175,000(2)	—	—	—	1,653(3)
Deepak Dhawan	2004	112,322	— (7)	—	—	—	—
Vice President, Human Resources	2003	112,774	21,324	—	—	—	100,000(4)
						20,000	
Pavan Bagai	2004	115,145	— (7)	—	—	—	—
Vice President, Strategic Business of EXL India	2003	124,235	21,324	—	—	25,000	90,000(4)
Shiv Kumar(6)	2004	166,667	— (7)	—	—	—	5,000(5)
Chief Sales and Marketing Officer							

- (1) Includes \$30,433 in 2003 and \$38,857 in 2004 relating to travel for Mr. Talwar and his family, together with automobile allowance, automobile insurance, personal security protection in India, social club fees, home office equipment and furnishings and reimbursement of fees relating to personal tax advice.
- (2) While the employment agreements of Messrs. Talwar and Kapoor provide for a contractual bonus of \$100,000, our board of directors agreed to grant Messrs. Talwar and Kapoor additional bonuses in 2003 and 2004 as a result of our exceptional performance in 2003 and 2004.
- (3) Includes an employer contribution of \$1,500 in 2003 and \$6,121 in 2004 for Mr. Talwar to our 401(k) plan and insurance premiums for term life insurance. Includes an employer contribution of \$1,500 in 2003 and \$5,940 in 2004 for Mr. Kapoor to our 401(k) plan and insurance premiums for term life insurance.
- (4) Special one-time incentive paid under the Conesco Management Incentive Plan.
- (5) Reflects an employer contribution of \$5,000 to our 401(k) plan.
- (6) Mr. Kumar joined the Company in March 2004.
- (7) Actual bonuses for 2004 for these executive officers have not yet been determined.

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**Options/SAR Grants in Last Fiscal Year**

The following table provides information on option grants during the year ended December 31, 2004 to our Chief Executive Officer and four other most highly compensated executive officers under our equity incentive plans.

**Option Grants in 2004**

Name	Number of Securities Underlying Options/SARs Granted(#)	% of Total Options/SARs Granted to Employees in 2004	Individual Grants		Grant Date Present Value (\$) (1)
			Exercise or Base Price Per Share(\$)	Expiration Date	
Vikram Ralwar	—	—	—	—	—
Rohit Kapoor	—	—	—	—	—
Deepak Dhawan(2)	—	—	—	—	—
Pavan Bagai	—	—	—	—	—
Shiv Kumar	30,000	11.7	7.50	3/04/2014	3.60

(1) Based on the Black-Scholes option pricing model, assuming an expected life of 60 months, a risk-free interest rate of 4.0%, a 50.0% volatility and a 0.0% dividend yield.

**Aggregated Options/SAR Exercises and Value in Last Fiscal Year**

**Option Exercises and Values in 2004**

The following sets forth, as to each named executive officer, aggregate exercises of options to purchase our common stock in the year ended December 31, 2004:

Name	Number of Shares Underlying Options Exercised(#)	Dollar Value Realized(\$)(1)	Number of Securities Underlying Unexercised Options at Fiscal Year-End(#)		Dollar Value of Unexercised In-the-Money Options, at Fiscal Year-End(\$)(2)	
			Exercisable	Nonexercisable	Exercisable	Nonexercisable
Vikram Ralwar	—	—	—	—	—	—
Rohit Kapoor	—	—	—	—	—	—
Deepak Dhawan(2)	5,000	36,350	5,000	10,000	117,600	235,200
Pavan Bagai	6,250	45,438	6,250	12,500	147,000	294,000
Shiv Kumar	—	—	—	30,000	—	487,500

(1) The fair market value of the common stock was \$7.50 per share on the date of exercise, which was January 29, 2004.

(2) Calculated using the fair market value of \$23.75 per share of our common stock on December 31, 2004 minus the option exercise price.

**Employment Agreements**

**Vikram Talwar.** We entered into an employment agreement with Mr. Talwar on November 14, 2002 which provides that Mr. Talwar will serve as our Chief Executive Officer and Vice Chairman until November 14, 2005. At our discretion, Mr. Talwar's employment with us may be extended for up to two additional one-year terms. The agreement provides Mr. Talwar with a base salary starting at \$300,000, subject to increases of up to \$400,000 upon achievement of certain revenue and EBITDA targets. Mr. Talwar's current base salary is \$400,000. We paid Mr. Talwar a cash bonus of \$187,500 upon signing the agreement and he is eligible for an annual bonus of \$100,000 based upon the attainment of certain financial targets. We also provide Mr. Talwar with certain benefits, including once-a-year airfare between the United States and India for Mr. Talwar and his

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family, a term life insurance policy with a face value of \$500,000, an automobile in the United States and India, personal security, certain club memberships up to \$3,500 per year and certain furniture and equipment for home offices in India and in the United States. In addition, we reimburse Mr. Talwar on account of the additional taxes he pays above his U.S. tax liability, because of his becoming subject to Indian taxes as a result of his relocation to India at our request.

If Mr. Talwar's employment is terminated either by us without cause (as defined in his employment agreement) or by Mr. Talwar for good reason (as defined in his employment agreement, which definition includes a change of control of us), he will be entitled to receive a severance consisting of his earned but unpaid base salary, bonuses and benefits through the date of termination, including a pro rata portion of his bonus for the year of termination; continued payment of his base salary for a period of two years following the date of termination in accordance with our payroll practices; and continuation of his benefits for a period of no greater than two years following the date of termination. Benefit participation will cease if and when Mr. Talwar commences new employment before the expiration of two years.

If Mr. Talwar becomes disabled, he will be entitled to receive his earned but unpaid base salary, bonuses and benefits through the date of termination, including a pro rata portion of his bonus for the year of termination; his base salary for a period of three months following the termination date (as reduced by any disability insurance benefits paid to him during that period); and continued benefits for a period of three months following the termination date (if permitted by our benefit plans and applicable law).

It is expected that we will enter into a new employment agreement with Mr. Talwar in connection with this offering, with automatic one-year extension rights. Pursuant to this new employment agreement, Mr. Talwar will have such powers, duties and responsibilities as are generally associated with the position of Chief Executive Officer, as may be modified or assigned by our board of directors and subject to the supervision of our board of directors. Mr. Talwar will also serve as Vice Chairman of our board of directors during the term of his employment agreement except under specific circumstances.

**Rohit Kapoor.** We entered into an employment agreement with Mr. Kapoor on November 14, 2002 which provides that Mr. Kapoor will serve as our President and Chief Financial Officer until November 14, 2005. At our discretion, Mr. Kapoor's employment with us may be extended for up to two additional one-year terms. The agreement provides Mr. Kapoor with a base salary starting at \$300,000, subject to increases of up to \$400,000 upon achievement of certain revenue and EBITDA targets. Mr. Kapoor's current base salary is \$400,000. We paid Mr. Kapoor a cash bonus of \$187,500 upon signing the agreement and he is eligible for an annual bonus of \$100,000 based upon the attainment of certain financial targets. We also provide Mr. Kapoor with certain benefits, including once-a-year airfare between the United States and India for Mr. Kapoor and his family, a term life insurance policy with a face value of \$500,000, an automobile in the United States and India, personal security and certain furniture and equipment for home offices in India and in the United States.

If Mr. Kapoor's employment is terminated either by us without cause (as defined in his employment agreement) or by Mr. Kapoor for good reason (as defined in his employment agreement, which definition includes a change of control of us), he will be entitled to receive a severance consisting of his earned but unpaid base salary, bonuses and benefits through the date of termination, including a pro rata portion of his bonus for the year of termination; continued payment of his base salary for a period of two years following the date of termination in accordance with our payroll practices; and continuation of his benefits for a period of no greater than two years following the date of termination. Benefit participation will cease if and when Mr. Kapoor commences new employment before the expiration of two years.

If Mr. Kapoor becomes disabled, he will be entitled to receive his earned but unpaid base salary, bonuses and benefits through the date of termination, including a pro rata portion of his bonus for the year of termination; his base salary for a period of three months following the termination date (as reduced by any disability insurance benefits paid to him during that period); and continued benefits for a period of three months following the termination date (if permitted by our benefit plans and applicable law).

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It is expected that we will enter into a new employment agreement with Mr. Kapoor in connection with this offering with automatic one-year extension rights. Pursuant to this new employment agreement, Mr. Kapoor will have such powers, duties and responsibilities as are generally associated with the position of President and Chief Financial Officer, as may be modified or assigned by our board of directors and subject to the supervision of our board of directors. Mr. Kapoor will also serve as a member of our board of directors during the term of his employment agreement except under specific circumstances.

**Deepak Dhawan, Pavan Bagai and Shiv Kumar.** We entered into employment agreements with Mr. Deepak Dhawan on May 29, 2002, Mr. Pavan Bagai on July 31, 2002 and Mr. Shiv Kumar on January 22, 2004.

Mr. Dhawan received an initial base salary of \$112,744 per year in his first year (2002), which was increased to \$119,294 per year on April 1, 2004 and increased again on December 1, 2004 to \$144,444 per year. The base salary includes a leased company car (with fuel, maintenance and driver), housing, leave travel concession, outpatient medical assistance and retirement benefits. He also receives telephone reimbursements, hospital and accident insurance and a discretionary bonus. Either party may terminate Mr. Dhawan's employment by giving the other party one month's notice, except that Mr. Dhawan may not voluntarily terminate his employment if he refuses to return our documents or property to us. We may also terminate Mr. Dhawan's employment without notice if he is absent for a continuous period of eight days without prior approval. Mr. Dhawan has agreed to retire on his 58th birthday, or earlier if he becomes disabled.

Mr. Bagai received an initial base salary of \$115,135 per year in his first year (2002). His base salary was increased once in 2003, again on April 1, 2004 to \$142,450 per year and again on December 1, 2004 to \$157,778 per year. The base salary includes a leased company car (with fuel, maintenance and driver), housing, leave travel concession, outpatient medical assistance and retirement benefits. He also receives telephone reimbursements, hospital and accident insurance and a discretionary bonus. Either party may terminate Mr. Bagai's employment by giving the other party one month's notice, except that Mr. Bagai may not voluntarily terminate his employment if he refuses to return our documents or property to us. We may also terminate Mr. Bagai's employment without notice if he is absent for a continuous period of eight days without prior approval. Mr. Bagai has agreed to retire on his 58th birthday, or earlier if he becomes disabled.

Mr. Kumar receives an annual base salary of \$200,000. In March 2005, if performance goals are met, Mr. Kumar will receive a one-time bonus of \$35,000 and will be eligible for a target bonus of \$115,000. In 2004, Mr. Kumar was also granted options to purchase 30,000 shares of our Series B common stock as provided by his employment agreement. Either party may terminate Mr. Kumar's employment at any time.

**Confidentiality and Non-Compete Arrangements.** As part of their employment agreements, each of our Chief Executive Officer and the four other most highly compensated executive officers is subject to a standard confidentiality agreement during his employment and thereafter. In addition, Messrs. Talwar and Kapoor have agreed not to directly or indirectly participate in any business that competes with us during their employment with us and for up to two years after the termination of their employment with us. Messrs. Dhawan and Bagai have also agreed to disclose and assign to us any inventions they may create during their relationships with us, and they each have agreed that, after the termination of his employment with us, for any reason, they will not directly or indirectly provide any services to our existing clients or solicit our employees to leave us for a period of two years.

## **Stock Option Plans**

### ***2003 India Option Plan***

We adopted the ExlService Holdings, Inc. 2003 India Stock Option Plan, (the "2003 India Plan"), effective on April 1, 2003. The 2003 India Plan complies with the guidelines issued by the Indian Ministry of Finance under the proviso to section 17(2)(iii)(c) of the India Income Tax Act of 1961. The following is a discussion of the features of the 2003 India Plan.

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**Purpose.** The purpose of the 2003 India Plan is to provide eligible employees of EXL India with the opportunity to acquire an ownership interest in EXL Holdings.

**Administration.** The 2003 India Plan is administered by our board of directors or our compensation committee (the “Administrator”). The Administrator has, subject to the terms of the 2003 India Option Plan, complete authority to:

- interpret the 2003 India Plan,
- determine the rights and obligations of participants under the 2003 India Plan, and
- make all other determinations necessary or advisable in the administration of the 2003 India Plan.

Our board of directors determines, in its discretion:

- the persons who may participate in the 2003 India Plan,
- the terms and conditions of the options granted under the 2003 India Plan, and
- all questions of interpretation of the 2003 India Plan or any option granted thereunder.

The determinations by our board of directors are final and binding upon all participants in the 2003 India Plan and the options granted under the 2003 India Plan.

**Stock Options.** Under the 2003 India Plan, the Administrator may grant awards of options to purchase shares of our common stock. These options are subject to the terms and conditions of the 2003 India Plan and a stock option agreement evidencing the award, as well as applicable Indian law.

**Eligibility.** Any employee of EXL India who is a resident of India and who the Board designates as eligible may participate in the 2003 India Plan, unless the employee is a Promoter (as defined in the Plan) or one of our directors who owns, individually or beneficially, more than 10% of our stock.

**Number of Shares Authorized.** A maximum of \_\_\_\_\_ aggregate shares of our common stock ( \_\_\_\_\_ shares after giving effect to the Share Conversion) is available for grant under the 2003 India Plan. As of the date of this prospectus, options to purchase \_\_\_\_\_ shares of our common stock (on a pro forma basis after giving effect to the Share Conversion) were issued and outstanding and additional options to purchase \_\_\_\_\_ shares of our common stock are expected to be granted under our 2003 India Plan in connection with the consummation of this offering.

**Change in Capitalization.** If the Administrator determines that certain corporate transactions or events (as described in the 2003 India Plan), such as a stock split, affect the shares such that an adjustment is determined by our board of directors, in its discretion, to be consistent with such event and necessary or equitable to carry out the purposes of the 2003 India Plan, the 2003 India Plan provides the Administrator with the discretion to appropriately adjust the number, price or kind of shares of stock that may be granted under the 2003 India Plan. In addition, upon the occurrence of certain corporate events or transactions (as described in the 2003 India Plan), such as a merger, consolidation, or reorganization, all options granted under the 2003 India Plan will automatically vest and the Administrator may, in its discretion and upon at least ten days prior notice to the participants, cancel all outstanding options and pay to the holders thereof, the value of such options in a form and an amount equal to what they would have received or been entitled to receive had they exercised all such options immediately prior to the consummation of such corporate event or transaction.

**Term and Vesting.** An option granted under the 2003 India Plan provides a participant with the right to purchase, within a specified period of time, a stated number of shares at the price specified in the stock option agreement. Options granted under the 2003 India Plan will be subject to terms, including the exercise price and the conditions and timing of exercise, not inconsistent with the 2003 India Plan, as may be and specified in the applicable stock option agreement or thereafter.

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Unless otherwise provided in a stock option agreement, a participant will receive an option to purchase up to \_\_\_\_\_ shares of our common stock at an exercise price of up to \$ \_\_\_\_\_ per share, and the option will vest with respect to 25% per year over four years. Under the terms of the 2003 India Plan, the exercise price of the option will be nominally less than the fair market value of the option on the date of grant. The options will expire no more than ten years following the date of grant. The exercise price of an option must be paid in full in order to exercise the option.

**Transferability of Stock Options.** Subject to the following paragraph, each option may be exercised during the participant's lifetime only by the participant or, if permissible under applicable law, by the participant's guardian or legal representative. No option may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a participant other than by will or by the laws of descent and distribution. The designation of a beneficiary will not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance for purposes of the 2003 India Plan.

Notwithstanding the foregoing, our board of directors may, in its discretion, provide in a stock option agreement that options granted under the 2003 India Plan may be transferred by a participant without consideration to certain persons (as described in the 2003 India Plan), pursuant to the terms of the 2003 India Plan and subject to such rules as the Administrator may adopt to preserve the purposes of the 2003 India Plan.

Upon the effectiveness of the 2004 India Subplan as described below, we will cease to make new grants under the 2003 India Plan, and a new equity award arrangement for employees of EXL India will be simultaneously adopted as part of the 2004 Plan. Grants previously made under the 2003 India Plan may continue to be exercised in accordance with the terms of the 2003 India Plan.

### **2004 Stock Option Plan**

**General.** We adopted the ExlService Holdings, Inc. 2003 Stock Option Plan (the "2003 Plan") effective on January 1, 2003. In connection with the consummation of this offering, we will amend and restate the 2003 Plan, to expand the number of individuals who are eligible to participate in the 2003 Plan in order to include our affiliates' employees, directors, and consultants, including employees of EXL India, to increase the number of shares available for awards and to expand the types of awards that may be granted under the 2003 Plan in order to include awards of restricted stock, restricted share units and other stock based awards. We will also rename our 2003 Plan the ExlService Holdings, Inc. 2004 Stock Award Plan (the "2004 Plan").

**Purpose.** The purpose of the 2004 Plan is to provide a means through which we and our affiliates may attract capable persons to enter and remain in our employ and to provide a means whereby our employees, directors and consultants can acquire and maintain ownership of our common stock, thereby strengthening their commitment to our welfare and our affiliates and promoting a common interest between stockholders and these employees.

**Administration.** The 2004 Plan will be administered by our compensation committee. It is intended, but not required, that the directors appointed to serve on our compensation committee be "Non-Employee Directors" (within the meaning of Rule 16b-3 under the Securities Exchange Act of 1934, (the "Exchange Act")) and "Outside Directors" within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"), to the extent Rule 16b-3 and Section 162(m) are applicable. However, the fact that a committee member shall fail to qualify under these requirements will not invalidate any award that is otherwise validly granted under the 2004 Plan. Subject to the terms of the 2004 Plan, the compensation committee will have the authority to grant awards, to determine the number of shares of our common stock for which each award may be granted and to determine any terms and conditions pertaining to the exercise or to the vesting of each award. The compensation committee will have the power, in its sole discretion, to accelerate the vesting of any award granted under the 2004 Plan. The compensation committee will also have full power to construe and interpret the 2004 Plan and any award agreement executed pursuant to the 2004 Plan and to establish, amend, suspend or waive any rules for the proper administration of the 2004 Plan. The determination of the compensation committee on all matters relating to the 2004 Plan or any award agreement will be conclusive.



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**Eligibility.** Our officers, employees, directors and consultants and those of our subsidiaries or affiliates will be eligible to be designated a participant under the 2004 Plan. The compensation committee will have the sole and complete authority to determine the participants to whom awards will be granted under the 2004 Plan, subject to certain limitations described below.

**Number of Shares Authorized.** A maximum of \_\_\_\_\_ aggregate shares of our common stock will be available for grant under the 2004 Plan after giving effect to the Share Conversion. As of the date of this prospectus, options to purchase \_\_\_\_\_ shares of our common stock (on a pro forma basis after giving effect to the Share Conversion) were issued and outstanding and additional options to purchase \_\_\_\_\_ shares of our common stock are expected to be granted under our 2004 Plan upon consummation of this offering. Only \_\_\_\_\_ shares may be granted to any one person in any one calendar year with respect to awards of restricted stock, restricted share units and stock bonuses that are intended to be “performance-based compensation” as defined in Section 162(m) of the Code. No more than \_\_\_\_\_ shares may be granted to any individual in any one calendar year with respect to options and stock appreciation rights (“SARs”). As described more fully in the 2004 Plan, if an award expires or terminates for any reason prior to the holder of such award receiving any economic benefit therefrom, the number of shares previously subject to but not delivered under such award will be available to be awarded thereafter.

If the compensation committee determines that certain corporate transactions or events (as described in the 2004 Plan), such as a stock split, affect the shares of common stock such that an adjustment is to be consistent with such event and necessary or equitable to carry out the purposes of the 2004 Plan, the compensation committee may, in its discretion, appropriately adjust the maximum number of shares and the classes or series of our common stock which may be delivered pursuant to the 2004 Plan, the number of shares and the classes or series of our common stock subject to outstanding awards, the price per share of all of our common stock subject to outstanding awards and any other provisions of the 2004 Plan. No adjustment made by the compensation committee will give any participant any additional benefits under any outstanding award. In addition, upon the occurrence of certain corporate events or transactions (as described in the 2004 Stock Plan), such as a merger, consolidation, or reorganization, the compensation committee may, in its discretion and upon at least ten days prior notice to the participants, cancel all outstanding awards and pay the holders thereof the value of such awards in a form and an amount equal to what they would have received or been entitled to receive had they exercised all such awards immediately prior to the consummation of such corporate event or transaction.

**Terms and Conditions of Awards.** Under the 2004 Plan, the compensation committee may grant awards of nonqualified stock options (“NSOs”), incentive stock options (“ISOs”), SARs, restricted stock, restricted share units, stock bonus awards, or any combination of the foregoing. The compensation committee may but is not required to provide in an award agreement that there will be a vesting acceleration or payout of the award upon a change in control, as defined in the 2004 Plan.

**Options.** An option provides a participant with the right to purchase, within a specified period of time, a stated number of shares of our common stock at the price specified in the award agreement. Options granted under the 2004 Plan will be subject to the terms, including the exercise price and the conditions and timing of exercise, not inconsistent with the 2004 Plan, determined by the compensation committee and specified in the applicable award agreement or thereafter. The maximum term of an option granted under the 2004 Plan will be ten years from the date of grant (or five years in the case of an ISO granted to a 10.0% stockholder).

The exercise price per share paid by a participant will be determined by the compensation committee at the time of grant but will not be less than 100.0% of the fair market value of one share on the date the option is granted if the option is an ISO (or no less than 110.0% of such fair market value in the case of an ISO granted to an employee who is a 10.0% stockholder) and will not be less than the par value of one share of our common stock if the option is an NSO. Payment in respect of the exercise of an option may be made in cash or by check, except that the compensation committee may, in its discretion, allow such payment to be made by surrender of unrestricted shares of our common stock (at their fair market value on the date of exercise) which have been held

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by the participant for at least six months, or by such other method as the compensation committee may determine and that is permitted by law. The compensation committee may also establish rules permitting the deferral of shares of our common stock upon the exercise of options for tax planning purposes.

**SARs.** A SAR is a contractual right that allows a participant to receive, either in the form of cash, shares of our common stock or a combination of the foregoing, the appreciation, if any, in the value of one share of our common stock over a certain period of time. An option granted under the 2004 Plan may include SARs, either on the date of grant or, except in the case of an ISO, by subsequent amendment. The compensation committee may also award SARs to a participant independent of the grant of an option. SARs granted in connection with an option will become exercisable, be transferable and will expire according to the same vesting schedule, transferability rules and expiration provisions as the corresponding option. If SARs are granted independent of an option, the SARs will become exercisable, be transferable and will expire in accordance with the vesting schedule, transferability rules and the expiration provisions established by the compensation committee and reflected in the award agreement.

**No Repricing.** Our 2004 Plan prohibits the repricing of stock options or SARs awarded under our 2004 Plan.

**Restricted Stock.** An award of restricted stock is a grant of shares at a price determined by the compensation committee, which may be zero. The grant or the vesting of an award of restricted stock may be conditioned upon service to us or our affiliates or upon the attainment of performance goals or other factors, as determined in the discretion of the compensation committee. The compensation committee may also, in its discretion, provide for the lapse of restrictions imposed upon an award of restricted stock. Holders of an award of restricted stock will have, with respect to the restricted stock granted, all of the rights of a stockholder, including the right to vote and to receive dividends.

**Restricted Share Units.** The compensation committee is authorized to award restricted share units to participants. The compensation committee will establish the terms, conditions and restrictions applicable to each award of restricted share units, including the time or times at which restricted share units will be granted or vested and the number of units to be covered by each award. The terms and conditions of each restricted share award will be reflected in a restricted share unit agreement. Each restricted share unit (representing one share of our common stock) awarded to a participant will be credited with an amount equal to the cash or stock dividends paid by us in respect of one share of our common stock (“dividend equivalents”). At the discretion of the compensation committee, dividend equivalents may either be paid currently to the participant or withheld by us for the participant’s account and interest will be credited on such dividend equivalents withheld at rate to be determined by the compensation committee. Upon expiration of the vesting period with respect to any restricted share units covered by a restricted share award, we will deliver to the participant or his beneficiary one share of our common stock for each restricted share unit with respect to which the vesting period has expired and cash or shares of common stock equal to the dividend equivalents credited to the restricted share unit and any interest accrued thereon.

With respect to an award of restricted stock or restricted share units that is intended to qualify as “performance-based compensation” under Section 162(m) of the Code, the timing, establishment and adjustment of performance goals will be implemented by the compensation committee in a manner designed to preserve the treatment of such award as “performance-based compensation” for purposes of Section 162(m) of the Code.

**Stock Bonus Awards.** The compensation committee may, in its discretion, grant an award of unrestricted shares of our common stock, either alone or in tandem with other awards, under such terms and conditions as the compensation committee in its sole discretion may decide. A stock bonus award shall be granted as, or in payment of, a bonus, or to provide special incentives or recognize special achievements or contributions.

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**Performance Criteria.** The compensation committee may, in its discretion, condition the vesting of any award granted under the 2004 Plan upon the satisfaction of certain performance goals. To the extent an award is intended to qualify as “performance-based compensation” under Section 162(m) of the Code, the performance goals will be established by the compensation committee with reference to one or more performance criteria set forth in the 2004 Plan, either on a company-wide basis or, as relevant, in respect of one or more of our affiliates, divisions or operations.

**Transferability.** Generally, each award may be exercised during the participant’s lifetime only by the participant or, if permissible under applicable law, by the participant’s guardian or legal representative, and such award may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a participant other than by will or by the laws of descent and distribution.

The compensation committee may, in its discretion, however, provide that awards granted under the 2004 Plan that are not ISOs may be transferred by a participant without consideration to certain “permitted transferees” (as defined in the 2004 Plan), pursuant to the terms of the 2004 Plan and rules adopted by the compensation committee.

**Amendment.** Our board of directors may amend, alter, suspend, discontinue, or terminate the 2004 Plan or any portion thereof at any time. No such action may be taken, however, without shareholder approval if such approval is necessary to comply with any regulatory requirement and no such action that would impair any rights under any previous award will be effective without the consent of the person to whom such award was made. In addition, the compensation committee is authorized to amend the terms of any award granted under the 2004 Plan if the amendment would not impair the rights of any participant without his or her consent. No amendment may, however, reduce the exercise price of an option, cancel an existing option and replace it with a new option having a lower exercise price, or take any other action, that would result in such option being considered “repriced” for purposes of our proxy statement, or that would result in the option being accounted for under the variable method of accounting, without shareholder approval of such amendment.

**U.S. Federal Income Tax Consequences.** The following is a general summary of the material U.S. federal income tax consequences of the grant and exercise of awards under the 2004 Plan and the disposition of shares purchased pursuant to the exercise of such awards and is intended to reflect the current provisions of the Code and the regulations thereunder. This summary is not intended to be a complete statement of applicable law, nor does it address foreign, state and local tax considerations. Moreover, the U.S. federal income tax consequences to any particular participant may differ from those described herein by reason of, among other things, the particular circumstances of such participant.

**Options.** No income will be realized by a participant upon grant of a non-qualified stock option. Upon the exercise of a non-qualified stock option, the participant will recognize ordinary compensation income in an amount equal to the excess, if any, of the fair market value of the underlying exercised shares over the option exercise price paid at the time of exercise. We will be able to deduct this same amount for U.S. federal income tax purposes, but such deduction may be limited under Sections 280G and 162(m) of the Code for compensation paid to certain executives designated in those Sections.

**Restricted Stock.** A participant will not be subject to tax upon the grant of an award of restricted stock unless the participant otherwise elects to be taxed at the time of grant pursuant to Section 83(b) of the Code. On the date an award of restricted stock becomes transferable or is no longer subject to a substantial risk of forfeiture, the participant will have taxable compensation equal to the difference between the fair market value of the shares on that date over the amount the participant paid for such shares, if any, unless the participant made an election under Section 83(b) of the Code to be taxed at the time of grant. If the participant made an election under Section 83(b), the participant will have taxable compensation at the time of grant equal to the difference between the fair market value of the shares on the date of grant over the amount the participant paid for such shares, if any. Special rules apply to the receipt and disposition of

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restricted shares received by officers and directors who are subject to Section 16(b) of the Exchange Act. We will be able to deduct, at the same time as it is recognized by the participant, the amount of taxable compensation to the participant for U.S. federal income tax purposes, but such deduction may be limited under Sections 280G and 162(m) of the Code for compensation paid to certain executives designated in those Sections.

*Restricted Share Units.* A participant will not be subject to tax upon the grant of a restricted share unit award. Rather, upon the delivery of shares or cash pursuant to a restricted share unit award, the participant will have taxable compensation equal to the fair market value of the number of shares (or cash) he actually receives with respect to the award. We will be able to deduct the amount of taxable compensation to the participant for U.S. federal income tax purposes, but the deduction may be limited under Sections 280G and 162(m) of the Code for compensation paid to certain executives designated in those Sections.

*Section 162(m).* In general, Section 162(m) of the Code denies a publicly held corporation a deduction for U.S. federal income tax purposes for compensation in excess of \$1,000,000 per year per person to its chief executive officer and the four other officers whose compensation is disclosed in its proxy statement, subject to certain exceptions. The 2004 Plan is intended to satisfy either an exception or applicable transitional rule requirements with respect to grants of options to covered employees. The 2004 Plan is designed to permit certain awards of restricted share units and other awards to be awarded in a manner intended to qualify under either the “performance-based compensation” exception to Section 162(m) of the Code or applicable transitional rule requirements.

Notwithstanding the above, a portion of the 2004 Plan will be designated the “2004 India Subplan.” The terms and conditions governing options granted under the 2004 India Subplan are identical to the terms and conditions governing options granted under the 2003 India Plan. Under the 2004 India Subplan, the compensation committee may also grant awards of nonqualified stock options, incentive stock options, SARs, restricted stock, restricted share units, stock bonus awards, or any combination of the foregoing in accordance with the same terms and conditions governing such awards under the 2004 Plan. The shares reserved under the 2004 Plan will be available for grants under the 2004 India Subplan.

**PRINCIPAL STOCKHOLDERS**

The table below sets forth, as of January 1, 2005, information with respect to the beneficial ownership of our common stock by:

- each of our directors and each of the executive officers named in the Summary Compensation Table under “Management—Executive Compensation,”
- each person who is known to be the beneficial owner of more than 5% of any class or series of our capital stock, and
- all of our directors and executive officers as a group.

The amounts and percentages of common stock beneficially owned are reported on the basis of the regulations of the Commission governing the determination of beneficial ownership of securities. Under these rules, a person is deemed to be a beneficial owner of a security if that person has or shares voting power, which includes the power to vote or to direct the voting of such security, or investment power, which includes the power to dispose of or to direct the disposition of such security. A person is also deemed to be a beneficial owner of any securities of which that person has a right to acquire beneficial ownership within 60 days. Under these rules, more than one person may be deemed to be a beneficial owner of the same securities.

Name and Address of Beneficial Owner (2)	Shares of Series A Common Stock Beneficially Owned Before This Offering		Shares of Series B Common Stock Beneficially Owned Before This Offering		Shares of Common Stock Beneficially Owned After This Offering (1)	
	Number of Shares	Percentage of Class	Number of Shares	Percentage of Class	Number of Shares	Percentage of Class
Oak Hill Partnerships(3)	5,271,252(4)	51.7%	—	—	—	—
FTVentures(5)	1,757,084(6)	17.2	—	—	—	—
NUI Investments Limited(7)	526,316	5.2	—	—	—	—
Vikram Talwar	1,053,036	10.4	—	—	—	—
Rohit Kapoor	1,053,036	10.4	—	—	—	—
Deepak Dhawan	—	—	59,831	9.7%	—	—
Pavan Bagai	—	—	181,180	29.4	—	—
Lalit Vij	—	—	48,656	9.1	—	—
Steven Gruber	—	—	—	—	—	—
James C. Hale, III	—	—	—	—	—	—
Bradford E. Bernstein	—	—	—	—	—	—
All current directors and executive officers as a group (15 persons)	2,106,072	20.9	372,980	67.0	—	—

- (1) Gives effect to the Share Conversion and assumes no exercise of the underwriters’ option to purchase additional shares. In the event the option is exercised, the underwriters have an option to purchase up to additional shares of our common stock.
- (2) Unless otherwise noted, the business address of each beneficial owner is c/o ExlService Holdings, Inc., 350 Park Avenue, New York, New York 10022.
- (3) The business address of Oak Hill Partnerships is 201 Main Street, Suite 2415, Fort Worth, TX 76102.
- (4) Includes an aggregate of 5,139,471 shares of Series A common stock held by Oak Hill Capital Partners, L.P. and 131,781 shares of Series A common stock held by Oak Hill Capital Management Partners, L.P. OHCP MGP, LLC is the sole general partner of OHCP GenPar, L.P., which is the sole general partner of Oak Hill Capital Management Partners, L.P. and Oak Hill Capital Partners, L.P. OHCP MGP, LLC exercises voting and dispositive control over the shares held by Oak Hill Capital Management Partners, L.P. and Oak Hill Capital Partners, L.P.
- (5) The business address of FTVentures is 601 California Street, Suite 2200, San Francisco, CA 94109.

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- (6) Includes 847,139 shares of Series A common stock held by Financial Technology Ventures (Q), L.P., 31,403 shares of Series A common stock held by Financial Technology Ventures, L.P., 873,354 shares of Series A common stock held by Financial Technology Ventures II (Q), L.P. and 5,188 shares of Series A common stock held by Financial Technology Ventures II, L.P. Financial Technology Management, LLC is the sole general partner of Financial Technology Ventures (Q), L.P. and Financial Technology Ventures, L.P. Financial Technology Management II, LLC is the sole general partner of Financial Technology Ventures II (Q), L.P. and Financial Technology Ventures II, L.P. Financial Technology Management, LLC exercises voting and dispositive control over the shares held by Financial Technology Ventures (Q), L.P. and Financial Technology Ventures, L.P., and Financial Technology Management II, LLC exercises voting and dispositive control over the shares held by Financial Technology Ventures II (Q), L.P. and Financial Technology Ventures II, L.P.
- (7) The business address of NUI Investments Limited is 8 Surrey Street, Norwich NR1 3NG, United Kingdom.

### **Recent Stock Sale**

On December 3, 2004, Vikram Talwar and Rohit Kapoor entered into a Stock Purchase Agreement with TCV V, L.P. and TCV V Member Fund, L.P. (together “TCV”) pursuant to which TCV purchased an aggregate of 421,054 shares of our Series A common stock ( shares after giving effect to the Share Conversion) for an aggregate purchase price of approximately \$10.0 million. In connection with the sale, Messrs. Talwar and Kapoor agreed to make up the difference to TCV between the purchase price and the resale price if TCV were required to resell those shares in connection with a sale of EXL Holdings at a price lower than that paid to Messrs. Talwar and Kapoor. By its terms, certain provisions of the agreement, including the obligation to make up for the difference, will terminate upon the consummation of this offering. In addition, we granted TCV certain piggyback registration rights with respect to its shares of our Series A common stock, subject to customary restrictions and pro rata reductions in the number of shares to be sold in an offering. We also granted TCV approval rights relating generally to affiliate transactions and the right to purchase a pro rata share of specified issuances of our common stock or preferred stock. See “Certain Relationships and Related Transactions— Transactions Entered into in Connection with this Offering—Registration Rights Agreements.” The provisions of our agreement with TCV relating to approval rights of affiliate transactions and the right to participate in additional equity sales will terminate upon the consummation of this offering.

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

### Transactions Entered into in Connection with this Offering

#### *Share Conversion*

Prior to this offering, we had two classes of common stock, our Series A common stock and Series B Common Stock. In accordance with the terms of our certificate of incorporation and our existing stock option plan arrangements, immediately prior to the consummation of this offering, each share of our Series B common stock will be converted automatically and without any action on the part of the holders or our part into one share of our Series A common stock, and each option to purchase shares of our Series B common stock will be adjusted to convert without any action on the part of the holders into an option to purchase the same number of shares of our Series A common stock. In addition, prior to the consummation of this offering, we will increase our total authorized number of shares of capital stock, make certain changes to our charter documents and effect the Stock Split. As a result, after this offering, we will only have one class of common stock outstanding, which will be referred to as common stock.

#### *Termination of Stockholders' Agreement*

We are parties to a Stockholders' Agreement with Oak Hill Capital Partners, L.P., Oak Hill Capital Management Partners, L.P., Financial Technology Ventures, L.P., Financial Technology Ventures (Q), L.P., Financial Technology Ventures II, L.P., Financial Technology Ventures II (Q), L.P., Vikram Talwar, Rohit Kapoor and certain other stockholders which contains certain rights and restrictions on the sale, assignment, transfer, encumbrance or other disposition of the approximately \_\_\_\_\_ shares of our common stock (\_\_\_\_\_ after giving affect to the Stock Split) that are subject to the agreement. While this agreement by its terms will expire six months after the consummation of this offering, the parties expect to terminate this agreement immediately prior to the consummation of this offering.

One of our directors, Mr. Steven Gruber, is a Managing Partner of Oak Hill Capital Management, Inc., the investment advisor to Oak Hill Capital Partners, L.P., as Oak Capital Management. Our director, Mr. Bradford E. Bernstein, is a Partner at FTVentures, one of our 5% stockholders, and a former Partner of Oak Hill Capital Management, Inc., the investment advisor to Oak Hill Capital Partners, L.P., one of our 5% stockholders. Mr. James C. Hale III, another director, is a General Partner and Managing Member of FTVentures.

#### *Registration Rights Agreements*

Prior to the consummation of this offering, Oak Hill Capital Partners, L.P., Oak Hill Capital Management Partners, L.P., Financial Technology Ventures (Q), L.P., Financial Technology Ventures, L.P., Financial Technology Ventures II (Q), L.P., Financial Technology Ventures II, L.P., Vikram Talwar, Rohit Kapoor and certain other members of our management (the "Initial Stockholders") will enter into a registration rights agreement with us relating to the shares of common stock they hold. Subject to several exceptions, including our right to defer a demand registration under certain circumstances, the Initial Stockholders may require that we register for public resale under the Securities Act all shares of common stock that they request be registered at any time after the expiration of the relevant lock-up period following this offering. The Initial Stockholders may demand a number of registrations so long as the securities being registered in each registration statement are reasonably expected to produce specified aggregate proceeds. If we become eligible to register the sale of our securities on Form S-3 under the Securities Act, the Initial Stockholders have the right to require us to register the sale of the common stock held by them on Form S-3, subject to offering size and other restrictions. The non-requesting Initial Stockholders are entitled to piggyback registration rights with respect to any registration request made by the requesting Initial Stockholders. If the registration requested by the Initial Stockholders is in the form of a firm underwritten offering, and if the managing underwriter of the offering determines that the

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number of securities to be offered would jeopardize the success of the offering, the number of shares included in the offering will be determined as follows:

- first, shares offered by the Initial Stockholders (pro rata, based on their respective ownership of our common equity),
- second, shares offered by any other stockholders (pro rata, based on their respective ownership of our common equity), and
- third, shares offered by us for our own account.

In addition, the Initial Stockholders have been granted piggyback rights on any registration for our account or the account of another stockholder. If the managing underwriter in an underwritten offering determines that the number of securities offered in a piggyback registration would jeopardize the success of the offering, the number of shares included in the offering will be determined as follows:

- first, shares offered by us for own account if we have initiated such registration or by any stockholders exercising demand rights with respect to such registration (pro rata, based on their respective ownership of our common equity),
- second, shares offered by any of our other stockholders (including the Initial Stockholders) (pro rata, based on their respective ownership of our common equity), and
- third, shares offered by us for our own account if any stockholder initiated such registration by exercising demand rights.

In connection with this offering or the other registrations described above, we will indemnify any selling stockholders, and we will bear all fees, costs and expenses (except underwriting discounts and selling commissions).

On December 3, 2004, we granted TCV certain piggyback registration rights with respect to its shares of our common stock, subject to customary restrictions and pro rata reductions in the number of shares to be sold in an offering. We will indemnify TCV and bear all fees, costs and expenses, except underwriting commissions or discounts, brokerage fees, transfer taxes, expenses of counsel, accountants or other representatives retained by TCV in connection with any registration of TCV's shares.



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### Stock and Note Purchase Agreement

On December 13, 2002, we entered into a Stock and Note Purchase Agreement with Oak Hill Capital Partners, L.P., Oak Hill Capital Management Partners, L.P., Financial Technology Ventures, L.P., Financial Technology Ventures (Q), L.P., Financial Technology Ventures II, L.P., Financial Technology Ventures II (Q), L.P., Vikram Talwar and Rohit Kapoor. Under this agreement, we issued and sold shares of our Series A common stock and Series A preferred stock and issued senior promissory notes to these persons. We intend to use a portion of the net proceeds from this offering to redeem \$4.5 million in aggregate principal amount of Series A preferred stock, plus accrued and unpaid dividends to the redemption date, and to repay all of those senior promissory notes in the aggregate principal amount of \$4.9 million, plus accrued and unpaid interest to the repayment date. The following table lists the aggregate purchase price paid by each party, the securities acquired and the amount to be paid to redeem the Series A preferred stock and repay the senior promissory notes.

	Aggregate Purchase Price	Shares of Series A Common Stock (#)	Shares of Series A Preferred Stock (#)	Principal Amount of Senior Promissory Notes	Amount to be Paid to Redeem Series A Preferred Stock and Senior Promissory Notes
Oak Hill Capital Partners, L.P.	\$ 7,312,500.00	5,139,471	29,182.00	\$ 3,175,549.94	\$
Oak Hill Capital Management Partners, L.P.	187,500.00	131,781	748.26	81,424.07	
Financial Technology Ventures, L.P.	44,680.00	31,403	178.30	19,403.24	
Financial Technology Ventures (Q), L.P.	1,205,320.00	847,139	4,870.07	523,426.43	
Financial Technology Ventures II, L.P.	7,381.25	5,188	29.46	3,204.99	
Financial Technology Ventures II (Q), L.P.	1,242,618.75	873,354	4,958.92	539,623.68	
Vikram Talwar	612,135.32	1,053,036	1,496.51	162,848.91	
Rohit Kapoor	612,135.32	1,053,036	1,496.51	162,848.91	

### Agreements with Norwich Union

#### *Stock Purchase Agreement*

On July 22, 2004, we entered into a Stock Purchase Agreement with NUI Investments Limited, an affiliate of our client Norwich Union, pursuant to which NUI Investments Limited purchased 526,316 shares of our Series A common stock for an aggregate purchase price of \$12,500,000. Following the consummation of this offering and the Share Conversion, these shares will be converted into shares of our common stock, representing approximately

% of our total outstanding common stock. Provisions of the Stock Purchase Agreement relating to certain approval rights, subsequent client-related transactions and additional equity financings will terminate upon the consummation of this offering. We granted Norwich Union piggyback registration rights subject to customary restrictions and pro rata reductions in the number of shares to be sold in an offering. We will indemnify NUI Investments Limited and bear all fees, costs and expenses, except underwriting commissions or discounts, brokerage fees, transfer taxes, expenses of counsel, accountants or other representatives retained by NUI Investments Limited in connection with any registration of shares purchased by NUI Investments Limited.

#### *Insurance Services Framework Agreements*

On May 28, 2003, we entered into an initial Insurance Services Framework Agreement with Norwich Union to supply them with insurance services. In connection with this agreement, we entered into a guarantee agreement, confidentiality agreement and data protection agreement. Each of these agreements was subsequently terminated in 2004 and replaced by two new Insurance Services Framework Agreements with Norwich Union.

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Our Insurance Services Framework Agreements with Norwich Union provide a broad range of business process services to Norwich Union and its affiliates from our facilities in Pune (the "Pune Agreement") and Noida (the "Noida Agreement"). These agreements provide that we will supply insurance services to Norwich Union to be set forth in work orders between us and Norwich Union. Under those agreements, we will generally be responsible for facility planning and management, IT and telecommunications services.

Under the Pune Agreement, neither we nor Norwich Union is under any obligation to comply with its obligations under that agreement, or to receive or provide insurance services, prior to the signing of a work order. However, under the Noida Agreement, Norwich Union has agreed to make a minimum commitment to use our insurance services requiring an average of not less than 550 full time employees in the Noida facility in any continuous period of 12 months following August 1, 2004.

Under the Pune Agreement, we and Norwich Union have agreed to the following restrictive covenants for so long as the average number of full time equivalents used to provide the services under both the Pune Agreement and the Noida Agreement during any period of 12 months ending on any anniversary of this agreement is less than 600 in aggregate. We have agreed not to provide in India any services similar to the services we provide to Norwich Union to competitors of Norwich Union that have been identified by Norwich Union. Further, during the term of this agreement and until the second anniversary of the date of termination, Norwich Union has agreed not to engage in certain competing activities.

The Pune Agreement has a minimum term of three years and the Noida Agreement has a minimum term of five years.

Either we or Norwich Union may terminate the agreements immediately under certain circumstances, including our failure to meet certain performance standards, without cost or liability. In addition, either party may terminate the agreement for any reason after their original term of three to five years upon six months' prior notice, without cost or liability. Norwich Union may also terminate the Noida Agreement for any reason upon six months' prior notice upon payment of a termination fee. Norwich Union may also terminate a work order immediately upon certain circumstances or for any reason upon three months' prior written notice and payment of a termination fee.

Norwich Union pays us for our services on a cost-plus basis. In addition to the costs, Norwich Union has agreed to pay us a management fee which is based on three levels of performance. The agreement which relates to the Noida facility provides that if in any continuous period of 12 months following July 29, 2004, the amount of the management fee paid to us in that period is less than the amount of the management fee that would have been so paid had the minimum commitment described therein been complied with, Norwich Union will then pay us any difference. We will also share any cost efficiency savings with Norwich Union, based on previously agreed upon percentages of those savings.

In separate Guarantee and Indemnity Agreements, two affiliates of Norwich Union have each guaranteed under certain circumstances the payment of all obligations under the Insurance Services Framework Agreements for each of the Pune and Noida facilities, up to a maximum payment of an aggregate of £26.0 million (U.S.\$50.0 million at an exchange rate as of December 2, 2004). These two affiliates have also agreed to indemnify us for any losses we may incur while acting in good faith under the applicable service agreement or related work order, as a result of any default by Norwich Union or each of those affiliates, as the case may be.

In addition, we and our operating subsidiaries that are the subject of those service agreements have entered into data protection agreements, which establish the obligations of each party to protect the export and use of personal data disclosed by, and on behalf of, Norwich Union, relating to its U.K. customers.

***Purchase by Norwich Union of Assets of EXL India***

Under the Noida Agreement, Norwich Union has the option to purchase certain of the assets of our operating subsidiary, EXL India, for the book value (as defined in that agreement) of these assets on the terms and conditions set forth in the agreement, under any of the following circumstances:

- if we are in material default of that agreement, as defined in the agreement, and such default affects the insurance services provided by more than 300 full time employees or their equivalent,
- upon our change of control that was not approved by Norwich Union in advance, which change of control results or would result in us becoming a company controlled by a competitor of Norwich Union or a U.K. client of Norwich Union, as defined in that agreement, or
- if there has been a material default, as defined in the agreement, by us, that has prejudiced or is likely to prejudice the reputation of Norwich Union or a U.K. client of Norwich Union.

***Option to Purchase Stock of NCOP***

We entered into a Virtual Shareholders' Agreement with Norwich Union, EXL India and Noida Customer Operations Private Limited ("NCOP"), the operating subsidiary for the Pune services, on August 26, 2004. Under that agreement Norwich Union has the option to purchase all of the outstanding shares of NCOP under the following circumstances:

- upon six months' prior notice, at any time during the period commencing on February 26, 2007 and terminating on February 26, 2011, or
- upon termination of the Insurance Services Framework Agreement relating to the Pune facility pursuant to its terms.

We may cause Norwich Union to purchase all of the outstanding shares of NCOP under the following circumstances:

- if the volumes (as defined in the agreement) of NCOP on the date we give notice of this "put" to Norwich Union are less than 90% of NCOP on August 26, 2007, at any time during the period commencing on August 26, 2007 and terminating on February 26, 2011, or
- upon termination by us of the Insurance Services Framework Agreement relating to the Pune facility pursuant to its terms.

In either case, the purchase price of the stock will be the net asset value (as defined in the agreement) of NCOP and certain foregone profits (as calculated pursuant to the agreement) for the NCOP shares. This agreement will terminate one month after the termination of the Pune Agreement. Norwich Union also has the right under that agreement to designate for election one member of the board of directors of NCOP.

**Management Arrangement**

We have a management arrangement with Oak Hill Capital Partners, L.P. and FTVentures, pursuant to which we make payments to Oak Hill Capital Partners, L.P. and FTVentures of not more than \$200,000 per year in return for advice related to insurance matters, including directors and officers insurance, various business introductions, assistance in hiring of key employees and other services related to marketing our services to potential clients. In years during which we do not meet certain financial thresholds, the amount is reduced to \$100,000 per year. We paid an annual management fee of \$200,000 with respect to services rendered in 2003 and had accrued \$150,000 for the nine months ended September 30, 2004. No management fees were paid in 2002. This management arrangement will terminate upon the consummation of this offering.

**Stock Purchase Agreement with Conseco**

On November 14, 2002, we entered into a Stock Purchase Agreement with Oak Hill Capital Partners, L.P., Oak Hill Capital Management Partners, L.P., Financial Technology Ventures (Q), L.P., Financial Technology Ventures, L.P., Financial Technology Ventures (Q) II, L.P., Financial Technology Ventures II, L.P., and Conseco Inc. for the purchase of all the issued and outstanding shares of capital stock of ExlService.com, Inc. from Conseco Inc. for a de minimis purchase price and for an agreement to provide additional capital to fund our operations.

**Other Related-party Transactions**

We have retained Eplacement to provide us with language training services. Eplacement is controlled by Vikram Talwar, our Chief Executive Officer and Vice Chairman, and his immediate family, and is operated by Siddarth Talwar, Mr. Talwar's son. We recorded expenses related to these services of \$166,737 for the nine months ended September 30, 2004, \$192,944 for the year ended December 31, 2003, \$14,128 for the period from November 15, 2002 to December 31, 2002, \$25,053 for the period from August 1, 2001 to December 31, 2001 and \$24,116 for the period from April 1, 2001 to July 31, 2001. We expect to terminate the services of this company prior to the consummation of this offering. Our board of directors approved all of our transactions with Eplacement.

We leased certain real estate assets from an affiliate of Mr. Talwar in 2001. We recorded expenses of \$152,542 and \$3,458 for the period from August 1, 2001 to December 31, 2001 and the period from April 1, 2001 to July 31, 2001, respectively. This lease agreement was terminated in 2001. Our board of directors approved this lease agreement.

In 2003, we received catering services from Just Foods Private Limited, which is controlled by Mr. Talwar and his immediate family. We recorded expenses related to these catering services of \$31,658 for the year ended December 31, 2003. We terminated the services of this company in March 2003. Our board of directors approved all of our transactions with Just Foods Private Limited.

## DESCRIPTION OF CAPITAL STOCK

Prior to the Share Conversion, our authorized capital stock consists of 10,196,878 shares of Series A common stock, 990,854 shares of Series B common stock and 55,000 shares of preferred stock, of which 45,833.36 are designated as Series A preferred stock. 10,081,778 shares of Series A common stock, 528,657 shares of Series B common stock and 45,424 shares of Series A preferred stock were issued and outstanding (excluding shares to be issued upon exercise of options granted under our equity incentive plans and otherwise) as of September 30, 2004.

### Stock Split and Share Conversion

Prior to this offering, we had two classes of common stock, our Series A common stock and Series B Common Stock. In accordance with the terms of our certificate of incorporation and our existing stock option plan arrangements, immediately prior to the consummation of this offering, each share of our Series B common stock will be converted automatically and without any action on the part of the holders or our part into one share of our Series A common stock, and each option to purchase shares of our Series B common stock will be adjusted to convert without any action on the part of the holders into an option to purchase the same number of shares of our Series A common stock. In addition, prior to the consummation of this offering, we will increase our total authorized number of shares of capital stock, make certain changes to our charter documents and effect the Stock Split. As a result, after this offering, we will only have one class of common stock outstanding, which will be referred to as common stock.

After giving effect to the Share Conversion and the application of the net proceeds of this offering as described under "Use of Proceeds," our authorized capital stock will consist of \_\_\_\_\_ shares of common stock and \_\_\_\_\_ of preferred stock, of which \_\_\_\_\_ shares of common stock and no shares of preferred stock are expected to be outstanding (excluding shares to be issued upon exercise of outstanding options and assuming the underwriters do not exercise their option to purchase additional shares). If the underwriters exercise their option in full, we expect \_\_\_\_\_ shares of common stock to be outstanding.

### Common Stock

The holders of our common stock are entitled to one vote per share on all matters submitted to a vote of stockholders, including the election of directors. Holders of the common stock do not have any preemptive rights or cumulative voting rights, which means that the holders of a majority of the outstanding common stock voting for the election of directors can elect all directors then being elected. The holders of our common stock are entitled to receive dividends when, as, and if declared by our board out of legally available funds. Upon our liquidation or dissolution, the holders of common stock will be entitled to share ratably in those of our assets that are legally available for distribution to stockholders after payment of liabilities and subject to the prior rights of any holders of preferred stock then outstanding. All of the outstanding shares of common stock are, and the shares of common stock to be sold in this offering when issued and paid for will be, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to the rights of the holders of shares of any series of preferred stock that may be issued in the future.

### Preferred Stock

After the consummation of this offering, we will be authorized to issue up to \_\_\_\_\_ shares of preferred stock. Our board of directors is authorized, subject to limitations prescribed by Delaware law and our certificate of incorporation, to determine the terms and conditions of the preferred stock, including whether the shares of preferred stock will be issued in one or more series, the number of shares to be included in each series and the powers, designations, preferences and rights of the shares. Our board of directors also is authorized to designate any qualifications, limitations or restrictions on the shares without any further vote or action by the stockholders. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control of our company and may adversely affect the voting and other rights of the holders of our common stock, which could have an adverse impact on the market price of our common stock. We have no current plan to issue any shares of preferred stock following the consummation of this offering.

### **Certain Certificate of Incorporation, By-Law and Statutory Provisions**

The provisions of our certificate of incorporation and by-laws and of the Delaware General Corporation Law summarized below may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that you might consider in your best interest, including an attempt that might result in your receipt of a premium over the market price for your shares.

### **Directors' Liability; Indemnification of Directors and Officers**

Our certificate of incorporation will provide that a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except:

- for any breach of the duty of loyalty,
- for acts or omissions not in good faith or which involve intentional misconduct or knowing violations of law,
- for liability under Section 174 of the Delaware General Corporation Law (relating to unlawful dividends, stock repurchases, or stock redemptions), or
- for any transaction from which the director derived any improper personal benefit.

This provision does not limit or eliminate our rights or those of any stockholder to seek non-monetary relief such as an injunction or rescission in the event of a breach of a director's duty of care. The provisions will not alter the liability of directors under federal securities laws. In addition, our certificate of incorporation and by-laws will provide that we indemnify each director and the officers, employees, and agents determined by our board of directors to the fullest extent provided by the laws of the State of Delaware.

### **Special Meetings of Stockholders**

Our certificate of incorporation will provide that special meetings of stockholders may be called only by the chairman or by a majority of the members of our board. Stockholders are not permitted to call a special meeting of stockholders, to require that the chairman call such a special meeting, or to require that our board request the calling of a special meeting of stockholders.

### **Stockholder Action; Advance Notice Requirements for Stockholder Proposals and Director Nominations**

Our certificate of incorporation will provide that stockholders may not take action by written consent, but may only take action at duly called annual or special meetings. In addition, our by-laws will establish advance notice procedures for:

- stockholders to nominate candidates for election as a director, and
- stockholders to propose topics for consideration at stockholders' meetings.

Stockholders must notify our corporate secretary in writing prior to the meeting at which the matters are to be acted upon or directors are to be elected. The notice must contain the information specified in our by-laws. To be timely, the notice must be received at our corporate headquarters not less than 90 days nor more than 120 days prior to the first anniversary of the date of the prior year's annual meeting of stockholders. If the annual meeting is advanced by more than 30 days, or delayed by more than 70 days, from the anniversary of the preceding year's annual meeting, or if no annual meeting was held in the preceding year or for the first annual meeting following this offering, notice by the stockholder, to be timely, must be received not earlier than the 120th day prior to the annual meeting and not later than the later of the 90th day prior to the annual meeting or the 10th day following the day on which we notify stockholders of the date of the annual meeting, either by mail or other public disclosure. In the case of a special meeting of stockholders called to elect directors, the stockholder notice must be received not earlier than 120 days prior to the special meeting and not later than the later of the 90th day prior to the special meeting or 10th day following the day on which we notify stockholders of the date of the special

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meeting, either by mail or other public disclosure. These provisions may preclude some stockholders from bringing matters before the stockholders at an annual or special meeting or from nominating candidates for director at an annual or special meeting.

### **Election and Removal of Directors**

Our board will be divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. Our stockholders may only remove directors for cause. Our board of directors may elect a director to fill a vacancy created by the expansion of the board of directors. This system of electing and removing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of our directors.

Our certificate of incorporation and by-laws will not provide for cumulative voting in the election of directors.

### **Amendment of the Certificate of Incorporation and By-Laws**

Our certificate of incorporation will provide that the affirmative vote of the holders of at least two thirds (66%) of the voting power of our issued and outstanding capital stock entitled to vote in the election of directors, is required to amend the following provisions of our certificate of incorporation:

- the provisions relating to our classified board of directors,
- the provisions relating to the number and election of directors, the management of our business, and bylaw provisions relating to stockholder action by written consent and meetings of stockholders,
- the provisions relating to the appointment of directors upon an increase in the number of directors or vacancy,
- the provisions relating to advance notice requirements for new business and stockholder nominations for the election of directors, and
- the provisions relating to the restrictions on stockholder actions by written consent.

In addition, the board of directors will be permitted to alter certain provisions of our by-laws without obtaining stockholder approval.

### **Anti-Takeover Provisions of Delaware Law**

We will be subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, section 203 prevents an interested stockholder (defined generally as a person owning 15% or more of the corporation's outstanding voting stock) of a Delaware corporation from engaging in a business combination (as defined) for three years following the date that person became an interested stockholder unless various conditions are satisfied.

### **Transfer Agent and Registrar**

The transfer agent and registrar for the common stock will be Registrar and Transfer Company. Its telephone number is 1-800-456-0596.

### **Nasdaq National Market Quotation**

We have applied to have our common stock included for quotation on the Nasdaq National Market under the trading symbol "EXLS."

## SHARES AVAILABLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. We cannot make any prediction as to the effect, if any, that sales of common stock or the availability of common stock for sale will have on the market price of our common stock. The market price of our common stock could decline because of the sale of a large number of shares of our common stock or the perception that such sales could occur. These factors could also make it more difficult to raise funds through future offerings of common stock. See “Risk Factors—Risks Related to this Offering—Substantial future sales of shares of our common stock in the public market could cause our stock price to fall.”

### Sale of Restricted Shares

Upon consummation of this offering, we will have \_\_\_\_\_ shares outstanding, excluding \_\_\_\_\_ shares underlying outstanding options, assuming the underwriters do not exercise their option to purchase additional shares. Of these shares, the \_\_\_\_\_ shares sold in this offering (or shares if the underwriters exercise their option in full) will be freely tradable without restriction or further restriction under the Securities Act, except that any shares purchased by our affiliates, as that term is defined in Rule 144 under the Securities Act, may generally only be sold in compliance with the limitations of Rule 144 described below. As defined in Rule 144, an affiliate of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the issuer. After this offering, approximately \_\_\_\_\_ of our outstanding shares of common stock will be deemed “restricted securities,” as that term is defined under Rule 144. Restricted securities may be sold in the public market only if they qualify for an exemption from registration under Rule 144, 144(k) or 701 under the Securities Act, which rules are summarized below, or any other applicable exemption under the Securities Act. Immediately following the consummation of this offering, the holders of approximately \_\_\_\_\_ shares of common stock will be entitled to dispose of their shares pursuant to the volume and other restrictions of Rule 144 under the Securities Act and the holders of approximately \_\_\_\_\_ shares of common stock will be entitled to dispose of their shares following the expiration of an initial 180-day “lock-up” period (360 days for Vikram Talwar, Rohit Kapoor, Norwich Union and Prudential Financial) pursuant to the volume and other restrictions of Rule 144.

### Rule 144

In general, under Rule 144 under the Securities Act, a person (or persons whose shares are aggregated) who has beneficially owned restricted securities within the meaning of Rule 144 for at least one year, and including the holding period of any prior owner except an affiliate, would be entitled to sell within any three-month period a number of shares that does not exceed the greater of one percent of the then outstanding shares of our common stock or the average weekly trading volume of our common stock reported through the Nasdaq National Market during the four calendar weeks preceding such sale. Sales under Rule 144 are also subject to certain manner of sale provisions, notice requirements and the availability of current public information about our company.

### Rule 144(k)

Under Rule 144(k) under the Securities Act, any person (or persons whose shares are aggregated) who is not deemed to have been our affiliate at any time during the three months preceding a sale, and who has beneficially owned shares for at least two years (including any period of ownership of preceding non-affiliated holders), would be entitled to sell these shares without regard to the volume limitations, manner of sale provisions, public information requirements or notice requirements of Rule 144.

### Rule 701

Securities issued in reliance on Rule 701 under the Securities Act are also restricted and may be sold by stockholders other than affiliates of ours subject only to the manner of sale provisions of Rule 144 and by affiliates under Rule 144 without compliance with its one-year holding period requirement.



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### **Options/Equity Awards**

We intend to file a registration statement under the Securities Act to register approximately \_\_\_\_\_ shares of common stock reserved for issuance or sale under our equity incentive plans and \_\_\_\_\_ shares held for resale by our existing stockholders that were previously issued under our employee stock option plans. After giving pro forma effect to the Share Conversion, there were \_\_\_\_\_ options outstanding under our equity incentive plans to purchase a total of \_\_\_\_\_ shares of our common stock, of which \_\_\_\_\_ options to purchase \_\_\_\_\_ shares were exercisable immediately. In addition, an entity also holds options exercisable immediately to purchase \_\_\_\_\_ shares of our common stock after giving pro forma effect to the Share Conversion. Shares issued upon the exercise of stock options after the effective date of the registration statement will be eligible for resale in the public market without restriction, subject to Rule 144 limitations applicable to affiliates and the lock-up agreements described below.

### **Lock-up Agreements**

EXL Holdings, our officers and directors and certain of our other stockholders have agreed that, for a period of 180 days from the date of this prospectus (360 days for Vikram Talwar, Rohit Kapoor, Norwich Union and Prudential Financial), subject to certain extensions, they will not, without the prior written consent of Citigroup Global Markets Inc. and Goldman, Sachs & Co., dispose of or hedge any shares of our common stock or any securities convertible into or exchangeable for our common stock, subject to certain exceptions. Citigroup and Goldman, Sachs & Co., in their sole discretion, may release any of the securities subject to these lock-up agreements at any time without notice.

Immediately following the consummation of this offering, stockholders subject to lock-up agreements will hold \_\_\_\_\_ shares of our common stock, representing approximately \_\_\_\_\_ % of our then outstanding shares of common stock, or approximately \_\_\_\_\_ % if the underwriters exercise their option to purchase additional shares in full.

We have agreed not to issue, sell or otherwise dispose of any shares of our common stock during the 180-day period following the date of this prospectus (subject to certain extensions). We may, however, grant options to purchase shares of common stock and issue shares of common stock upon the exercise of outstanding options under our existing equity incentive plans, and we may issue or sell common stock in connection with an acquisition or business combination (subject to a specified maximum amount) as long as the acquiror of such common stock agrees in writing to be bound by the obligations and restrictions of our lock-up agreement.

### **Registration Rights**

We have granted registration rights to some of our stockholders who, following the consummation of this offering, will hold approximately \_\_\_\_\_ shares of our common stock in the aggregate (including shares issuable upon the exercise of outstanding options). Under certain circumstances, some of these stockholders can require us to file registration statements that permit them to re-sell their shares. For more information, see “Certain Relationships and Related Transactions—Registration Rights Agreements” and “—Agreements with Norwich Union—Stock Purchase Agreement.”

## MATERIAL U.S. FEDERAL TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following discussion summarizes certain material U.S. federal income tax and estate tax consequences of the ownership and disposition of shares of our common stock purchased pursuant to this offering by a holder that is a non-U.S. holder as we define that term below. This discussion is based on the Code, administrative pronouncements, judicial decisions, existing and proposed Treasury Regulations, and interpretations of the foregoing, all as of the date of this prospectus. All of the foregoing authorities are subject to change (possibly with retroactive effect) and any such change may result in U.S. federal income tax consequences to a holder that are materially different from those described below. We have not sought, and will not seek, any ruling from the U.S. Internal Revenue Service (IRS) or opinion of counsel with respect to the tax consequences discussed in this prospectus. Consequently, the IRS may disagree with or challenge any of the tax consequences discussed in this prospectus.

The following discussion does not purport to be a full description of all U.S. federal income tax considerations that may be relevant to a non-U.S. holder in light of such holder's particular circumstances and only addresses non-U.S. holders who hold common stock as capital assets within the meaning of Section 1221 of the Code. Furthermore, this discussion does not address the U.S. federal income tax considerations applicable to holders subject to special rules, such as certain financial institutions, tax-exempt entities, real estate investment trusts, regulated investment companies, insurance companies, partnerships or other pass-through entities, persons who have ceased to be U.S. citizens or to be taxed as resident aliens, dealers in securities or currencies, persons holding common stock in connection with a hedging transaction, "straddle," conversion transaction or a synthetic security or other integrated transaction, holders subject to special U.S. federal income tax rules (such as "passive foreign investment companies" and "controlled foreign corporations") or holders whose "functional currency" is not the U.S. dollar. In addition, this discussion does not include any description of any alternative minimum tax consequences, gift tax consequences, or the tax laws of any state, local or foreign government that may be applicable to non-U.S. holders of our common stock. We urge you to consult your own tax advisor concerning the U.S. federal, state or local income tax and federal, state or local estate tax consequences of your ownership and disposition of our common stock in light of your particular situation as well as any consequences arising under the laws of any other taxing jurisdiction or under any applicable tax treaty.

As used in this discussion, a "non-U.S. holder" means a beneficial owner of shares of common stock who is not, for U.S. tax purposes:

- a citizen or individual resident of the U.S.,
- a corporation or other entity taxable as a corporation created or organized in the U.S. or under the laws of the U.S. or of any state thereof (including the District of Columbia),
- an estate, income of which is subject to U.S. federal income taxation regardless of its source,
- a trust the administration of which is subject to the primary supervision of a U.S. court and that has one or more U.S. persons who have the authority to control all substantial decisions of the trust or
- a trust that has validly elected to be treated as a U.S. person for U.S. federal income tax purposes under applicable Treasury Regulations.

If a partnership or other pass-through entity holds our common stock, the tax treatment of a partner in or owner of the partnership or pass-through entity will generally depend upon the status of the partner or owner and the activities of the entity. If you are a partner in or owner of a partnership or other pass-through entity that is considering holding our common stock, you should consult your tax advisor.

### Payment of Dividends

We do not presently anticipate paying cash dividends on shares of our common stock. For more information, please see "Dividend Policy." If dividends are paid on shares of our common stock, however, these

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dividends will generally be subject to withholding of U.S. federal income tax at a rate of 30% of the gross amount, or any lower rate that may be specified by an applicable income tax treaty if we have received proper certification of the application of that income tax treaty. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under an applicable income tax treaty and the manner of claiming the benefits of such treaty. A non-U.S. holder that is eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund with the IRS.

Dividends that are effectively connected with a non-U.S. holder's conduct of a trade or business in the U.S. or, if provided in an applicable income tax treaty, dividends that are attributable to a permanent establishment (or, in the case of an individual, a fixed base) in the U.S., are not subject to U.S. withholding tax, but are instead taxed in the manner applicable to U.S. persons. In that case, we will not have to withhold U.S. federal withholding tax, provided that the non-U.S. holder complies with applicable certification and disclosure requirements. In addition, dividends received by a foreign corporation that are effectively connected with the conduct of a trade or business in the U.S. maybe subject to a branch profits tax at a 30% rate, or any lower rate as may be specified in an applicable income tax treaty.

### **Sale or Exchange**

A non-U.S. holder will generally not be subject to U.S. federal income tax, including by way of withholding, on gain recognized on a sale, exchange or other disposition of shares of common stock unless any one of the following is true:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the U.S. and, if an applicable tax treaty applies, is attributable to a permanent establishment (or, in the case of an individual, a fixed base) maintained by the non-U.S. holder in the U.S., in which case, the branch profits tax discussed above may also apply if the non-U.S. holder is a corporation, or
- the non-U.S. holder, who is an individual, is present in the U.S. for 183 days or more in the taxable year of sale, exchange or other disposition and some additional conditions are met.

Individual non-U.S. holders who are subject to U.S. tax because the holder was present in the U.S. for 183 days or more during the year of disposition are taxed on their gains, including gains from the sale of shares of our common stock and net of applicable U.S. losses from sale or exchanges of other capital assets incurred during the year, at a flat rate of 30%. Other non-U.S. holders who may be subject to U.S. federal income tax on the disposition of our common stock will be taxed on such disposition in the manner applicable to U.S. persons.

### **Federal Estate Tax**

Shares of common stock owned or treated as owned by an individual non-U.S. holder will be included in that non-U.S. holder's estate for U.S. federal estate tax purposes, and may be subject to U.S. federal estate tax, unless an applicable estate tax treaty provides otherwise.

### **Backup Withholding and Information Reporting**

Under U.S. Treasury Regulations, we must report annually to the IRS and to each non-U.S. holder the amount of dividends paid to that holder and the tax withheld with respect to those dividends. These information reporting requirements apply even if withholding was not required because the dividends were effectively connected dividends or withholding was reduced or eliminated by an applicable tax treaty. Under an applicable tax treaty, that information may also be made available to the tax authorities in the country in which the non-U.S. holder resides or is established. U.S. information reporting requirements and backup withholding tax will not apply to dividends paid on our common stock to a non-U.S. holder, however, if such holder provides a Form W-8BEN (or satisfies certain documentary evidence requirements for establishing that it is not a United States person) or otherwise establishes an exemption.

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The gross amount of dividends paid to a non-U.S. holder that fails to certify its non-U.S. holder status in accordance with applicable U.S. Treasury Regulations generally will be reduced by backup withholding tax at a current rate of 28%.

The payment of the proceeds of the disposition of common stock by a non-U.S. holder to or through the U.S. office of a broker generally will be reported to the IRS and reduced by backup withholding unless the non-U.S. holder either certifies its status as a non-U.S. holder in accordance with applicable U.S. Treasury Regulations or otherwise establishes an exemption and the broker has no actual knowledge, or reason to know, to the contrary. The payment of the proceeds on the disposition of common stock by a non-U.S. holder to or through a non-U.S. office of a broker generally will not be reduced by backup withholding or reported to the IRS. If, however, the broker is a U.S. person or has specified connections with the United States, unless some conditions are met, the proceeds from that disposition generally will be reported to the IRS, but not reduced by backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be refunded or credited against the non-U.S. holder's U.S. federal income tax liability, if any, provided that certain required information is furnished to the IRS. Non-U.S. holders should consult their own tax advisors regarding the application of the information reporting and backup withholding rules to them and the availability and procedure for obtaining an exemption from backup withholding under current U.S. Treasury Regulations.

*The above discussion is included for general information only. Each prospective purchaser is urged to consult its tax advisor with respect to the U.S. federal income tax and federal estate tax consequences of the ownership and disposition of our common stock, as well as the application and effect of the laws of any state, local, foreign or other taxing jurisdiction.*

## UNDERWRITING

Citigroup Global Markets Inc. (“Citigroup”) and Goldman, Sachs & Co. are acting as joint book-running managers of the offering, and as representatives of the underwriters named below. We and the underwriters named below have entered into an underwriting agreement with respect to the shares being offered. Subject to the terms and conditions stated in that underwriting agreement dated the date of this prospectus, each underwriter named below has agreed to purchase, and we have agreed to sell to that underwriter, the number of shares set forth opposite the underwriter’s name.

<u>Underwriter</u>	<u>Number of shares</u>
Citigroup Global Markets Inc.	
Goldman, Sachs & Co.	
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Thomas Weisel Partners LLC	
<b>Total</b>	

The underwriting agreement provides that the obligations of the underwriters to purchase the shares included in this offering are subject to approval of legal matters by counsel and to other conditions. The underwriters are obligated to purchase all the shares (other than those covered by the option described below) if they purchase any of them.

If the underwriters sell more shares than the total number set forth in the table above, we have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to \_\_\_\_\_ additional shares of common stock at the public offering price less the underwriting discount. If any shares are purchased pursuant to this option, each underwriter must purchase a number of additional shares in approximately the same proportion as set forth in the table above.

The following table shows the per share and total underwriting discounts and commissions to be paid by us to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the underwriters’ option to purchase additional shares of common stock.

	<u>No Exercise</u>	<u>Full Exercise</u>
Per Share	\$	\$
Total	\$	\$

The underwriters propose to offer some of the shares directly to the public at the public offering price set forth on the cover page of this prospectus and some of the shares to dealers at the public offering price less a concession not to exceed \$ \_\_\_\_\_ per share. The underwriters may allow, and dealers may reallow, a concession not to exceed \$ \_\_\_\_\_ per share on sales to other dealers. If all of the shares are not sold at the initial offering price, the representatives of the underwriters may change the public offering price and the other selling terms. The representatives have advised us that the underwriters do not intend sales to discretionary accounts to exceed five percent of the total number of shares of our common stock offered by them.

Our officers and directors and certain of our other stockholders have agreed that, for a period of 180 days from the date of this prospectus (360 days for Vikram Talwar, Rohit Kapoor, Norwich Union and Prudential Financial), subject to certain extensions, they will not, without the prior written consent of Citigroup Global Markets Inc. and Goldman, Sachs & Co., dispose of or hedge any shares of our common stock or any securities convertible into or exchangeable for our common stock, subject to certain exceptions. Citigroup and Goldman, Sachs & Co., in their sole discretion, may release any of the securities subject to these lock-up agreements at any time without notice.

We have agreed not to issue, sell or otherwise dispose of any shares of our common stock during the 180-day period following the date of this prospectus (subject to certain extensions). We may, however, grant options to purchase shares of common stock and issue shares of common stock upon the exercise of outstanding

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options under our existing equity incentive plans, and we may issue common stock in connection with an acquisition or business combination (subject to a specified maximum amount) as long as the acquiror of such common stock agrees in writing to be bound by the obligations and restrictions of our lock-up agreement.

At our request, the underwriters have reserved up to 5% of the shares of common stock offered in this offering for sale at the initial public offering price to certain persons who are our directors, officers and employees, and certain friends and family members of these persons, and certain clients and prospective clients, through a directed share program. The number of shares of common stock available for sale to the general public in this offering will be reduced by the number of directed shares purchased by participants in the program. Any directed shares not purchased will be offered by the underwriters to the general public on the same basis as all other shares of common stock offered. We have agreed to indemnify the underwriters against certain liabilities and expenses, including liabilities under the Securities Act, in connection with the sales of the directed shares.

Each underwriter agrees that (i) it has not offered or sold and, prior to the expiry of a period of six months from the date of the consummation of this offering, will not offer or sell any shares to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995; (ii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000 (“FSMA”)) received by it in connection with the issue or sale of any shares in circumstances in which section 21(1) of the FSMA does not apply to us; and (iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares in, from or otherwise involving the United Kingdom.

The shares may not be offered or sold, transferred or delivered, as part of their initial distribution or at any time thereafter, directly or indirectly, to any individual or legal entity in the Netherlands other than to individuals or legal entities who or which trade or invest in securities in the conduct of their profession or trade, which includes banks, securities intermediaries, insurance companies, pension funds, other institutional investors and commercial enterprises which, as an ancillary activity, regularly trade or invest in securities.

The shares may not be offered or sold by means of any document other than to persons whose ordinary business is to buy or sell shares or debentures, whether as principal or agent, or in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32) of Hong Kong, and no advertisement, invitation or document relating to the shares may be issued, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made thereunder.

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation or subscription or purchase, of the securities may not be circulated or distributed, nor may the securities be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than under circumstances in which such offer, sale or invitation does not constitute an offer or sale, or invitation for subscription or purchase, of the securities to the public in Singapore.

The securities have not been and will not be registered under the Securities and Exchange Law of Japan (the Securities and Exchange Law) and each underwriter agrees that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for reoffering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Securities and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

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Prior to this offering, there has been no public market for our common stock. Consequently, the initial public offering price for the shares offered in this offering will be negotiated between us and the representatives of the underwriters. Among the factors to be considered in determining the initial public offering price will be our record of operations, our current financial condition, our future prospects, our markets, the economic conditions in and future prospects for the industry in which we compete, our management and currently prevailing general conditions in the equity securities markets, including current market valuations of publicly traded companies considered comparable to our company. The prices at which the shares will sell in the public market after this offering may be lower than the initial public offering price and an active trading market in our common stock may not develop and continue after this offering.

We have applied to have our common stock included for quotation on the Nasdaq National Market under the trading symbol “EXLS.”

In connection with the offering, one or more of the underwriters may purchase and sell shares of common stock in the open market. These transactions may include short sales, syndicate covering transactions and stabilizing transactions. Short sales involve syndicate sales of common stock in excess of the number of shares to be purchased by the underwriters in the offering, which creates a syndicate short position. “Covered” short sales are sales made in an amount up to the number of shares represented by the underwriters’ option to purchase additional shares. The underwriters may close out any covered short position by exercising their option to purchase additional shares or purchasing shares in the open market after the distribution has been completed. In determining the source of shares to close out the covered syndicate short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through their option. The underwriters may also make “naked” short sales of shares in excess of their option. The underwriters must close out any naked short position by purchasing shares of common stock in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares made by the underwriters in the open market while the offering is in progress.

The underwriters also may impose a penalty bid. Penalty bids permit the underwriters to reclaim a selling concession from a syndicate member when Citigroup or Goldman, Sachs & Co. repurchases shares originally sold by that syndicate member in order to cover syndicate short positions or make stabilizing purchases.

Any of these activities may have the effect of preventing or retarding a decline in the market price of the common stock and, together with the imposition of penalty bids, may stabilize, maintain or otherwise affect the market price of our shares. As a result, the price of the common stock may be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriters may conduct these transactions on the Nasdaq National Market or in the over-the-counter market, or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

We estimate that the total expenses of this offering, excluding discounts and commissions, will be \$ .

The underwriters may, from time to time, perform various financial advisory and investment banking services for us in the ordinary course of their business, for which they may receive customary fees and expenses.

A prospectus in electronic format may be made available either on the websites maintained by one or more of the underwriters or in another manner. The representatives may agree to allocate a number of shares of our common stock to underwriters for sale to their online brokerage account holders. The representatives will allocate shares of our common stock to underwriters that may make Internet distributions on the same basis as other allocations. In addition, shares of our common stock may be sold by the underwriters to securities dealers who resell shares to online brokerage account holders.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

## LEGAL MATTERS

Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York, will pass on the validity of the common stock offered by this prospectus for us. Cleary Gottlieb Steen & Hamilton LLP will pass upon the validity of the common stock for the underwriters. Paul, Weiss, Rifkind, Wharton & Garrison LLP has represented the Oak Hill Partnerships and their related parties from time to time and certain members of Paul, Weiss, Rifkind, Wharton & Garrison LLP own an indirect interest in Oak Hill Capital Management Partners, L.P. Luthra & Luthra acted as our Indian counsel.

## EXPERTS

The consolidated financial statements of ExlService Holdings, Inc. at December 31, 2003 and 2002 and for the year ended December 31, 2003 and the period from November 15, 2002 to December 31, 2002 (successor basis); the periods from January 1, 2002 to November 14, 2002 and from August 1, 2001 to December 31, 2001 (predecessor basis); and the period from April 1, 2001 to July 31, 2001 (pre-predecessor basis), appearing in this prospectus and registration statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

## ENFORCEABILITY OF JUDGMENTS

Our primary operating subsidiary is organized in India and the majority of our executive officers reside outside the United States. Most of our assets are located in India. As a result, you may be unable to effect service of process upon such persons outside their jurisdiction of residence. In addition, you may be unable to enforce against these persons outside the jurisdiction of their residence judgments obtained in courts of the United States, including judgments predicted solely upon the federal securities laws of the United States.

We have been advised by our Indian counsel that the United States and India do not currently have a treaty providing for reciprocal recognition and enforcement of judgments (other than arbitration awards) in civil and commercial matters. Therefore, a final judgment for the payment of money rendered by any federal or state court in the United States on civil liability, whether or not predicated solely upon the federal securities laws of the United States, would not be enforceable in India. However, the party in whose favor such final judgment is rendered may bring a new suit in a competent court in India based on a final judgment that has been obtained in the United States. The suit must be brought in India within three years from the date of the judgment in the same manner as any other suit filed to enforce a civil liability in India. It is unlikely that a court in India would award damages on the same basis as a foreign court if an action is brought in India. Furthermore, it is unlikely that an Indian court would enforce foreign judgments if it viewed the amount of damages awarded as excessive or inconsistent with Indian practice. In addition, a party seeking to enforce a foreign judgment in India is required to obtain approval from the Reserve Bank of India under the Foreign Exchange Management Act, 1999, to execute such a judgment or to repatriate any amount recovered.



## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Commission a registration statement on Form S-1 with respect to the common stock being sold in this offering. This prospectus constitutes a part of that registration statement. This prospectus does not contain all the information set forth in the registration statement and the exhibits and schedules to the registration statement, because some parts have been omitted in accordance with the rules and regulations of the Commission. For further information with respect to us and our common stock being sold in this offering, you should refer to the registration statement and the exhibits and schedules filed as part of the registration statement. Statements contained in this prospectus regarding the contents of any agreement, contract or other document referred to are not necessarily complete; reference is made in each instance to the copy of the contract or document filed as an exhibit to the registration statement. Each statement is qualified by reference to the exhibit. You may inspect a copy of the registration statement without charge at the Commission's principal office in Washington, D.C. Copies of all or any part of the registration statement may be obtained after payment of fees prescribed by the Commission from the Commission's Public Reference Room at the Commission's principal office, 450 Fifth Street, N.W., Washington, D.C. 20549.

You may obtain information regarding the operation of the Public Reference Room by calling the Commission at 1-800-SEC-0330. The Commission maintains an Internet site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the Commission. The Commission's website address is [www.sec.gov](http://www.sec.gov).

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**Report of Independent Registered Public Accounting Firm**

The Board of Directors of  
ExlService Holdings, Inc.

We have audited the accompanying consolidated balance sheets of ExlService Holdings, Inc. (the "Company") as of December 31, 2003 and 2002 and the related consolidated statements of operations, stockholders' equity, and cash flows for the year ended December 31, 2003 and the period from November 15, 2002 to December 31, 2002 (Successor basis); the periods from January 1, 2002 to November 14, 2002 and from August 1, 2001 to December 31, 2001 (Predecessor basis); and the period from April 1, 2001 to July 31, 2001 (Pre-Predecessor basis). These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of ExlService Holdings, Inc. at December 31, 2003 and 2002 and the consolidated results of its operations and its cash flows for the year ended December 31, 2003 and the period from November 15, 2002 to December 31, 2002 (Successor basis); the periods from January 1, 2002 to November 14, 2002 and from August 1, 2001 to December 31, 2001 (Predecessor basis); and the period from April 1, 2001 to July 31, 2001 (Pre-predecessor basis), in conformity with U.S. generally accepted accounting principles.

As discussed in Note 3, the previously issued financial statements as of December 31, 2002 and the period from November 15, 2002 to December 31, 2002 have been restated to correct overaccruals of general and administrative expenses and interest expense.

As discussed in Note 2 to the consolidated financial statements, effective January 1, 2002, the Company adopted Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets."

/s/ ERNST & YOUNG LLP

New York, New York  
November 10, 2004

**ExlService Holdings, Inc.**  
**Consolidated Balance Sheets**

	December 31	
	2003	2002
	(Successor Basis)	
	(Restated)	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 8,649,276	\$ 15,693,514
Restricted cash	173,872	1,512,661
Accounts receivable, net of allowance for doubtful accounts of \$50,000 in 2003 and \$300,000 in 2002	5,262,498	297,954
Employee receivables	145,520	105,383
Prepaid expenses	747,189	1,515,384
Other current assets	321,361	167,604
<b>Total current assets</b>	<b>15,299,716</b>	<b>19,292,500</b>
Fixed assets, net	5,213,920	235,736
Restricted cash	100,686	63,252
Other assets	1,262,872	732,309
<b>Total assets</b>	<b>\$ 21,877,194</b>	<b>\$ 20,323,797</b>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 759,143	\$ 2,182,513
Deferred revenue	1,916,999	1,500,000
Accrued employee cost	2,127,450	1,307,336
Other accrued expenses and current liabilities	1,586,499	625,435
Income taxes payable	686,159	—
Current portion of capital lease obligation	14,277	22,535
<b>Total current liabilities</b>	<b>7,090,527</b>	<b>5,637,819</b>
Senior long-term debt	5,167,710	4,698,286
Capital lease obligations, less current portion	45,289	50,849
<b>Total liabilities</b>	<b>12,303,526</b>	<b>10,386,954</b>
Preferred stock, \$.001 par value; 55,000 shares authorized:		
45,833.36 Designated as Series A redeemable shares; 45,424 and 42,900 shares issued and outstanding at December 31, 2003 and 2002, respectively (liquidation preference \$5,070,910 at December 31, 2003)	4,652,819	3,758,898
Stockholders' equity:		
Common stock, \$0.001 par value: 12,000,000 shares authorized:		
9,555,462 Designated as Series A; 9,555,462 shares issued and outstanding	9,555	9,555
990,854 Designated as Series B; 444,538 shares issued at December 31, 2003 and none at December 31, 2002	445	—
Additional paid-in-capital	2,375,984	2,091,517
Deferred stock based compensation	(155,004)	—
Retained earnings	3,045,018	4,060,459
Accumulated other comprehensive (loss) income	(353,041)	16,414
	4,922,957	6,177,945
Less 8,785 shares at December 31, 2003 of Series B common stock held in treasury, at cost	(2,108)	—
<b>Total stockholders' equity</b>	<b>4,920,849</b>	<b>6,177,945</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 21,877,194</b>	<b>\$ 20,323,797</b>

See accompanying notes.

**ExlService Holdings, Inc.**  
**Consolidated Statements of Operations**

	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
	(Successor Basis)	<i>(Restated)</i>	(Predecessor Basis)		(Pre-Predecessor Basis)
Revenues	\$27,771,359	\$ 3,359,772	\$ 23,789,661	\$ 8,667,842	\$ 3,199,787
Cost of revenues (exclusive of depreciation and amortization)	18,443,205	1,326,819	11,723,159	4,574,700	2,233,010
Gross profit	9,328,154	2,032,953	12,066,502	4,093,142	966,777
Operating expenses:					
General and administrative expenses	7,891,083	2,974,716	8,861,998	2,700,508	2,092,768
Selling and marketing expenses	1,104,482	59,106	582,527	306,492	13,867
Depreciation and amortization	420,719	8,391	3,896,547	967,801	422,883
Total operating expenses	9,416,284	3,042,213	13,341,072	3,974,801	2,529,518
Income (loss) from operations	(88,130)	(1,009,260)	(1,274,570)	118,341	(1,562,741)
Other income (expense):					
Foreign exchange gain (loss)	444,733	112,418	51,007	(136,599)	(43,973)
Interest and other income	214,942	33,665	59,786	39,456	32,879
Interest expense	(277,331)	(41,271)	—	(3,258)	(238)
Impairment of goodwill	—	—	(46,008,087)	—	—
Income (loss) before income taxes and extraordinary item	294,214	(904,448)	(47,171,864)	17,940	(1,574,073)
Income tax provision	769,554	6,636	94,338	14,289	—
Income (loss) before extraordinary gain	(475,340)	(911,084)	(47,266,202)	3,651	(1,574,073)
Extraordinary gain	—	5,027,452	—	—	—
Net income (loss)	(475,340)	4,116,368	(47,266,202)	3,651	(1,574,073)
Dividends and accretion on preferred stock	(540,101)	(55,909)	—	—	—
Net income (loss) to common stockholders	\$ (1,015,441)	\$ 4,060,459	\$ (47,266,202)	\$ 3,651	\$ (1,574,073)
Basic and Diluted earnings (loss) per share to common stockholders:					
Income (loss) before extraordinary gain	\$ (0.10)	\$ (0.10)	\$ (4.95)	\$ —	\$ (0.16)
Extraordinary gain	—	0.53	—	—	—
Net income (loss) per share to common stockholders	\$ (0.10)	\$ 0.43	\$ (4.95)	\$ —	\$ (0.16)
Weighted-average number of shares used in computing earnings per share:					
Basic and diluted <sup>(1)</sup>	9,784,420	9,555,462	9,555,462	9,555,462	9,555,462

(1) The weighted average number of shares used in computing earnings (loss) per share for the period from November 15, 2002 to December 31, 2002 and for the year ended December 31, 2003 includes Series A and Series B common stock.

See accompanying notes.

**ExlService Holdings, Inc.**  
**Consolidated Statements of Stockholders' Equity**

	Series A Common Stock		Series B Common Stock		Additional Paid-in Capital	Deferred Stock Based Compensation	Retained Earnings (deficit)	Accumulated Other Comprehensive Income (Loss)	Treasury Stock	Total
	Shares	Amount	Shares	Amount						
Balance as of March 31, 2001 (Pre-Predecessor Basis)	100	\$ 1	—	\$ —	\$15,537,052	\$(1,074,681)	\$ (7,525,852)	\$ —	\$ —	\$ 6,936,520
Deferred stock based compensation	—	—	—	—	276,115	(276,115)	—	—	—	—
Amortization of deferred compensation	—	—	—	—	—	145,273	—	—	—	145,273
Comprehensive loss:										
Translation adjustments	—	—	—	—	—	—	—	(27,533)	—	(27,533)
Net loss	—	—	—	—	—	—	(1,574,073)	—	—	(1,574,073)
Comprehensive loss										(1,601,606)
Balance as of July 31, 2001 (Pre-Predecessor Basis)	100	\$ 1	—	—	\$15,813,167	\$(1,205,523)	\$ (9,099,925)	\$ (27,533)	—	\$ 5,480,187
Purchase accounting	100	1	—	—	52,503,635	(1,015,361)	—	—	—	51,488,275
Balance as of August 1, 2001 (Predecessor Basis)	100	1	—	—	52,503,635	(1,015,361)	—	—	—	51,488,275
Amortization of deferred compensation	—	—	—	—	—	50,000	—	—	—	50,000
Comprehensive income:										
Translation adjustments	—	—	—	—	—	—	—	232,107	—	232,107
Net income	—	—	—	—	—	—	3,651	—	—	3,651
Comprehensive income										235,758
Balance as of December 31, 2001 (Predecessor Basis)	100	1	—	—	52,503,635	(965,361)	3,651	232,107	—	51,774,033
Contribution by Conseco	—	—	—	—	13,000,000	—	—	—	—	13,000,000
Amortization of deferred compensation	—	—	—	—	—	308,110	—	—	—	308,110
Reversal of deferred compensation cost issued by Conseco	—	—	—	—	(657,251)	657,251	—	—	—	—
Comprehensive loss:										
Translation adjustments	—	—	—	—	—	—	—	5,507	—	5,507
Net loss	—	—	—	—	—	—	(47,266,202)	—	—	(47,266,202)
Comprehensive loss										(47,260,695)
Balance as of November 14, 2002 (Predecessor Basis)	100	1	—	—	64,846,384	—	(47,262,551)	237,614	—	17,821,448

**ExlService Holdings, Inc.**  
**Consolidated Statements of Stockholders' Equity (continued)**

	Series A Common Stock		Series B Common Stock		Additional Paid-in Capital	Deferred Stock Based Compensation	Retained Earnings (deficit)	Accumulated Other Comprehensive Income (Loss)	Treasury Stock	Total
	Shares	Amount	Shares	Amount						
Balance as of November 14, 2002 (Predecessor Basis)	100	\$ 1	—	\$ —	\$ 64,846,384	\$ —	\$(47,262,551)	\$ 237,614	\$ —	\$ 17,821,448
Common stock issued for cash	7,555,462	7,555	—	—	1,784,111	—	—	—	—	1,791,666
Restricted common stock issued to management	2,000,000	2,000	—	—	472,270	—	—	—	—	474,270
Equity issuance costs	—	—	—	—	(164,864)	—	—	—	—	(164,864)
Dividends and accretion on preferred stock	—	—	—	—	—	—	(55,909)	—	—	(55,909)
Comprehensive income:										
Translation adjustments	—	—	—	—	—	—	—	16,414	—	16,414
Net income—Restated	—	—	—	—	—	—	4,116,368	—	—	4,116,368
Comprehensive income—Restated										4,132,782
Balance as of December 31, 2002 (Restated)	9,555,462	9,555	—	—	2,091,517	—	4,060,459	16,414	—	6,177,945
Series B common stock and options issued to management	—	—	444,538	445	114,168	—	—	—	—	114,613
Deferred stock based compensation	—	—	—	—	170,299	(170,299)	—	—	—	—
Amortization of deferred compensation	—	—	—	—	—	15,295	—	—	—	15,295
Dividends and accretion on preferred stock	—	—	—	—	—	—	(540,101)	—	—	(540,101)
Acquisition of treasury stock (Series B common stock)	—	—	—	—	—	—	—	—	(2,108)	(2,108)
Comprehensive loss:										
Translation adjustments	—	—	—	—	—	—	—	(369,455)	—	(369,455)
Net loss	—	—	—	—	—	—	(475,340)	—	—	(475,340)
Comprehensive loss										(844,795)
Balance as of December 31, 2003	9,555,462	\$ 9,555	444,538	\$ 445	\$ 2,375,984	\$ (155,004)	\$ 3,045,018	\$ (353,041)	\$(2,108)	\$ 4,920,849

See accompanying notes.

**ExlService Holdings, Inc.**  
**Consolidated Statements of Cash Flows**

	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
	(Successor Basis)	(Restated)	(Predecessor Basis)	(Pre-Predecessor Basis)	(Pre-Predecessor Basis)
<b>Cash flows from operating activities</b>					
Net income (loss)	\$ (475,340)	\$ 4,116,368	\$ (47,266,202)	\$ 3,651	\$ (1,574,073)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:					
Depreciation and amortization	420,719	8,391	3,896,547	967,801	422,883
Amortization of deferred financing costs	67,500	—	—	—	—
Amortization of deferred stock compensation and other non-cash compensation	237,977	484,558	1,308,110	50,000	145,273
Bad debt expense (recovery)	(250,000)	300,000	—	—	—
Extraordinary gain	—	(5,027,452)	—	—	—
Impairment of goodwill	—	—	46,008,087	—	—
Change in operating assets and liabilities (net of effect of acquisitions):					
Restricted cash	1,308,422	610,367	(1,160,226)	(220,596)	(821,986)
Accounts receivable	(4,714,544)	(597,954)	2,699,758	(362,635)	(1,843,937)
Prepaid expenses and other current assets	581,473	1,426,592	(1,445,256)	(671,144)	(474,826)
Accounts payable	(1,373,678)	1,369,036	(129,784)	579,074	22,066
Deferred revenue	416,999	(500,000)	(7,000,000)	6,000,000	3,000,000
Accrued expenses and other liabilities	1,783,075	(2,806,466)	1,568,469	1,613,790	600,767
Income taxes payable	686,159	—	—	—	—
Other assets	(571,037)	79,195	4,116	(207,012)	(142,881)
Net cash provided by (used in) operating activities	(1,882,275)	(537,365)	(1,516,381)	7,752,929	(666,714)
<b>Cash flows from investing activities</b>					
Purchase of fixed assets	(5,405,780)	(136,599)	(4,617,011)	(5,990,817)	(2,349,579)
Cash acquired on acquisition of Exl Inc, net	—	7,017,610	—	694,945	—
Net cash provided by (used in) investing activities	(5,405,780)	6,881,011	(4,617,011)	(5,295,872)	(2,349,579)
<b>Cash flows from financing activities</b>					
Proceeds from issuance of senior long-term debt	272,403	4,349,000	—	—	—
Principal payments on capital lease obligations	(16,360)	(7,324)	(27,331)	(14,519)	(24,401)
Proceeds from issuance of preferred stock	252,400	3,990,701	—	—	—
Net proceeds from common stock transactions	99,905	1,791,666	—	—	—
Contribution by Conseco	—	—	12,000,000	—	—
Restricted common stock issued to management	—	2,000	—	—	—
Transaction costs	—	(764,864)	—	—	—
Net cash provided by (used in) financing activities	608,348	9,361,179	11,972,669	(14,519)	(24,401)
Effect of exchange rate changes on cash and cash equivalents	(364,531)	(11,311)	31,441	150,533	65,848
Net (decrease) increase in cash and cash equivalents	(7,044,238)	15,693,514	5,870,718	2,593,071	(2,974,846)
Cash and cash equivalents at the beginning of the period	15,693,514	—	2,593,071	—	4,091,529
Cash and cash equivalents at the end of the period	\$ 8,649,276	\$ 15,693,514	\$ 8,463,789	\$ 2,593,071	\$ 1,116,683
<b>Supplemental disclosure of cash flow information</b>					
Cash paid for interest	\$ 18,800	\$ 400	\$ 5,300	\$ 3,250	\$ 250
Cash paid for taxes	87,100	2,000	124,600	10,500	—
<b>Supplemental disclosure of non-cash information</b>					
Long-term debt payable to management	—	325,000	—	—	—
Common stock issued to management	—	472,270	—	—	—
Preferred stock issued to management	—	299,000	—	—	—
Assets acquired under capital lease	4,242	80,708	—	—	138,408
Shares and options issued by Conseco	—	—	—	52,081,897	—

See accompanying notes.



**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements**  
**December 31, 2003**

**1. Organization, Basis of Presentation and Business Combinations**

***Organization***

ExlService Holdings, Inc. (“Exl Holdings”) was organized as a corporation under the laws of the state of Delaware on October 29, 2002 with the primary objective of acquiring the Exl entities existing on that date. Exl Holdings, together with its subsidiaries ExlService.com, Inc. (“Exl Inc”), ExlService.com (India) Private Limited (“Exl India”), Noida Customer Operations Private Limited (“NCOP”) and ExlService (U.K.) Limited (“Exl UK”) (collectively, the “Company”), are principally engaged in the business of developing and deploying business process outsourcing solutions, including transaction-processing services and Internet and voice-based customer care services for its clients primarily in India. The Company’s clients are located principally in the United States and the United Kingdom.

***Successor and Predecessor Entities and Periods Presented***

On July 31, 2001, Conseco, Inc (“Conseco” or the “Former Parent”) acquired all of Exl Inc’s outstanding common shares in exchange for shares of Conseco’s common stock. On November 14, 2002, Exl Holdings, purchased all of the outstanding capital stock of Exl Inc from Conseco. The acquisitions were accounted for under the purchase method in accordance with Statement of Financial Accounting Standards SFAS No. 141, “Business Combinations” (“SFAS No. 141”).

The consolidated financial statements present the Company as of December 31, 2003 and 2002 (Successor basis reflecting the Exl Holdings acquisition of Exl Inc), the period from January 1, 2002 through November 14, 2002 and the period from August 1, 2001 through December 31, 2001 (Predecessor basis for the period of Conseco’s acquisition and ownership of Exl Inc), and the period from April 1, 2001 through July 31, 2001 (Pre-Predecessor basis for the period prior to Conseco’s acquisition of Exl Inc). Exl Inc’s fiscal year ended on March 31 prior to it being acquired by Conseco. Exl Holdings did not have any operations from the date of its incorporation through November 14, 2002.

The application of purchase accounting, which requires assets acquired and liabilities assumed to be recorded at their fair values, creates a new basis of accounting and accordingly results in different depreciation and amortization expense in later periods. Accordingly, the accompanying consolidated financial statements as of and for the periods prior to the Conseco acquisition, as of and for the periods during which the Company was owned by Conseco, and as of and for the period under Exl Holdings acquisition and ownership are not comparable.

On February 5, 2002, the Board of Directors of Exl Inc authorized a reverse stock split pursuant to which one equity share was issued for every 119,379 shares of Exl Inc equity shares held on that date and the par value was increased from \$0.001 to \$0.01 per share. Accordingly, all share amounts in the accompanying consolidated financial statements and related notes for the Pre-Predecessor and Predecessor periods have been adjusted retroactively to reflect the reverse stock split.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

***Acquisition by Conseco on July 31, 2001***

On July 31, 2001, Conseco acquired all of the outstanding common shares of Exl Inc and its wholly owned subsidiary, Exl India, for approximately \$52.5 million. After the acquisition, Exl Inc became a wholly owned subsidiary of Conseco. Purchase transactions that result in an entity becoming substantially wholly owned establish a new basis of accounting for the purchased assets and liabilities. Therefore, Conseco's cost of acquiring Exl Inc was pushed down to establish a new accounting basis in Exl Inc's separate financial statements, thereby establishing a new basis of accounting for the purchased assets and liabilities.

	<u>July 31, 2001</u>
Purchase consideration (fair value of shares and options issued)	\$ 52,081,897
Acquisition costs capitalized	421,738
	<u>\$ 52,503,635</u>
<b>Allocated to assets and liabilities:</b>	
Cash and cash equivalents	\$ 1,116,683
Restricted cash	826,662
Fixed assets	4,831,136
Current assets and liabilities, net	(1,562,660)
Noncurrent assets	311,357
Non current liabilities	(42,991)
Deferred compensation cost	1,015,361
Goodwill	46,008,087
	<u>\$ 52,503,635</u>

Since this was a stock acquisition, none of the goodwill was tax deductible. In accordance with SFAS No. 142, "Goodwill and Other Intangibles Assets" ("SFAS No. 142"), the Company treated the goodwill as non-amortizable because the acquisition was completed after June 30, 2001. As discussed in Note 2, the Company recorded an impairment charge of \$46,008,087 related to this goodwill during the period from January 1, 2002 to November 14, 2002.

***Acquisition by Exl Holdings on November 14, 2002***

On November 14, 2002, Exl Holdings purchased all of the outstanding capital stock of Exl Inc and its wholly owned subsidiary, Exl India, from Conseco for \$1 plus a commitment to provide ongoing services under a transition/wind-down service agreement effective through March 2003. The consideration provided by the Company for EXL Inc. was determined by arm's-length negotiations between unaffiliated parties. Conseco made a strategic decision to terminate all of its outsourcing activities in India in 2002. Company management believes that Conseco determined that selling Exl Inc at a minimal cost plus the continued provision of services during a transition period was a cheaper and more attractive alternative to it than liquidating the business, and maintaining the operational risks associated with a liquidation. Also factored into the purchase price was the fact that Conseco at the time represented approximately 95% of Exl Inc's revenues, which would cease within a short period of time following the sale of the business.

The acquisition included the following key transactions:

a. Contribution by Conseco:

- i. Conseco provided a capital contribution of \$1,000,000 to Exl Inc prior to the sale of its ownership to Exl Holdings.

**ExlService Holdings, Inc.****Notes to Consolidated Financial Statements (continued)**

ii. Conseco waived repayment of advances of \$11,000,000 provided to Exl Inc.

iii. Conseco paid \$1,000,000 to certain members of management of Exl Inc whereby their existing employment agreements and incentive plan with Exl Inc were terminated and new employment agreements were entered into with Exl Holdings.

b. For employees who were covered by the terms of the Employment Incentive Plan established by Exl Inc effective August 1, 2001, the Company entered into an agreement and established a trust for the benefit of the eligible employees and deposited \$1,050,000 into the trust to meet its obligation under the agreement (see Note 11).

c. New investors contributed cash of approximately \$10,000,000 to Exl Holdings in return for common shares, preferred shares and Senior Debt.

The following table summarizes the estimated fair value of the assets acquired and liabilities assumed and the purchase price at the date of the acquisition:

	<b>November 14, 2002</b>
Purchase consideration	\$ 1
Acquisition costs capitalized	1,446,179
	<u>1,446,180</u>
Less:	
Cash and cash equivalents	8,463,789
Restricted cash	2,185,173
Fixed assets, net of reduction of \$11,347,816	—
Current assets and liabilities, net	(4,161,326)
Noncurrent liabilities	(14,004)
	<u>\$ 5,027,452</u>

The acquisition of Exl Inc by Exl Holdings for \$1 resulted in the fair value of the net assets exceeding the cost. In accordance with SFAS No. 141, the Company allocated the excess of fair value over cost to the non-current assets acquired. Such allocation resulted in reducing the carrying value of fixed assets to zero and the Company recognized the remaining excess of the fair value of the net assets acquired over cost of \$5,027,452 as an extraordinary gain (net of tax of \$0) in its consolidated financial statements.

Professional fees totaling \$2,549,830 were incurred in connection with the acquisition and certain transactions. Of such amount, \$1,446,179 was capitalized and recorded as acquisition costs, \$338,787 represented organization and start-up costs and was appropriately expensed, and the balance of \$764,864 were transaction costs related to common stock, preferred stock and senior long-term debt. The acquisition costs capitalized included fees paid to lawyers, consultants and accountants for their services provided in relation to the acquisition of Exl Inc from Conseco. These fees were paid for services directly associated with the acquisition, including drafting agreements and due diligence services.

**2. Summary of Significant Accounting Policies*****Principles of Consolidation***

The consolidated financial statements include the accounts of Exl Holdings and its subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

***Use of Estimates***

The preparation of the consolidated financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the results of operations during the reporting period. Estimates are based upon management's best assessment of the current business environment. Actual results could differ from those estimates. The significant estimates and assumptions that affect the financial statements include, but are not limited to, allowance for doubtful accounts, future obligations under employee benefit plans, income tax valuation allowances, depreciation and amortization periods, and recoverability of long-term assets.

***Foreign Currency***

The functional currency of Exl Holdings and Exl Inc is the United States Dollar ("U.S. Dollar"), being the currency of the primary economic environment in which they operate. The functional currency of Exl India and NCOP is Indian Rupees and for Exl U.K., it is the Pound Sterling, being the currency of primary economic environment in which they operate. Monetary assets and liabilities in foreign currencies are remeasured into functional currency at the rates of exchange prevailing at the balance sheet dates. Transactions in foreign currencies are remeasured into functional currency at the rates of exchange prevailing on the date of the transaction. All transaction foreign exchange gains and losses are recorded in the accompanying consolidated statements of operations.

In respect of the subsidiaries for which the functional currency is other than U.S. Dollar, the assets and liabilities of such subsidiaries are translated into U.S. Dollars, the reporting currency, at the rate of exchange prevailing on the balance sheet date. Revenues and expenses are translated into U.S. Dollars at average exchange rates prevailing during the period. Resulting translation adjustments are included in accumulated other comprehensive income (loss).

***Cash and Cash Equivalents***

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. Cash and cash equivalents consist solely of funds held in general checking accounts and money market accounts.

***Fixed Assets***

Fixed assets are stated at cost. Equipment held under capital leases is stated at the present value of minimum lease payments at the inception of the leases. Advances paid towards acquisition of fixed assets and the cost of fixed assets not ready for use before the end of the period are classified as construction in progress.

Fixed assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable through an assessment of the estimated future undiscounted cash flows related to such assets. In the event that assets are found to be carried at amounts, which are in excess of estimated undiscounted future cash flows, the carrying value of the related asset or group of assets is reduced to a level commensurate with fair value based on a discounted cash flow analysis.

Depreciation is computed using the straight-line method over the estimated useful lives of assets. Depreciation on equipment held under capital leases and leasehold improvements is computed using the straight-line method over the shorter of the assets' estimated lives or the lease term.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**Revenue Recognition**

The Company derives revenues from business process outsourcing services, which includes processing of transactions and services provided through voice and Internet communication channels. The Company recognizes revenue as services are rendered, provided that persuasive evidence of an arrangement exists, there are no remaining obligations with respect to the services rendered and collection is considered probable. The Company invoices clients in accordance with the agreed rates and billing arrangements, which consist of time and material, cost plus and unit priced arrangements. The Company recognizes revenue from the last billing date to the balance sheet date as unbilled revenues and recognizes billings in excess of revenues earned or advances received from clients as deferred revenue.

In accordance with EITF 01-14, "Income Statement Characterization of Reimbursements Received for 'Out-of-Pocket' Expenses Incurred," the Company has accounted for reimbursements received for out-of-pocket expenses incurred as revenues in the consolidated statements of operations. The Company typically incurs telecommunications, and travel related costs that are billed to and reimbursed by clients.

Revenues for the following periods include reimbursements of out-of-pocket expenses:

April 1, 2001 to July 31, 2001	\$ —
August 1, 2001 to December 31, 2001	56,838
January 1, 2002 to November 14, 2002	69,096
November 15, 2002 to December 31, 2002	2,470
Year ended December 31, 2003	555,372

Pursuant to a transition/wind-down services agreement executed with Conesco on November 14, 2002, the Company contracted to provide wind-down and transition services to Conesco over the four-month period from December 1, 2002 to March 31, 2003. Pursuant to the terms of the agreement, the Company deposited \$2,000,000 that it received from Conesco for such services in an escrow account and was entitled to receive this amount in four equal monthly installments during the period from December 1, 2002 through March 31, 2003 as services are performed. At December 31, 2002, approximately \$1,500,000 was reflected as restricted cash and deferred revenue. Revenue for the year ended December 31, 2003 includes approximately \$1,500,000 for the services rendered to Conesco pursuant to the transition/wind-down services agreement. Revenue from services provided to Conesco as a percentage of total revenues on the consolidated statement of operations for each of the respective periods is as follows:

April 1, 2001 to July 31, 2001	93%
August 1, 2001 to December 31, 2001	95%
January 1, 2002 to November 14, 2002	95%
November 15, 2002 to December 31, 2002	92%
Year ended December 31, 2003	18%

For the year ended December 31, 2003, two other clients accounted for 43% and 31% of the Company's total revenues.

**Cost of Revenues**

Cost of revenues include salaries, employee benefits and stock compensation expense, project related travel costs, communication expenses, technology operating expenses and facilities costs.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

***Income Taxes***

The Company accounts for income taxes pursuant to the provisions of Statement of Financial Accounting Standards No. 109 "Accounting for Income Taxes." Under SFAS No. 109, deferred tax liabilities and assets are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their tax bases. Any deferred tax assets recognized for net operating loss carryforwards and other items are reduced by a valuation allowance when it is more likely than not that the benefits may not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that the tax change occurs. Deferred taxes are not provided on the undistributed earnings of subsidiaries outside the United States where it is expected that the earnings of the foreign subsidiary will be permanently reinvested.

***Employee Benefits***

In accordance with Indian law, all employees of the Company in India are entitled to receive benefits under the Government Provident Fund, a defined contribution plan in which both the employee and the Company contribute monthly at a determined rate (currently 12% of the employee's base salary). These contributions are made to the Government Provident Fund.

In accordance with Indian law, the Company provides for gratuity, a defined benefit retirement plan (the "Gratuity Plan") covering all of its employees in India. The Gratuity Plan provides for a lump sum payment to vested employees on retirement or on termination of employment in an amount based on the respective employees' salary and the years of employment with the Company. Gratuity benefit cost for the year is calculated on an actuarial basis.

***Accumulated Other Comprehensive Income***

SFAS No. 130, "Reporting Comprehensive Income" establishes rules for the reporting of comprehensive income and its components. Comprehensive income is defined as all changes in equity from non-owner sources. For the Company, comprehensive income (loss) consists of net earnings and changes in the cumulative foreign currency translation adjustments. The Company reports comprehensive income (loss) in the consolidated statements of stockholders' equity.

***Financial Instruments and Concentration of Credit Risk***

*Financial Instruments:* For certain financial instruments, including cash and cash equivalents, accounts receivable, accounts payable, accrued expenses, and other current liabilities, recorded amounts approximate fair value due to the relatively short maturity periods.

*Concentration of Credit Risk:* Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash equivalents, accounts receivable and time deposits. By their nature, all such financial instruments involve risks including the credit risks of non-performance by counter parties.

*Derivative Financial Instruments:* The Company entered into forward exchange contracts during the year ended December 31, 2003 and the period from November 15, 2002 through December 31, 2002. None of the contracts were outstanding at December 31, 2003 or December 31, 2002.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**Stock Based Compensation**

*Stock Based Compensation:* In fiscal 2003, the Company instituted the Exl Holdings 2003 Stock Option Plan (“the Plan”). The Plan covers all the employees of the Company and its subsidiaries. The Compensation Committee of the Board (the “Committee”) administers the Plan and grants stock options to eligible employees of the Company and its subsidiaries.

The Committee determines which employees are eligible to receive the options, the number of options to be granted, the exercise price, the vesting period and the exercise period. The vesting period is determined for the options issued on the date of the grant and is non-transferable during the life of the option. The options generally vest incrementally over a period of 4 years from the date of grant with 25% of the options vesting each year. Pursuant to the Plan, the Company has reserved 526,316 shares of Series B common stock for the granting of options.

The Company uses Accounting Principles Board (“APB”) Opinion No. 25 and related interpretations to account for stock options granted to its employees. Accordingly, compensation cost is recognized only for stock option awards granted where the exercise price is less than the market value on the date of grant.

Had the compensation cost been recognized based on the fair value at the date of grant in accordance with Statement of Financial Accounting Standard No. 123 “Accounting for Stock Based Compensation” as amended by Statement of Financial Accounting Standard No. 148 “Accounting for Stock-Based Compensation—Transition and Disclosure, the pro-forma amounts of net income (loss) to common stockholders would have been as follows:

	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
	(Successor Basis)	(Restated)	(Predecessor Basis)		(Pre-Predecessor Basis)
Net income (loss) to common stockholders	\$ (1,015,441)	\$ 4,060,459	\$ (47,266,202)	\$ 3,651	\$ (1,574,073)
As reported:					
Add stock based employee compensation expense included in reported net income	10,405	—	308,110	50,000	145,273
Less stock based employee compensation expense determined under the fair value method	(10,818)	—	(335,101)	(137,406)	(251,410)
Pro forma net income (loss) to common stockholders	\$ (1,015,854)	\$ 4,060,459	\$ (47,293,193)	\$ (83,755)	\$ (1,680,210)
Basic and diluted earnings (loss) per share to common stockholders:					
Basic and diluted as reported	\$ (0.10)	\$ 0.43	\$ (4.95)	\$ —	\$ (0.16)
Basic and diluted, pro forma	\$ (0.10)	\$ 0.43	\$ (4.95)	\$ (0.01)	\$ (0.18)

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

Stock compensation expense for the period from January 1, 2002 to November 14, 2002 and for the period from August 1, 2001 to December 1, 2001 relates to stock options granted to Exl Inc employees by Conseco (Predecessor entity).

Stock compensation expense for the period from April 1, 2001 to July 31, 2001 relates to employee stock options under the Exl Inc Employee Stock Option Plan (Pre-Predecessor entity).

The fair value of each option is estimated on the date of grant using the Black-Scholes option valuation model with the following assumptions:

	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
	(Successor Basis)		(Predecessor Basis)		(Pre-Predecessor Basis)
Dividend yield	0%	—	0%	0%	0%
Expected life	60 months	—	48-60 months	48-60 months	48 months
Risk free interest rate	4%	—	4.8%	4.8%	5.8%
Volatility	50%	—	40%	40%	10%

***Earnings Per Share***

Basic earnings per share is computed by dividing income (loss) to common stockholders by the weighted average number of common shares outstanding during each period. In determining the income to common stockholders, net income has been reduced by dividends and accretion on preferred stock. Diluted earnings per share are computed using the weighted average number of common shares plus the potentially dilutive effect of common stock equivalents. Stock options that are anti-dilutive are excluded from the computation of weighted average shares outstanding. Certain options that are currently anti-dilutive may be dilutive in the future.

***Goodwill and Other Intangible Assets***

The Company adopted SFAS No. 142 on January 1, 2002. SFAS No. 142 requires that goodwill and intangible assets with indefinite useful lives no longer be amortized. Furthermore, goodwill and intangible assets determined to have an indefinite useful life that were acquired in a business combination completed after June 30, 2001 and before SFAS No. 142 was adopted, are also not amortized. Accordingly, the Company did not amortize goodwill resulting from the July 31, 2001 Conseco acquisition for the period from August 1, 2001 to December 31, 2001.

SFAS No. 142 required the completion of a transitional impairment test as of the date of adoption within six months of adoption and further required companies to record an impairment related to the implementation of SFAS No. 142 as a cumulative effect of an accounting change. In addition, SFAS No. 142 requires an annual impairment test, or more frequently if impairment indicators arise, to determine impairment of goodwill. Impairment of goodwill, which is not related to the implementation of SFAS No. 142 and covered by the transition rule as discussed above, is recorded as a charge to operations.

The Company had recorded \$46,008,087 of goodwill related to the 2001 Conseco acquisition. During the period from January 1, 2002 to November 14, 2002, the Company experienced a significant decline in revenue from Conseco and determined that the projections with respect to revenue and cash flows made at the time of the Conseco acquisition, including such determination made at December 31, 2001, could not be sustained. Accordingly, the Company made an assessment that the entire goodwill balance was impaired and recorded an impairment charge of \$46,008,087.



**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**Recent Accounting Pronouncements**

In January 2003, the Financial Accounting Standards Board (“FASB”) issued FASB Interpretation (“FIN”) No. 46, “Consolidation of Variable Interest Entities, an interpretation of Accounting Research Bulletin No. 51.” The primary objectives of FIN 46 are to provide guidance on the identification of entities for which control is achieved through means other than through voting rights (“variable interest entities” or “VIEs”) and on how to determine when and on which business enterprise should consolidate the VIE. This new model for consolidation applies to an entity in which either: (a) the equity investors (if any) do not have a controlling financial interest; or (b) the equity investment at risk is insufficient to finance that entity’s activities without receiving additional subordinated financial support from other parties. In addition, FIN 46 requires that both the primary beneficiary and all other enterprises with a significant variable interest in a VIE make additional disclosures. The adoption of FIN 46 has not had any significant impact on the Company’s results of operations or financial position.

In May 2003, the FASB issued Statement of Financial Accounting Standards No. 150, “Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity,” which establishes standards for how an issuer of financial instruments classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances) if, at inception, the monetary value of the obligation is based solely or predominantly on a fixed monetary amount known at inception, variation in something other than the fair value of the issuer’s equity shares or variations inversely related to changes in the fair value of the issuer’s equity shares. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of SFAS No. 150 by the Company on January 1, 2004 has not had any significant impact on the Company’s results of operations or financial position.

**3. Restatement**

The Company’s balance sheet as of December 31, 2002 and the related statements of operations, stockholders’ equity and cash flows for the period from November 15, 2002 to December 31, 2002 have been restated. The restatement is the result of an arrangement with Oak Hill Capital Partners L.P. (“Oak Hill”), a related party, for professional fees to be paid in relation to certain services provided by Oak Hill to the Company. The fee was initially recorded in error at \$1,000,000. The amount should have been recorded as \$500,000. Therefore, this adjustment has been reflected as a restatement of the 2002 financial statements to reduce general and administrative expenses by \$500,000, with a corresponding reduction to the related liability. In addition, the dividends on the preferred stock totaling \$55,909 in 2002 were incorrectly recorded as interest expense. Such amount has also been reflected as a restatement of the 2002 financial statements to reduce interest expense and record a corresponding dividend.

The reconciliation of net income and retained earnings to amounts previously reported are as follows:

Net income—as previously reported	\$ 3,560,459
Reduction of general and administrative expenses	500,000
Reduction of interest expense	55,909
	<hr/>
Net income—restated	\$ 4,116,368
	<hr/>
Retained earnings—as previously reported	\$ 3,560,459
Increase as a result of reduction in general and administrative expenses	500,000
	<hr/>
Retained earnings—restated	\$ 4,060,459
	<hr/>

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**4. Restriction on Cash Balances and Time Deposits**

Current restricted time deposits of Exl India represent amounts on deposit with a bank against letters of credit issued by the Company for equipment imports amounting to \$173,872 that mature on various dates in 2004.

Non-current restricted time deposits represent guarantees against custom and excise bonding issued through a bank amounting to \$100,686 that mature in 2008.

Restricted cash at December 31, 2002 included a balance of \$1,500,000 in the escrow account deposited pursuant to a transition/wind-down service agreement executed with Conseco on November 14, 2002. The Company received such amount from the Escrow account in three equal monthly installments beginning in January 2003. In addition, restricted cash balance at December 31, 2002 includes guarantees against custom and excise bonding issued through a bank in India amounting to \$12,661, which matured in March 2003 and \$52,466 and \$10,786 maturing in July 2004 and March 2005.

**5. Fixed Assets**

Fixed assets consist of the following:

	Estimated Useful Life	December 31	
		2003	2002
Network equipment, cabling and computers	3	\$3,298,996	\$ 59,334
Leasehold improvements	3-5	99,995	1,248
Office furniture and equipment	3-5	154,654	12,067
Motor vehicles	3	84,950	80,708
Construction in progress		2,010,566	90,770
		5,649,161	244,127
Less accumulated depreciation and amortization		(435,241)	(8,391)
		<u>\$5,213,920</u>	<u>\$235,736</u>

Construction in progress represents advances paid towards acquisition of fixed assets and the cost of fixed assets not yet placed in service. The cost and accumulated amortization of assets under capital leases at December 31, 2003 is \$84,950 and \$28,469, respectively, and at December 31, 2002 is \$80,708 and \$147, respectively.

**6. Senior Long-Term Debt**

On December 13, 2002, certain new investors and members of the management team acquired senior promissory notes issued by the Company totaling \$4,674,000. The senior promissory notes mature on December 13, 2007. The Company issued additional senior promissory notes to employees of the Company during August 2003 in the amount of \$272,403. Interest on the principal amount is payable on maturity and accrues at a rate equal to the greater of (i) 2.02% semiannually or (ii) LIBOR.

The effective interest rate during the year ended December 31, 2003 was 4.11% per annum. Accrued interest at December 31, 2003 and 2002 included in Senior Long-Term Debt on the balance sheet is \$221,307 and \$24,286, respectively.

Deferred financing costs, totaling \$300,000, are included in other assets and are being amortized to interest expense through the maturity date of the Senior Long-Term Debt. For the year ended December 31, 2003, amortization of deferred financing costs amounted to \$67,500.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**7. Capital Structure**

***Common Stock***

Holders of Series A common stock have one vote for each share held with respect to all matters voted on by the stockholders of the Company. Holders of Series B common stock do not have any voting rights.

Prior to the occurrence of a conversion event, as defined, the Series B common stock will be converted into Series A common stock initially at a ratio of 1:1. Among other things, a conversion event includes the consummation of a sale of common stock in a public offering, as defined.

***Preferred Stock***

Holders of preferred stock are not permitted or entitled to vote on any matter required or permitted to be voted on by the stockholders of the Company.

Holders of preferred stock have superior liquidation rights compared to the common stockholders. In the event of liquidation, dissolution or winding up of the operations of the Company, the preferred stockholders are entitled to receive a liquidation preference in the distribution of assets. Liquidation preference is equal to \$100 per share plus any accrued and unpaid dividends.

Holders of preferred stock are entitled to receive annual dividends, as and when declared by the Company out of funds legally available equal to 10% of the liquidation preference per share. Such dividends are payable, at the election of the Company, in cash or in the form of an additional liquidation preference and accrue annually, but are to be paid only upon redemption, liquidation or as otherwise declared by the Company. Such dividends are cumulative and accrue on a day-to-day basis, whether or not earned. Cumulative dividends in arrears at December 31, 2003 amounted to \$528,510. The preferred stock is recorded net of issuance costs of \$300,000 which are being accreted over a period of five years. For the year ended December 31, 2003, accretion of issuance costs amounted to \$67,500. In addition, as discussed in Note 11, the carrying value of preferred stock is further reduced by the net unamortized deferred compensation.

The Company may, at its option at any time, redeem all of the preferred stock by giving adequate notice to the holders of preferred stock. Upon the occurrence of a mandatory redemption event, holders of the preferred stock can cause redemption of all the preferred stock outstanding. Mandatory redemption events include (i) breach in any material respect of warranties and representations made by Conesco under the stock purchase agreement dated November 14, 2002, (ii) any material adverse change in the condition, financial or otherwise, business, properties, assets, results of operations or prospects of the Company or any of its subsidiaries, (iii) if either or both Vikram Talwar or Rohit Kapoor resign from or are terminated or are otherwise no longer employed by the Company or any of its subsidiaries for any reason, and (iv) the failure of the Company to achieve certain financial performance measures during the period between April 1, 2003 and December 31, 2003. Further, if Exl Holdings defaults on any debt or other obligation, automatic redemption of the preferred stock would be triggered. The redemption events are conditional on the events occurring and therefore the Company has classified the preferred stock between liabilities and stockholders' equity. The preferred stock will be classified as a liability if the mandatory redemption event occurs or the event becomes certain to occur. In all instances, the redemption amount will equal the liquidation preference. Upon the occurrence of a liquidity event, as defined, the vesting of certain preferred stock granted in connection with employment agreements is accelerated.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**8. Employee Benefit Plans**

The Gratuity Plan provides a lump sum payment to vested employees on retirement or on termination of employment in an amount based on the respective employee's salary and years of employment with the Company. Liabilities with regard to the Gratuity Plan are determined by actuarial valuation. Current service costs for the Gratuity Plan are accrued in the year to which they relate.

The following table sets forth the activity and the funded status of the Gratuity Plan and the amounts recognized in the Company's financial statements at the end of the relevant periods:

	December 31	
	2003	2002
	(Successor Basis)	
<b>Change in benefit obligation</b>		
Benefit obligation at the beginning of the period	\$ 132,019	\$ 120,550
Service cost	94,226	8,605
Interest cost	10,938	1,370
Benefits paid	(15,578)	(1,031)
Actuarial (gain) loss	(40,749)	1,446
Effect of exchange rate changes	7,739	1,079
<b>Benefit obligation at the end of the period</b>	<b>\$ 188,595</b>	<b>\$ 132,019</b>
<b>Un-funded amount</b>	<b>\$ 188,595</b>	<b>\$ 132,019</b>
<b>Accrued liability</b>	<b>\$ 188,595</b>	<b>\$ 132,019</b>

Net gratuity cost includes the following components:

	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
		(Successor Basis)	(Predecessor Basis)		(Pre-Predecessor Basis)
Service cost	\$ 94,226	\$ 8,605	\$ 82,342	\$ 19,125	\$ 3,966
Interest cost	10,938	1,370	3,401	501	138
Actuarial (gain) loss	(40,749)	1,446	(13,785)	16,033	4,871
<b>Net gratuity cost</b>	<b>\$ 64,415</b>	<b>\$ 11,421</b>	<b>\$ 71,958</b>	<b>\$ 35,659</b>	<b>\$ 8,975</b>

For the above calculations, a discount rate of 8% has been assumed and salaries are assumed to increase at the rate of 8% per annum.

In 2003, the Company established the Exl Service Inc 401(k) Plan (the "401(k) Plan") under Section 401(k) of the Internal Revenue Code covering all eligible employees, as defined. The Company may make discretionary contributions of up to a maximum of 3% of employee compensation within certain limits. The Company's contribution to the 401(k) Plan amounted to \$6,457 in 2003.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

The Company contributes to Government Provident Fund (a defined contribution plan) on behalf of its employees in India. The assets held by the Government Provident Fund are not reported on the Company's balance sheet. The contributions made to the Government Provident Fund for each period are as follows.

April 1, 2001 to July 31, 2001	\$ 30,802
August 1, 2001 to December 31, 2001	65,894
January 1, 2002 to November 14, 2002	336,929
November 15, 2002 to December 31, 2002	55,702
January 1, 2003 to December 31, 2003	393,587

**9. Leases**

Exl India leases motor vehicles from finance companies. Such leases are recorded as capital leases with interest at rates ranging from 9.0% to 12.5%. Future minimum lease payments under these capital leases at December 31, 2003 are as follows:

Year end December 31:	
2004	\$19,210
2005	17,806
2006	17,806
2007	16,322
<hr/>	
Total minimum lease payments	71,144
Less amount representing interest	11,578
<hr/>	
Present value of minimum lease payments	59,566
Less current portion	14,277
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Long term capital lease obligation	\$45,289
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The Company is conducting its operations using facilities, office furniture and certain equipment under non-cancelable operating lease agreements that expire at various dates through 2007. Future minimum lease payments under these non-cancelable agreements are as follows:

Year end December 31:	
2004	\$ 595,000
2005	477,000
2006	311,000
2007	74,000
<hr/>	
Total minimum lease payments	\$ 1,457,000
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Rent expense under operating leases was \$817,400 and \$90,802 for the year ended December 31, 2003 and the period from November 15, 2002 to December 31, 2002, respectively. For the period from January 1, 2002 to November 14, 2002, the period from August 1, 2001 to December 31, 2001, and the period from April 1, 2001 to July 31, 2001, rent expense was \$700,004, \$364,484 and \$170,132, respectively.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**10. Income Taxes**

The fiscal year under the Indian Income Tax Act ends on March 31. A substantial portion of the profits of the Company's Indian operations qualify for deduction from taxable income because its profits are attributable to undertakings situated in Export Processing Zones. This deduction is available for a period of ten consecutive years beginning from the year in which the respective undertaking commenced commercial operations. Accordingly, Exl India can benefit from this deduction for the years ended March 31, 1999 through March 31, 2009. This deduction terminates if the Company ceases to be an undertaking situated in Export Processing Zones.

With respect to the Company's foreign operations, temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases arose due to difference in depreciation rates of fixed assets and provision for gratuity and vacation pay which are allowable on a cash basis under the Indian Income Tax Act. Since export revenue of Exl India qualifies for a deduction from taxable income, being profits attributable to undertakings situated in Export Processing Zones until March 2009, a substantial portion of the temporary differences would not have any tax consequences as they will reverse within the tax holiday period.

Income (loss) before income taxes and extraordinary item are as follows:

	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
	(Successor Basis)	<i>(Restated)</i>	(Predecessor Basis)		(Pre-Predecessor Basis)
Domestic	\$(1,727,234)	\$(1,543,597)	\$(48,866,042)	\$ (89,471)	\$ (1,062,196)
Foreign	2,021,448	639,149	1,694,178	107,411	(511,877)
	<u>\$ 294,214</u>	<u>\$ (904,448)</u>	<u>\$(47,171,864)</u>	<u>\$ 17,940</u>	<u>\$ (1,574,073)</u>

The provision for income taxes consists of the following:

	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
	(Successor Basis)	<i>(Restated)</i>	(Predecessor Basis)		(Pre-Predecessor Basis)
Domestic	\$ 700,000	\$ —	\$ —	\$ —	\$ —
Foreign	69,554	6,636	94,338	14,289	—
	<u>\$ 769,554</u>	<u>\$ 6,636</u>	<u>\$ 94,338</u>	<u>\$ 14,289</u>	<u>\$ —</u>

The foreign income tax provision represents current taxes on non-exempt income in India and certain withholding taxes. The domestic income tax provision primarily includes \$700,000 related to U.S. Federal alternative minimum taxes ("AMT").

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

The significant components of the net deferred income tax assets and liabilities are as follows:

	December 31	
	2003	2002
Deferred tax assets:		
Net operating loss carryforwards	\$ 1,090,000	\$ 269,000
AMT credit carry forward	700,000	—
Accounts receivable allowances	22,000	129,000
Deferred compensation	305,000	265,000
	2,117,000	663,000
Deferred tax liabilities:		
Depreciation and amortization	18,000	—
	18,000	—
Total gross deferred tax liabilities	18,000	—
Valuation allowance	(2,099,000)	(663,000)
	(2,099,000)	(663,000)
Net deferred tax asset (liability)	\$ —	\$ —

The Company believes that it is more likely than not that the net operating losses and other deferred tax assets will not be realized and, accordingly, has provided a valuation allowance against its net deferred tax assets. The valuation allowance increased by \$1,436,000 and \$663,000 for the year ended December 31, 2003 and the period from November 15, 2002 through December 31, 2002, respectively. At December 31, 2003, the Company has U.S. Federal net operating loss carryforwards for U.S. federal income tax purposes of approximately \$2,500,000, expiring in years through 2023. At December 31, 2003, the Company has AMT credit carry forwards of approximately \$700,000.

The effective tax rate differs from the amount computed by applying the U.S. federal statutory rate to income (loss) before income taxes as follows:

	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
	(Successor Basis)	(Successor Basis)	(Predecessor Basis)	(Predecessor Basis)	(Pre-Predecessor Basis)
Expected tax provision (benefit)	\$ 103,000	\$ (317,000)	\$(16,510,000)	\$ 6,000	\$ (551,000)
Change in valuation allowance	1,436,000	661,000	787,000	38,000	456,000
Impact of tax holiday	(638,000)	(217,000)	(551,000)	(23,000)	179,000
State (benefit) provision, net of federal taxes	(137,000)	(123,000)	(146,000)	(7,000)	(85,000)
Non-deductible goodwill impairment	—	—	16,103,000	—	—
Non-deductible non-cash compensation	—	—	350,000	—	—
Foreign taxes withheld	—	—	55,000	—	—
Other	6,000	3,000	6,000	—	1,000
	6,000	3,000	6,000	—	1,000
Tax provision	\$ 770,000	\$ 7,000	\$ 94,000	\$ 14,000	\$ —

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**11. Stock Based Compensation***Pre-Predecessor Stock Option*

Through July 31, 2001, the Company had a 2000 Stock Option Plan (the "2000 Plan") which allowed for the grant of both incentive stock options and non-qualified stock options. The activity in the 2000 Plan is shown below:

	<u>Number of Shares</u>	<u>Weighted- Average Exercise Price</u>
Outstanding at March 31, 2001	10.72	\$ 51,333
Granted	0.66	51,333
Forfeited	(1.21)	51,333
	<hr/>	
Outstanding at July 31, 2001	10.17	51,333

In connection with the granting of certain stock options to employees during the period from April 1, 2001 to July 31, 2001, the Company recorded deferred stock compensation of \$276,115, representing the difference between the estimated fair value of the common stock and the option exercise price at the date of grant. Deferred stock compensation was amortized over the vesting period of the applicable stock options. The Company recorded amortization of deferred compensation of \$145,723 during the period from April 1, 2001 to July 31, 2001.

In connection with the acquisition of the Company by Consecro as discussed in Note 1, each of the Company's stock options which was outstanding at July 31, 2001 pursuant to the 2000 Plan was converted to an option to purchase a number of shares of Consecro common stock as determined in the Agreement and Plan of Merger by multiplying (i) the number of shares of common stock subject to the Company's options immediately prior to July 31, 2001 by (ii) the exchange ratio. The conversion of the Company's options to Consecro's options was recorded by the Company based on their fair value. In addition, as part of the push down accounting discussed in Note 1, the Company recorded deferred compensation of \$1,015,361 based on the intrinsic value of the options that remained unvested. Compensation expense pushed down to the Company based on the intrinsic value of these options was \$50,000 and \$308,110 for the periods from August 1, 2001 to December 31, 2001 and January 1, 2002 to November 14, 2002, respectively.

*Predecessor Options*

Consecro issued options to purchase its common stock to the Company's employee's subsequent to the Company's acquisition by Consecro. A total of 190,000 options were granted in the period from August 1, 2001 to December 31, 2001, at an exercise price equivalent to the market price of Consecro's common stock at the date of the grant. There were no options granted by Consecro for the period from January 1, 2002 through November 14, 2002.

Prior to selling its equity ownership in Exl Inc in November 2002, Consecro and Exl Inc agreed to pay a cash bonus of \$1,050,000 to all the eligible employees, the amount being determined based on performance evaluation and employee grades and payable only if the employee was still in service at July 31, 2003. The Company recorded \$437,500 as compensation expense in 2002 and the balance of \$612,500 was recorded as part of prepaid expenses at December 31, 2002. The bonus payable of \$1,050,000 was placed in a trust account by the Company.

In 2003, the Company recorded \$342,500 of compensation expense. The remaining balance of \$270,000 pertaining to employees who left Exl Inc prior to July 31, 2003 was returned to the Company.



**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

**Stock Option Plan**

In 2003, the Company instituted a plan under which it may award options to employees, officers, directors, advisory board and consultants to purchase up to 526,316 shares of its Series B common stock. The options vest over a four-year period. The vested options must be exercised within ten years after the vesting date or they expire.

Stock option activity under the Plan is shown below:

	Number of Shares	Weighted- Average Exercise Price
Outstanding at December 31, 2002	—	\$ —
Granted	409,600	0.23
Exercised	—	—
Forfeited	58,325	0.24
Outstanding at December 31, 2003	<u>351,275</u>	0.23
Vested and exercisable at December 31, 2003	—	
Available for grant at December 31, 2003	<u>175,041</u>	

The weighted-average fair value of options issued under the Plan during 2003 was \$0.59, and the weighted-average remaining contractual life of options outstanding and exercisable at December 31, 2003 was 9.34 years.

For options granted to employees in 2003, the Company recorded \$165,409 in deferred compensation, representing the difference between the exercise price of the options on the date of grant and the fair value of the Company's common stock. Deferred compensation is amortized over the vesting period of the related options. For the year ended December 31, 2003, the Company amortized and recorded \$10,405 as compensation expense.

In December 2003, the Company granted an employee options to purchase 20,000 shares of Series B common stock at an exercise of \$5.00 per share outside the Plan. These options vest immediately and expire ten years from the date of grant. For the year ended December 31, 2003, the Company recorded \$12,600 as compensation expense.

**Series A Common Stock**

In 2002, 2,000,000 shares of Series A common stock were purchased by certain officers for an aggregate purchase price of \$2,000. The difference of \$472,270 between the fair value of these shares and the purchase price was recorded as compensation expense in 2002. These shares vest immediately, however, the officers may not transfer their interest in the common stock for a period of two years.

**Series B Common Stock**

In 2003, certain employees purchased 444,538 shares of Series B common stock for an aggregate purchase price of \$102,013. The difference of \$4,890 between the fair value of these shares and the purchase price was recorded as compensation expense in 2003.

**ExlService Holdings, Inc.**  
**Notes to Consolidated Financial Statements (continued)**

***Preferred Stock***

During the period from November 15, 2002 through December 31, 2002, in connection with employment agreements, certain officers purchased 2,993 shares of preferred stock for \$3. The difference between the fair value of these shares and the purchase price, totaling \$299,299, was recorded as a reduction to the carrying value of the preferred stock and is being amortized to compensation expense over the three-year vesting period. For the year ended December 31, 2003 and the period from November 15, 2002 through December 31, 2002, the Company amortized and recorded compensation expense of \$101,420 and \$12,288, respectively.

***Advisory Board Options***

In 2003, the Company granted to members of its advisory board options to purchase 10,000 shares of Series B common stock at an exercise price of \$0.24 per share under the Plan. These options vest over a period of four years and expire ten years from the vesting date. Using the Black-Scholes valuation model, the fair value of these options at December 31, 2003 was determined to be \$55,000. For the year ended December 31, 2003, the Company recorded \$1,750 as compensation expense. The fair value and related compensation expense will be remeasured for the unvested portion of these options at the end of each reporting period until such options are fully vested.

**12. Related Party Transactions**

The Company entered into the following related party transactions:

The Company received services in India for employee training by a company controlled by a stockholder. This company is one of the many companies rendering such services to Exl India. The Company recorded expenses related to these services of \$192,944 and \$14,128 for the year ended December 31, 2003 and for the period from November 15, 2002 through December 31, 2002, respectively. At December 31, 2003 and 2002, the Company had a balance payable of \$23,210 and \$2,613, respectively, related to these services.

The Company recorded expenses related to the services from the same related party of \$24,116 and \$25,053 for the periods from April 1, 2001 through July 31, 2001 and August 1, 2001 through December 31, 2001, respectively.

The Company also entered into a facility lease agreement in India with this related party. The Company recorded rent expense related to the lease of \$3,458 and \$152,542 for the period April 1, 2001 through July 31, 2001 and August 1, 2001 through December 31, 2001, respectively.

The Company received services in India for catering of meals by a company controlled by a stockholder. The Company recorded expenses related to these services of \$31,658 for the year ended December 31, 2003. There is no amount payable at December 31, 2003 related to these services. The services of this company were terminated during 2003.

The Company entered into employment and non-competition agreements with management in November 2002. The initial term of these agreements is three years and the Company has the option to extend the term for two additional one-year periods. These agreements include a base salary of \$300,000 with an annual increase over the period payable to these individuals, a bonus amount and an additional incentive bonus amount as well as certain other fringe benefits. Under the employment and non-competition agreements, the vesting of senior management's portion of senior debt and the preferred stock accelerate upon a liquidity event, as defined. In addition, upon termination of employment under conditions as defined, 25% of certain common stock, as defined, held by such senior management is subject to repurchase by the Company at cost for up to one year and at fair market value if after one year for a two-year period. Such common stock is not subject to repurchase after three years.

**ExlService Holdings, Inc.**

**Notes to Consolidated Financial Statements (continued)**

Senior long-term debt of \$325,000 with a five-year life issued to certain officers is being amortized over a three-year period consistent with the preferred stock issued to such officers. For the year ended December 31, 2003, the Company has recorded compensation expense of \$108,660.

For the year ended December 31, 2003 the Company paid a management fee of \$200,000 to certain investors.

**13. Geographical Information**

Revenues	Year ended December 31, 2003	Period from November 15, 2002 to December 31, 2002	Period from January 1, 2002 to November 14, 2002	Period from August 1, 2001 to December 31, 2001	Period from April 1, 2001 to July 31, 2001
	(Successor Basis)	(Predecessor Basis)	(Predecessor Basis)	(Pre-Predecessor Basis)	(Pre-Predecessor Basis)
United States	\$ 15,927,472	\$ 3,359,772	\$ 23,789,661	\$ 8,667,842	\$ 3,199,787
United Kingdom	11,843,887	—	—	—	—
	<u>\$ 27,771,359</u>	<u>\$ 3,359,772</u>	<u>\$ 23,789,661</u>	<u>\$ 8,667,842</u>	<u>\$ 3,199,787</u>

  

Fixed Assets	December 31	
	2003	2002
United States	\$ 555,793	\$ 6,114
India	4,658,127	229,622
	<u>\$ 5,213,920</u>	<u>\$ 235,736</u>

**14. Commitments and Contingencies**

*Fixed Assets Commitments*

At December 31, 2003, the Company had committed to spend approximately \$3,000,000 under agreements to purchase fixed assets. This amount is net of advances paid in respect of these purchases.

*Other Commitments*

Exl India has been established as an “Export-Oriented Undertaking” enterprise under the “Export Import Policy” (“policy”) formulated by the Government of India. Pursuant to this policy, the Company has benefited from certain incentives on import of capital goods. Under this policy, Exl India must achieve certain export ratios and realize revenues attributable to exports of approximately \$70.86 million over a period of five years.

In the event of Exl India is unable to achieve its commitments over the specified period, Exl India may be required to refund such incentives along with penalties and fines. Management, however, believes that Exl India will achieve these export levels within the required time frame.

**15. Subsequent Events**

In July 2004, NUI Investment Limited, a significant client, invested \$12,500,000 in Exl Service Holdings Inc for the purchase of 526,316 shares of Series A common stock. Net proceeds to the Company were \$12,462,110.

In connection with the execution of a five-year services agreement, the Company issued options to a client to purchase 115,100 shares of Series A common stock at an exercise price of \$12.50 per share in July 2004.

**ExlService Holdings, Inc.**  
**Condensed Consolidated Balance Sheet**  
**September 30, 2004**  
**(Unaudited)**

<b>Assets</b>	
Current assets:	
Cash and cash equivalents	\$ 22,674,085
Restricted cash	319,797
Accounts receivable, net of allowance for doubtful accounts of \$78,322	6,859,905
Employee receivables	964,098
Prepaid expenses	415,880
Other current assets	1,506,846
<b>Total current assets</b>	<b>32,740,611</b>
Fixed assets, net	13,537,109
Restricted cash	131,812
Other assets	2,815,729
<b>Total assets</b>	<b>\$ 49,225,261</b>
<b>Liabilities and stockholders' equity</b>	
Current liabilities:	
Accounts payable	\$ 1,654,984
Deferred revenue	5,431,075
Accrued employee cost	2,779,135
Other accrued expenses and current liabilities	4,322,130
Income taxes payable	1,027,172
Current portion of capital lease obligation	149,483
<b>Total current liabilities</b>	<b>15,363,979</b>
Senior long-term debt	5,325,061
Capital lease obligations, less current portion	374,918
<b>Total liabilities</b>	<b>21,063,958</b>
Preferred stock, \$.001 par value; 55,000 shares authorized:	
45,833.36 Designated as Series A redeemable shares; 45,424 shares issued and outstanding (liquidation preference \$5,470,179)	5,171,842
Stockholders' equity:	
Common stock, \$0.001 par value: 12,000,000 shares authorized:	
10,196,878 Designated as Series A; 10,081,778 shares issued and outstanding	10,081
990,854 Designated as Series B; 528,657 shares issued	529
Additional paid-in-capital	17,207,561
Deferred stock based compensation	(497,879)
Retained earnings	6,559,768
Accumulated other comprehensive loss	(282,274)
	22,997,786
Less: 34,724 shares of Series B common stock held in treasury, at cost	(8,325)
<b>Total stockholders' equity</b>	<b>22,989,461</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 49,225,261</b>

See accompanying notes.

**ExlService Holdings, Inc.**  
**Condensed Consolidated Statements of Operations**  
**(Unaudited)**

	Nine months ended September 30,	
	2004	2003
Revenues	\$ 43,065,181	\$ 19,022,204
Cost of revenues (exclusive of depreciation and amortization)	27,147,012	12,629,874
Gross profit	15,918,169	6,392,330
Operating expenses:		
General and administrative expenses	7,698,672	5,880,025
Selling and marketing expenses	1,126,482	783,607
Depreciation and amortization	2,666,114	163,349
Total operating expenses	11,491,268	6,826,981
Income (loss) from operations	4,426,901	(434,651)
Other income (expense):		
Foreign exchange gain (loss)	(25,088)	449,182
Interest and other income	153,171	162,341
Interest expense	(261,031)	(159,558)
Income before income taxes	4,293,953	17,314
Income tax provision	334,934	740,953
Net income (loss)	3,959,019	(723,639)
Dividends and accretion on preferred stock	(444,269)	(397,687)
Net income (loss) to common stockholders	\$ 3,514,750	\$ (1,121,326)
Basic and diluted earnings (loss) per share to common stockholders:		
Basic	\$ 0.35	\$ (0.12)
Diluted	\$ 0.34	\$ (0.12)
Weighted average number of shares of Series A and Series B common stock used in computing earnings per share:		
Basic	10,160,691	9,713,411
Diluted	10,445,060	9,713,411

See accompanying notes.

**ExlService Holdings, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
**(Unaudited)**

	Nine months ended September 30,	
	2004	2003
<b>Cash flows from operating activities</b>		
Net income (loss)	\$ 3,959,019	\$ (723,639)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation	2,666,114	163,349
Amortization of deferred stock compensation	485,571	163,560
Amortization of deferred financing costs	45,000	52,500
Change in operating assets and liabilities:		
Restricted cash	(183,300)	1,308,224
Accounts receivable	(1,597,463)	(4,003,525)
Prepaid expenses and other current assets	(1,472,238)	548,827
Accounts payable	814,693	(1,102,034)
Deferred revenue	3,514,076	(838,595)
Accrued expenses and other liabilities	3,698,243	1,366,548
Income taxes payable	426,382	857,230
Other assets	(470,329)	(389,176)
Net cash provided by (used in) operating activities	<u>11,885,768</u>	<u>(2,596,731)</u>
<b>Cash flows from investing activities</b>		
Purchase of fixed assets	(10,529,477)	(1,532,416)
Net cash used in investing activities	<u>(10,529,477)</u>	<u>(1,532,416)</u>
<b>Cash flows from financing activities</b>		
Proceeds from issuance of senior long-term debt	—	272,403
Principal payments on capital lease obligations	(54,574)	(12,298)
Proceeds from issuance of preferred stock	—	252,408
Net proceeds from common stock transactions	—	102,014
Proceeds from sale of Series A common stock, net of issuance costs	12,462,110	—
Proceeds from exercise of stock options	114,854	—
Purchase of Series B common stock at cost	(6,217)	—
Net cash provided by financing activities	<u>12,516,173</u>	<u>614,527</u>
Effect of exchange rate changes on cash	152,345	(342,277)
Net increase (decrease) in cash and cash equivalents	14,024,809	(3,856,897)
Cash and cash equivalents at the beginning of the period	8,649,276	15,768,185
Cash and cash equivalents at the end of the period	<u>\$ 22,674,085</u>	<u>\$ 11,911,288</u>
<b>Supplemental disclosure of cash flow information</b>		
Cash paid for interest	\$ 24,573	\$ 4,450
Cash paid for taxes	40,907	37,831
<b>Supplemental disclosure of noncash information</b>		
Long-term debt payable to management	—	325,000
Common stock issued to management	—	474,270
Preferred stock issued to management	—	299,000
Assets acquired under capital lease	521,668	4,242

See accompanying notes.

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**September 30, 2004**

**1. Organization and Basis of Presentation**

***Organization***

ExlService Holdings, Inc. (“Exl Holdings”) was organized as a corporation under the laws of the state of Delaware on October 29, 2002 with the primary objective of acquiring the Exl entities existing on that date. Exl Holdings together with its subsidiaries ExlService.com, Inc. (“Exl Inc”), ExlService.com (India) Private Limited (“Exl India”), Noida Customer Operations Private Limited (“NCOP”) and ExlService (U.K.) Limited (“Exl UK”) (collectively, the “Company”) are principally engaged in the business of developing and deploying business process outsourcing solutions, including transaction-processing services and Internet and voice-based customer care services for its clients primarily in India. The Company’s clients are located principally in the United States and the United Kingdom.

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”) for interim financial reporting and pursuant to the rules and regulations of the Securities and Exchange Commission. Accordingly, such financial statements do not include all of the information and footnotes required by GAAP for complete financial statements. GAAP requires the Company’s management to make estimates and assumptions that affect the amounts reported in the financial statements. Actual results could differ from such estimates.

The interim results presented herein are not necessarily indicative of the results to be expected for the entire year.

In the opinion of the management of the Company, these unaudited condensed consolidated financial statements contain all adjustments of a normal recurring nature necessary for a fair presentation of the financial statements for the interim periods presented. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements of the Company for the year ended December 31, 2003.

**2. Summary of Significant Accounting Policies**

***Fixed Assets***

Fixed assets are stated at cost. Equipment held under capital leases is stated at the present value of minimum lease payments at the inception of the leases. Advances paid towards acquisition of fixed assets and the cost of fixed assets not ready for use before the end of the period are classified as construction in progress.

Fixed assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable through an assessment of the estimated future undiscounted cash flows related to such assets. In the event that assets are found to be carried at amounts, which are in excess of estimated undiscounted future cash flows, the carrying value of the related asset or group of assets is reduced to a level commensurate with fair value based on a discounted cash flow analysis.

Depreciation is computed using the straight-line method over the estimated useful lives of assets. Depreciation on equipment held under capital leases and leasehold improvements is computed using the straight-line method over the shorter of the assets’ estimated lives or the lease term.

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

***Revenue Recognition***

The Company derives revenues from business process outsourcing services which includes processing of transactions and services provided through voice and Internet communication channels. The Company recognizes revenue as services are rendered, provided that persuasive evidence of an arrangement exists, there are no remaining obligations with respect to the services rendered and collection is considered probable. The Company invoices the clients in accordance with the agreed rates and billing arrangements, which consist of time and material, cost plus and unit priced arrangements. The Company recognizes revenue from the last billing date to the balance sheet date as unbilled revenues and recognizes billings in excess of revenues earned or advances received from clients as deferred revenue.

In accordance with EITF 01-14, "Income Statement Characterization of Reimbursements Received for 'Out-of-Pocket' Expenses Incurred," the Company has accounted for reimbursements received for out-of-pocket expenses incurred as revenues in the unaudited condensed consolidated statements of operations. The Company typically incurs telecommunications and travel related costs that are billed to and reimbursed by customers.

Reimbursements of out-of-pocket expenses amounting to \$3,076,185 and \$476,553 for the nine months ended September 30, 2004 and 2003, respectively, are included in revenues.

For the nine months ended September 30, 2004, two clients accounted for 52% and 25% of the Company's total revenues. For the nine months ended September 30, 2003, three clients accounted for 42%, 26% and 24% of the Company's total revenues.

***Earnings Per Share***

Basic earnings per share is computed by dividing income (loss) to common stockholders by the weighted average number of common shares outstanding during each period. In determining the income to common stockholders, net income has been reduced by dividends and accretion on preferred stock. Diluted earnings per share are computed using the weighted average number of common shares plus the potentially dilutive effect of common stock equivalents. Stock options that are anti-dilutive are excluded from the computation of weighted average shares outstanding. Certain options that are currently anti-dilutive may be dilutive in the future.

***Comprehensive Income***

Total comprehensive income (loss) was \$4,029,786 and \$(1,110,583) for the nine months ended September 30, 2004 and 2003, respectively.

**3. Stock Based Compensation**

The Company uses Accounting Principles Board ("APB") Opinion No. 25 and related interpretations to account for stock options granted to its employees. Accordingly, compensation cost is recognized only for stock option awards granted where the exercise price is less than the market value on the date of grant.



**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

Had the compensation cost been recognized based on the fair value at the date of grant in accordance with Statement of Financial Accounting Standard No. 123 "Accounting for Stock Based Compensation" as amended by Statement of Financial Accounting Standard No. 148 "Accounting for Stock-Based Compensation—Transition and Disclosure," the pro-forma amounts of net income (loss) would have been as follows:

	Nine months ended September 30, 2004	Nine months ended September 30, 2003
Net income (loss) to common stockholders	\$ 3,514,750	\$ (1,121,326)
As reported:		
Add stock based employee compensation expense included in reported net income (loss)	71,391	2,421
Less stock based employee compensation expense determined under the fair value method	(151,245)	(4,941)
Pro forma net income (loss) to common stockholders	\$ 3,434,896	\$ (1,123,846)

Basic and diluted earnings (loss) per share to common stockholders:

	Nine months ended September 30, 2004	Nine months ended September 30, 2003
Basic as reported	\$ 0.35	\$ (0.12)
Diluted as reported	0.34	(0.12)
Basic, proforma	0.34	(0.12)
Diluted, proforma	0.33	(0.12)

**Stock Option Plan**

In 2003, the Company instituted the Exl Holdings 2003 Stock Option Plan (the "2003 Plan") under which it may award options to employees, officers, directors, advisory board and consultants to purchase up to 526,316 shares of its Series B common stock. The options vest over a four-year period. The vested options must be exercised within ten years after the vesting date or they expire.

In accordance with the APB 25, the Company recorded compensation expense of \$71,391 and \$2,421 for the nine months ended September 30, 2004 and 2003, respectively, for options granted to the employees under the 2003 Plan representing the difference between the exercise price of the option on the date of the grant and the fair value of the Series B common stock.

During the twelve-month period ended September 30, 2004, the Company granted stock options as follows:

Date of Grant	Number of options granted	Exercise price	Deemed fair value per share	Intrinsic Value per option
December 9, 2003	26,000	\$0.24	\$5.63	5.39
February 5, 2004	42,000	7.50	7.50	—
April 13, 2004	34,100	10.00	14.00	4.00
April 20, 2004	30,000	10.00	14.00	4.00
June 18, 2004	51,500	18.00	21.25	3.25

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

The deemed fair value of the common stock for accounting purposes was based on contemporaneous valuations performed by management as adjusted for the cash sales price of common stock in 2004. Management considered a number of factors in determining the deemed fair value per share including:

- Key Company milestones
- Comparable company and industry analysis
- Third party common stock investments and the impact of those investments on different classes of common stock value
- Anticipated initial public offering price per share and the timing of the initial public offering

***Series B Common Stock***

In 2003, certain employees purchased 444,538 shares of Series B common stock for an aggregate purchase price of \$102,013. The difference between the fair value of these shares and the purchase price totaling \$4,890 was recorded as compensation expense during nine months ended September 30, 2003.

***Preferred Stock***

In 2002, in connection with employment agreements, certain officers purchased 2,993 shares of preferred stock for \$3. The difference between the fair value of these shares and the purchase price, totaling \$299,299, was recorded as a reduction to the carrying value of the preferred stock and is being amortized to compensation expense over the three-year vesting period. For the nine months ended September 30, 2004 and 2003, the Company amortized and recorded compensation expense of \$74,754 and \$74,754, respectively.

***Advisory Board Options***

In December 2003, the Company granted to members of its advisory board options to purchase 10,000 shares of Series B common stock at an exercise price of \$0.24 per share under the Plan. These options vest over a period of four years and expire ten years from the vesting date. The fair value of these options at September 30, 2004 was determined to be \$235,700 using the Black Scholes valuation method. For the nine months ended September 30, 2004, the Company recorded compensation expense of \$48,852 relating to these options. The fair value and related compensation are re-measured for the unvested portion of these options at the end of each reporting period until such options are fully vested.

***Client Options***

In connection with the execution of a five year services agreement, the Company issued options to purchase 115,100 shares of Series A common stock at an exercise price of \$12.50 per share in July 2004. The option is fully exercisable and expires ten years from the date of grant. The \$15.56 per share fair value of the option on the date of issuance, using the Black Scholes valuation model, was approximately \$1,792,000. Such amount is being amortized as a reduction to revenue over the five-year term of the services agreement.

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

The fair value was estimated considering the following assumptions:

Dividend yield	0%
Expected life	5 years
Fair value of stock	\$23.75
Risk free interest rate	4%
Volatility	50%

#### 4. Restriction on Cash Balances and Time Deposits

Restricted time deposits of Exl India as of September 30, 2004 represent amounts on deposit with banks against letters of credit issued by the Company for equipment imports, amounting to \$319,797 maturing through February 2005.

Non-current restricted time deposits represent guarantees against custom and excise bonding issued through a bank amounting to \$131,812 that matures in 2008.

#### 5. Fixed Assets

Fixed assets consist of the following:

	Estimated Useful Life	September 30, 2004
Network equipment, cabling and computers	3	\$ 9,291,803
Leasehold improvements	3-5	3,556,970
Office furniture and equipment	3-5	1,858,598
Motor vehicles	3	621,708
Construction in progress		1,263,953
		<u>16,593,032</u>
Less accumulated depreciation and amortization		<u>(3,055,923)</u>
		<u>\$13,537,109</u>

Construction in progress represents advances paid towards acquisition of fixed assets and the cost of fixed assets not yet placed in service. The cost and accumulated amortization of assets under capital leases at September 30, 2004 is \$621,708 and \$104,915 respectively.

#### 6. Senior Long-Term Debt

On December 13, 2002, certain new investors and members of management acquired senior promissory notes issued by the Company totaling \$4,674,000. The senior promissory notes mature on December 13, 2007. The Company issued additional senior promissory notes to employees of the Company during August 2003 in the amount of \$272,403. Interest on the principal amount is payable on maturity and accrues at a rate equal to the greater of (i) 2.02% semiannually or (ii) LIBOR. The effective interest rate for the nine months ended September 30, 2004 and 2003 was 4.24% and 4.11% per annum, respectively. Accrued interest at September 30, 2004 included in Senior Long-Term Debt is \$378,658.

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

Deferred financing costs, totaling \$300,000, are included in other assets and are being amortized to interest expense through the maturity date of the Senior Long-Term Debt. For the nine months ended September 30, 2004 and 2003, amortization of deferred financing costs amounted to \$45,000 and \$52,500, respectively.

**7. Capital Structure**

***Common Stock***

Holders of Series A common stock have one vote for each share held with respect to all matters voted on by the stockholders of the Company. Holders of Series B common stock do not have any voting rights.

Prior to the occurrence of a conversion event, as defined, the holders of Series B common stock will be converted into Series A common stock initially at a ratio of 1:1. Among other things, a conversion event includes the consummation of a sale of common stock in a public offering registered, as defined.

In July 2004, NUI Investment Limited, a significant client, purchased 526,316 shares of Series A common stock for \$12,500,000. Net proceeds to the Company were \$12,462,110.

***Preferred Stock***

Holders of preferred stock are not permitted or entitled to vote on any matter required or permitted to be voted on by the stockholders of the Company.

Holders of preferred stock have superior liquidation rights compared to the common stockholders. In the event of liquidation, dissolution or winding up of the operations of the Company, the preferred stockholders are entitled to receive a liquidation preference in the distribution of assets. Liquidation preference is equal to \$100 per share plus any accrued and unpaid dividends.

Holders of preferred stock are entitled to receive annual dividends, as and when declared by the Company out of funds legally available equal to 10% of the liquidation preference per share. Such dividends are payable, at the election of the Company, in cash or in the form of an additional liquidation preference and accrue annually, but are to be paid only upon redemption, liquidation or as otherwise declared by the Company. Such dividends are cumulative and accrue on a day-to-day basis, whether or not earned. Cumulative dividends in arrears at September 30, 2004 amounted to \$927,779. The preferred stock is recorded net of issuance costs of \$300,000, which are being accreted over a period of five years. For the nine months ended September 30, 2004 and 2003, accretion of issuance costs amounted to \$45,000 and \$52,500, respectively. In addition, as discussed in Note 3, the carrying value of preferred stock is further reduced by the net unamortized deferred compensation.

The Company may, at its option at any time, redeem all of the preferred stock by giving adequate notice to the holders of preferred stock. Upon the occurrence of a mandatory redemption event, as defined, holders of the preferred stock can cause redemption of all the preferred stock outstanding. Further, if Exl Holdings defaults on any debt or other obligation, automatic redemption of the preferred stock would be triggered. In all instances, the redemption amount will be the liquidation preference. Upon the occurrence of a liquidity event, as defined, the vesting of certain preferred stock granted in connection with employment agreements is accelerated.

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

**8. Employee Benefit Plans**

The Gratuity Plan provides a lump sum payment to vested employees on retirement or on termination of employment in an amount based on the respective employee's salary and years of employment with the Company. Liabilities with regard to the Gratuity Plan are determined by actuarial valuation. Current service costs for the Gratuity Plan are accrued in the year to which they relate.

The following table sets forth the activity and the funded status of the Gratuity Plan and the amounts recognized in the Company's financial statements at the end of the relevant periods:

	<u>Nine months ended September 30, 2004</u>
<b>Change in benefit obligation</b>	
Benefit obligation at the beginning of the period	\$ 188,595
Service cost	100,534
Interest cost	10,009
Benefits paid	(31,994)
Actuarial loss	14,940
Effect of exchange rate changes	(1,710)
	<hr/>
Benefit obligation at the end of the period	\$ 280,374
	<hr/>
Un-funded amount	\$ 280,374
	<hr/>
Accrued liability	\$ 280,374
	<hr/>

Net gratuity cost includes the following components:

	<u>Nine months ended September 30, 2004</u>	<u>Nine months ended September 30, 2003</u>
Service cost	\$ 100,534	\$ 70,670
Interest cost	10,009	8,204
Actuarial (gain) loss	14,940	(30,562)
	<hr/>	<hr/>
Net gratuity cost	\$ 125,483	\$ 48,312
	<hr/>	<hr/>

For the above calculations, a discount rate of 7% and 8% has been assumed and salaries are assumed to increase at the rate of 7% and 8% per annum for September 30, 2004 and 2003, respectively.

In 2003, the Company established the Exl Service Inc 401(k) Plan (the "401 (k) Plan") under Section 401(k) of the Internal Revenue Code covering all eligible employees, as defined. The Company may make discretionary contributions up to a maximum of 3% of employee compensation within certain limits. The Company's contribution to the 401 (k) Plan amounted to \$44,050 and \$0 during the nine months ended September 30, 2004 and 2003, respectively.

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

**9. Leases**

Exl India leases motor vehicles from finance companies. Such leases are recorded as capital leases with interest at rates ranging from 9.0% to 12.5%. Future minimum lease payments under these capital leases at September 30, 2004 are as follows:

<u>Through September 30,</u>	
2005	\$ 207,617
2006	207,617
2007	218,667
2008	2,923
<b>Total minimum lease payments</b>	<b>636,824</b>
Less amount representing interest	112,423
<b>Present value of minimum lease payments</b>	<b>524,401</b>
Less current portion	149,483
<b>Long term capital lease obligation</b>	<b>\$ 374,918</b>

The Company is conducting its operations using facilities, office furniture and certain equipment under non-cancelable operating lease agreements that expire at various dates through the year 2007. Future minimum lease payments under these non-cancelable agreements at September 30, 2004 are as follows:

<u>Through September 30,</u>	
2005	515,000
2006	358,000
2007	120,000
<b>Total minimum lease payments</b>	<b>\$ 993,000</b>

Rent expense under operating leases was \$828,747 and \$384,333 for the nine months ended September 30, 2004 and 2003, respectively.

**10. Income Taxes**

The fiscal year under the Indian Income Tax Act, ends on March 31. A substantial portion of the profits of the Company's Indian operations qualify for deduction from taxable income because its profits are attributable to undertakings situated in Export Processing Zones. This deduction is available for a period of ten consecutive years beginning from the year in which the respective undertaking commenced commercial operations. Accordingly, Exl India can benefit from this deduction for the years ended March 31, 1999 through March 31, 2009. This deduction shall terminate if the Company ceases to be an undertaking situated in an Export Processing Zones. In accordance with the provisions of the Indian Income Tax Act, the Company has estimated deductions for profits attributable to the undertakings situated in Export Processing Zones of approximately \$1,500,000 for the nine months ended September 30, 2004.

With respect to the Company's foreign operations, temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases arose due to difference in depreciation rates of fixed assets and provision for gratuity and vacation pay which are allowable on a cash basis under the Indian Income Tax Act. Since export revenue of Exl India qualifies for a deduction from taxable income, being profits attributable to undertakings situated in Export Processing Zones until March 2009, a substantial portion of the temporary differences would not have any tax consequences as they will reverse within the tax holiday period.

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

The provision for current income taxes consists of the following:

	Nine months ended September 30, 2004	Nine months ended September 30, 2003
Domestic	\$ 268,554	\$ 700,000
Foreign	66,380	40,953
	<u>\$ 334,934</u>	<u>\$ 740,953</u>

The foreign income tax provision represents current taxes on non-exempt income in India. The domestic provision for income tax primarily includes \$268,000 and \$700,000, respectively, related to U.S. Federal alternative minimum taxes (“AMT”). The company utilized approximately \$1,300,000 of net operating loss carry forwards to reduce current taxes otherwise due during the nine months ended September 30, 2004.

The significant components of the net deferred income tax assets and liabilities at September 30, 2004 are as follows:

Deferred tax assets:	
Net operating loss carry forwards	\$ 527,000
AMT Credit carry forward	968,000
Accounts receivable allowances	34,000
Deferred compensation	372,000
	<u>1,901,000</u>
Deferred tax liabilities:	
Depreciation and amortization	21,000
	<u>21,000</u>
Total gross deferred tax liabilities	(1,880,000)
	<u>—</u>
Valuation allowance	(1,880,000)
	<u>—</u>
Net deferred tax asset (liability)	<u>\$ —</u>

The Company believes that it is more likely than not that the net operating losses and other deferred tax assets will not be realized and, accordingly, has provided a valuation allowance against its net deferred tax assets. At September 30, 2004, the Company has net operating loss carryforwards for U.S. federal income tax purposes of approximately \$1,200,000, expiring through 2023 and AMT credit carry forwards of approximately \$ 968,000.

The effective tax rate differs from the amount computed by applying the U.S. federal statutory rate to income before income taxes as follows:

	Nine Months Ended September 30	
	2004	2003
Expected tax benefit (provision)	\$ 1,503,000	\$ 6,000
Change in valuation allowance	(219,000)	1,355,000
Impact of tax holiday benefit	(1,043,000)	(502,000)
State (benefit) provision, net of federal taxes	91,000	(122,000)
Other	3,000	4,000
	<u>\$ 335,000</u>	<u>\$ 741,000</u>
Tax Provision	<u>\$ 335,000</u>	<u>\$ 741,000</u>

**ExlService Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements (Unaudited)**  
**(continued)**

**11. Related Party Transactions**

The Company entered into the following related party transactions:

The Company received services in India for employee training by a company controlled by a stockholder. This company is one of the many companies rendering such services to Exl India. The Company recorded expenses related to these services of \$166,737 and \$180,391 during the nine months ended September 30, 2004 and 2003, respectively. At September 30, 2004, the Company had a balance payable of \$54,640 related to these services.

The Company received services in India for catering of meals by a company controlled by a stockholder. The Company recorded expenses related to these services of \$31,658 during the nine months ended September 30, 2003. The services of this company terminated during 2003.

The Company entered into employment and non-competition agreements with management in November 2002. The initial term of these agreements is three years and the Company has the option to extend the term for two additional one-year periods. These agreements include a base salary of \$300,000 with an annual increase over the period payable to these individuals, a bonus amount and an additional incentive bonus amount as well as certain other fringe benefits. Under the employment and non-competition agreements, the vesting of senior management's portion of senior debt and the preferred stock accelerates upon a liquidity event, as defined. In addition, upon termination of employment under conditions as defined, 25% of certain common stock, as defined, held by such senior management is subject to repurchase by the Company at cost for up to one year and at fair market value if after one year for a two-year period. Such common stock is not subject to repurchase after three years.

Senior long-term debt of \$325,000 with a five-year life issued to certain officers is being amortized over a three-year period consistent with the preferred stock issued to such officers. For the nine months ended September 30, 2004 and 2003, the Company recorded compensation expense of \$81,495 and \$81,495, respectively.

During the nine months ended September 30, 2004, the Company accrued a management fee of \$150,000 payable to certain investors.



Shares

# ExlService Holdings, Inc.

Common Stock



**Citigroup**

**Goldman, Sachs & Co.**

**Merrill Lynch & Co.**

**Thomas Weisel Partners LLC**

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution.**

The following sets forth the estimated expenses and costs (other than underwriting discounts and commissions) expected to be incurred in connection with the issuance and distribution of the common stock registered hereby:

SEC registration fee	\$9,503
NASD fee	8,000
Nasdaq National Market listing fee	*
Printing expenses	*
Accounting fees and expenses	*
Legal fees and expenses	*
Blue Sky fees and expenses	*
Transfer agent fees and expenses	*
Miscellaneous	*
Total	*

\* To be provided by amendment.

**Item 14. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law (the "DGCL") provides, among other things, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the corporation's request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding. The power to indemnify applies (i) if such person is successful on the merits or otherwise in defense of any action, suit or proceeding or (ii) if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The power to indemnify applies to actions brought by or in the right of the corporation as well, but only to the extent of defense expenses, (including attorneys' fees but excluding amounts paid in settlement) actually and reasonably incurred and not to any satisfaction of judgment or settlement of the claim itself, and with the further limitation that in such actions no indemnification shall be made in the event of any adjudication of negligence or misconduct in the performance of his duties to the corporation, unless a court believes that in light of all the circumstances indemnification should apply.

Our amended and restated certificate of incorporation will provide that we shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was at any time from and after the effective date of our plan of reorganization, a director or officer of the corporation or, while a director or officer of the corporation, is or was at any time from and after the effective date of our plan of reorganization, serving at the written request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such

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person; *provided, however*, that we shall be required to indemnify a person in connection with a proceeding (or part thereof) initiated by such person only if the commencement of such proceeding (or part thereof) was authorized by our board of directors.

Section 102 of the DGCL permits the limitation of directors' personal liability to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director except for (i) any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) breaches under section 174 of the DGCL, which relates to unlawful payments of dividends or unlawful stock repurchase or redemptions, and (iv) any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation will limit the personal liability of our directors to the fullest extent permitted by section 102 of the DGCL.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

We maintain directors' and officers' liability insurance for our officers and directors.

Our Underwriting Agreement for this offering will provide that each underwriter severally agrees to indemnify and hold harmless ExlService Holdings, Inc., each of our directors, each of our officers who signs the registration statement, and each person who controls ExlService Holdings, Inc. within the meaning of the Securities Act of 1933 but only with respect to written information relating to such underwriter furnished to ExlService Holdings, Inc. by or on behalf of such underwriter specifically for inclusion in the documents referred to in the foregoing indemnity.

### **Item 15. Recent Sales of Unregistered Securities.**

(a) On December 13, 2002, we issued and sold an aggregate of 7,555,462 shares of Series A common stock and 42,900 shares of Series A preferred stock to certain private equity investors and certain members of senior management, at an aggregate purchase price equal to \$1,791,666.84 and \$4,290,003.00, respectively. These transactions were effected without registration under the Securities Act in reliance on the exemption from registration provided under Section 4(2) promulgated thereunder.

(b) On December 13, 2002, we issued and sold an aggregate of 2,000,000 shares of Series A common stock to certain members of senior management in connection with their employment agreements, at a purchase price of \$0.23 per share or an aggregate price of \$460,000. This transaction was effected without registration under the Securities Act in reliance on the exemption from registration provided under Section 4(2) or Regulation S promulgated thereunder.

(c) On June 25, 2003, we issued and sold an aggregate of 444,538 shares of Series B common stock and 2,524 shares of Series A preferred stock at a purchase price of \$0.23 per share of Series B common stock and \$100.00 per share of Series A preferred stock or an aggregate purchase price of \$354,653.70 to certain employees pursuant to incentive agreements with such employees. These transactions were effected without registration under the Securities Act in reliance on the exemption from registration provided under Section 4(2) or Regulation S promulgated thereunder.

(d) On June 4, 2004, we issued and sold 20,000 shares of Series B common stock to an Executive Officer based in India pursuant to an incentive agreement with said Executive Officer at a purchase price of \$5.00 per share or an aggregate purchase price of \$100,000. This transaction was effected without registration under the Securities Act in reliance on the exemption from registration provided under Regulation S promulgated thereunder.

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(e) On July 1, 2004, we granted options to purchase an aggregate of 115,100 shares of Series A common stock to Prudential Financial Inc., at an exercise price of \$12.50 per share. This transaction was effected without registration under the Securities Act in reliance on the exemption from registration provided under Section 4(2) promulgated thereunder.

(f) On July 22, 2004, we issued and sold an aggregate of 526,316 shares of Series A common stock to NUI Investments Limited, at a purchase price of \$23.75 per share or an aggregate purchase price of \$12,500,000.00. This transaction was effected without registration under the Securities Act in reliance on the exemption from registration provided under Section 4(2) promulgated thereunder.

(g) In accordance with the terms of our certificate of incorporation and our existing stock option plan arrangements, immediately prior to the consummation of this offering, each share of our Series B common stock will be converted automatically into one share of our Series A common stock, and each option to purchase shares of our Series B common stock will be adjusted to become an option to purchase the same number of shares of our Series A common stock. These transactions will be effected without registration under the Securities Act. At our request, the underwriters have reserved up to 5% of the shares of common stock offered in this offering for sale at the initial public offering price to persons who are our directors, officers, certain employees, friends and family members of these persons and certain clients and prospective clients, through a directed share program because such issuance did not represent a sale of securities.

(h) We issued options to purchase a total of 404,600 shares of Series B common stock in 2003 and 257,100 shares of Series B common stock in 2004 to employees, executive officers, members of our advisory board and directors of EXL India under our 2003 Stock Option Plan and 2003 India Employee Stock Option Plan, as described below. All of these issuances were effected without registration under the Securities Act in reliance on the exemption from registration provided pursuant to Rule 701 of the Securities Act.

<u>Date of Grant</u>	<u>Number of options</u>	<u>Exercise price(1)</u>
<u>2003</u>		
April 30	48,275	\$ 0.24
April 30	274,875	\$ 0.23
July 8	40,000	\$ 0.23
September 11	5,000	\$ 0.23
December 9	10,000	\$ 0.24
December 9	26,000	\$ 0.23
<u>2004</u>		
February 5	42,000	\$ 7.50
April 13	34,100	\$ 10.00
April 20	30,000	\$ 10.00
June 18	51,500	\$ 18.00
October 25	6,500	\$ 23.75
December 6	80,000	\$ 23.75
December 18	13,000	\$ 23.75

(1) In 2003, the options to purchase shares under the 2003 India Plan were granted at an exercise price of \$0.23 per share, while the options to purchase shares under the 2003 Plan were granted at \$0.24 per share.

No options were exercised in 2003, and options to purchase 64,831 shares were exercised in 2004.

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### Item 16. Exhibits and Financial Statement Schedules.

<u>Exhibit Number</u>	<u>Description</u>
1.1†	Form of Underwriting Agreement.
3.1†	Form of Amended and Restated Certificate of Incorporation of the Registrant.
3.2†	Form of Amended and Restated By-laws of the Registrant.
4.1†	Specimen Stock Certificate.
4.2†	Form of Registration Rights Agreement to be entered into by and among ExlService Holdings, Inc. and the stockholders named therein.
5.1†	Opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP as to legality of the common stock.
10.1**	Umbrella Agreement, dated as of August 26, 2004, by and among Norwich Union Customer Services (Singapore) Private Limited, ExlService Holdings, Inc., ExlService.com (India) Private Limited and Noida Customer Operations Private Limited.
10.2**	Insurance Services Framework Agreement, dated as of July 29, 2004, by and between Norwich Union Customer Services (Singapore) Private Limited and ExlService Holdings, Inc.
10.3**	Insurance Services Framework Agreement (ISFA), dated as of August 26, 2004, by and between Norwich Union Customer Services (Singapore) Private Limited and ExlService Holdings, Inc.
10.4**	Data Protection Agreement, dated as of July 29, 2004 by and among Norwich Union Customer Services (Singapore) Private Limited, Norwich Union Insurance Limited, ExlService Holdings, Inc. and ExlService.com (India) Private Limited.
10.5**	Data Protection Agreement, dated as of August 26, 2004, by and among Norwich Union Customer Services (Singapore) Private Limited, Norwich Union Insurance Limited, Norwich Union Life Services Limited, ExlService Holdings, Inc., ExlService.com (India) Private Limited and Noida Customer Operations Private Limited.
10.6**	Virtual Shareholders' Agreement, dated as of August 26, 2004, by and among Norwich Union Customer Services (Singapore) Private Limited, ExlService Holdings, Inc., ExlService.com (India) Private Limited and Noida Customer Operations Private Limited.
10.7**	Confidentiality Agreement, dated as of August 26, 2004, by and among Norwich Union Customer Services (Singapore) Private Limited, Norwich Union Insurance Limited, Norwich Union Life Services Limited, ExlService Holdings, Inc., ExlService.com (India) Private Limited and Noida Customer Operations Private Limited.
10.8**	Guarantee and Indemnity, dated as of August 26, 2004, by and between Norwich Union Insurance Limited and ExlService Holdings, Inc.
10.9**	Guarantee and Indemnity, dated as of August 26, 2004, by and between Norwich Union Life Holdings Limited and ExlService Holdings, Inc.
10.10‡	Master Agreement, effective as of November 1, 2002, by and between ExlService Holdings, Inc. and Dell Products L.P.
10.11‡	Statement of Work, effective as of August 2, 2003, by and between ExlService.com Inc. and Dell Products L.P.
10.12*	Stock and Note Purchase Agreement, dated December 13, 2002, by and among ExlService Holdings, Inc., Oak Hill Capital Partners, L.P., Oak Hill Capital Management Partners, L.P., Financial Technology Ventures (Q), L.P., Vikram Talwar and Rohit Kapoor.
10.13*	Employment Contract, dated October 25, 2000, by and between ExlService India Private Limited and Lalit Vij.
10.14*	Employment Contract, dated May 29, 2002, by and between ExlService.com (I) Pvt. Ltd and Deepak Dhawan.

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<u>Exhibit Number</u>	<u>Description</u>
10.15*	Employment Contract, dated July 31, 2002, by and between ExlService.com (I) Pvt. Ltd and Pavan Bagai.
10.16†	Form of Employment and Non-Competition Agreement to be entered into by and among ExlService Holdings, Inc., ExlService.com, Inc., ExlService.com (India) Private Limited and Vikram Talwar.
10.17†	Form of Employment and Non-Competition Agreement to be entered into by and among ExlService Holdings, Inc., ExlService.com, Inc., ExlService.com (India) Private Limited and Rohit Kapoor.
10.18†	Form of ExlService Holdings, Inc. 2004 Stock Option Plan.
10.19†	Form of Award Agreement under 2004 Stock Option Plan.
10.20*	ExlService Holdings, Inc. 2003 India Employee Stock Option Plan.
10.21†	Form of Stock Option Agreement under 2003 India Employee Stock Option Plan.
10.22**	Stock Purchase Agreement, by and between ExlService Holdings, Inc. and NUI Investments Limited, dated July 22, 2004.
10.23**	Stock Purchase Agreement, dated as of November 14, 2002, by and among Oak Hill Capital Partners, L.P., Financial Technology Venture (Q), L.P., Oak Hill Capital Management Partners, L.P., ExlService Holdings, Inc. and Conesco Inc.
10.24**	Supplemental Stockholders Agreement, dated as of December 3, 2004, by and among ExlService Holdings, Inc., TCV V, L.P. and TCV V Member Fund, L.P.
10.25†	Employment Contract, dated January 22, 2004, by and between ExlService.com, Inc. and Shiv Kumar.
21.1*	Subsidiaries of the Registrant.
23.1**	Consent of Ernst & Young LLP.
23.2†	Consent of Paul, Weiss, Rifkind, Wharton & Garrison LLP (included in Exhibit 5.1 to this Registration Statement).
23.3†	Consent of Luthra & Luthra.
24.1*	Powers of Attorney.

\*\* Filed herewith.

† To be filed by amendment.

\* Previously filed.

‡ Confidential treatment has been requested with respect to portions of this exhibit, and such confidential portions have been deleted and replaced with “\*” and filed separately with the Commission pursuant to Rule 406 under the Securities Act.

### **Item 17. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) That, for purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(b) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification

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is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(c) The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.





**EXHIBIT INDEX**

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23.3†	Consent of Luthra & Luthra.
24.1*	Powers of Attorney (included on signature pages of this Part II).

\*\* Filed herewith.

† To be filed by amendment.

\* Previously filed.

‡ Confidential treatment has been requested with respect to portions of this exhibit, and such confidential portions have been deleted and replaced with “\*” and filed separately with the Commission pursuant to Rule 406 under the Securities Act.

DATED 26 August 2004

- (1) NORWICH UNION CUSTOMER SERVICES (SINGAPORE) PTE LTD
- (2) EXLSERVICE HOLDINGS, INC
- (3) EXL SERVICE.COM (INDIA) PRIVATE LIMITED
- (4) NOIDA CUSTOMER SERVICES OPERATIONS PRIVATE LIMITED

UMBRELLA AGREEMENT

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UMBRELLA AGREEMENT

Dated: 26 August 2004

**BETWEEN:**

- (1) **Norwich Union Customer Services (Singapore) Pte Ltd**, a company registered in Singapore with registration number 200303457R and whose registered office is at 4 Shenton Way, #27-02 SGX Centre 2, Singapore 068807 (**“Client”**);
- (2) **Exlservice Holdings, Inc**, a company registered in the State of Delaware and whose principal office is at 350 Park Avenue, 10 Floor, New York, NY 10022 (**“EXL Holdings (US)”**);
- (3) **exl Service.com (India) Private Limited**, a company registered in India at 103A, Ashoka Estate, Barakhamba Road, New Delhi 110 001 with registration number 55-99888 and whose principal office is at A48, Sector 58, Noida, Uttar Pradesh, 201 301, India (**“EXL (India)”**); and
- (4) **Noida Customer Operations Private Limited**, a company registered in India with registered number U72900DL2003PTC122175 and whose registered office is at 103A, Ashoka Estate, Barakhamba Road, New Delhi 110 001 (**“the SPV”**)

**1 DEFINITIONS AND INTERPRETATION**

In this Agreement, unless inconsistent with the context or otherwise specified;

1.1 the following expressions shall have the following meanings:

- |                             |   |   |
|-----------------------------|---|---|
| “this Agreement”            | : | this agreement, as varied from time to time in accordance with its terms, and including all schedules;  |
| “Associated Company”        | : | any holding company from time to time of the Client and any subsidiary from time to time of the Client or of any such holding company and the terms “holding company” and “subsidiary” shall have the meaning given to them by Section 736 of the Companies Act 1985; |
| “Business Day”              | : | a day other than a Saturday or Sunday or public holiday in the United Kingdom, United States of America or India;   |
| “Client UK”                 | : | means an Associated Company which is a UK customer of the Client or its assignee being identified as such in an Insurance Services Work Order;  |
| “Confidentiality Agreement” | : | an agreement between (1) Client, (2) Norwich Union Insurance Limited, (3) Norwich Union Life Services Limited, (4) EXL Holdings (US), (5) EXL India and (6) SPV entered into on the date of this Agreement;   |

“Data Protection Agreement”	:	an agreement between (1) Client, (2) Norwich Union Insurance Limited, (3) Norwich Union Life Services Limited, (4) EXL Holdings (US), (5) EXL India and (6) SPV entered into on the date of this Agreement;
“Effective Date”	:	Has the meaning given to that term in Schedule 1 in the Insurance Services Framework Agreement;
“Force Majeure”	:	has the meaning ascribed to it in clause 7.1;
“Guarantees”	:	the Deeds of Guarantee and Indemnity between EXL Holdings (US) and Norwich Union Insurance Limited and between EXL Holdings (US) and Norwich Union Life Holdings Limited and entered into on the date of this Agreement;
“Guaranteed Obligations”	:	has the meaning given to that term in the Guarantees;
“Insurance Services Framework Agreement (Intra-Group – India)”	:	an agreement between EXL Holdings (US) and EXL India in the form set out in Part 1 of the Schedule;
“Insurance Services Framework Agreement (Intra Group – SPV)”	:	an agreement in the agreed form set out in part 2 of the Schedule to be entered into by EXL Holdings (US) and SPV;
“Insurance Services Framework Agreement”	:	an agreement between Client and EXL Holdings (US) entered into on the date of this Agreement;
“Insurance Services”	:	those services provided under the Insurance Services Framework Agreement, the Insurance Services Framework Agreement (Intra-Group – India), the Insurance Services Work Order No. 1, all other Insurance Services Work Orders and the Insurance Services Framework Agreement (Intra Group – SPV);
“Insurance Services Work Orders”	:	has the meaning given to it in schedule 1 of the Insurance Services Framework Agreement;
“Parties”	:	the parties to this Agreement, and a “Party” means any one of them;
“personal data”	:	has the meaning given to it in the Data Protection Agreement;
“Proposed Completion Date”	:	has the meaning ascribed to it in clause 3.1; and

“Transaction Documents” : the agreements referred to in clause 2.2 together with this Agreement; and

“Virtual Shareholders’ Agreement” : an agreement between Client, EXL Holdings (US), EXL India and SPV entered into on the date of this Agreement.

1.2 references to clauses and schedules are to clauses of and the schedules to this Agreement;

1.3 the schedules form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement;

1.4 words importing gender include each gender;

1.5 references to persons include bodies corporate, firms and unincorporated associations and that person’s legal personal representatives and successors;

1.6 the singular includes the plural and vice versa;

1.7 clause headings are included for the convenience of the Parties only and do not affect its interpretation;

1.8 references to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute; and

1.9 references to any English legal or accounting term for any action, remedy, method of judicial proceeding, legal or accounting document, legal or accounting status, insolvency proceeding, event of incapacity, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept, practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned; and

1.10 any undertaking by any of the Parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing.

## **2 PRELIMINARY STATEMENTS**

2.1 The purpose of this Agreement is to set out the manner in which, and terms on which, the Parties shall enter into various agreements relating to the provision of services by EXL Holdings (US) to the Client, and the management of the SPV.

2.2 The agreements referred to in clause 2.1 are as follows:

2.2.1 the Virtual Shareholders’ Agreement. This agreement sets out terms relating to the management and operation of the SPV, as well as the right for the Client to acquire the shares of SPV;

2.2.2 the Insurance Services Framework Agreement. This sets out the framework under which, and key legal terms upon which, EXL Holdings (US) will provide the Insurance Services to the Client under Insurance Services Work Orders;

2.2.3 the Insurance Services Framework Agreement (Intra-Group - India). This sets out the framework legal terms upon which EXL (India) will provide certain services to EXL Holdings (US) to enable it to comply with its obligations under the Insurance Services Framework Agreement;

- 2.2.4 The Insurance Services Framework Agreement (Intra Group – SPV). This sets out the framework legal terms upon which the SPV will provide certain services to EXL Holdings (US) to enable it to comply with its obligations under the Insurance Services Framework Agreement;
- 2.2.5 the Confidentiality Agreement. This sets out various confidentiality obligations of the Parties and each of the Clients UK;
- 2.2.6 the Data Protection Agreement. This sets out the obligations of the Parties and each Client UK in relation to the export and use of personal data disclosed by or on behalf of the Client and each Client UK; and
- 2.2.7 the Guarantees. These set out the terms on which guarantors on behalf of each Client UK guarantee that the Client will discharge the Guaranteed Obligations as therein described.

### **3 AUTHORISATION OF SPV**

- 3.1 EXL Holdings (US) shall use all reasonable endeavours to ensure that as soon as practicable and in any event by the Effective Date as defined in the Insurance Services Framework Agreement, SPV has all necessary governmental, administrative and regulatory authorisations, licences, permits and consents and all necessary Intellectual Property Rights to enter into and to perform its obligations under the Insurance Services Framework Agreement (Intra Group – SPV).
- 3.2 The reasonable endeavours obligation set out in clause 3.1 shall not apply to the approval set out in clause 3.2.1 or the exemption referred to in clause 3.2.2 and instead, EXL Holdings (US) shall ensure that as soon as practicable and in any event by the Effective Date as aforesaid, SPV has:
  - 3.2.1 obtained approval under Software Technology Parks of India scheme including but not limited to approvals/permissions/authorisations for:
    - (a) status as a 100% export oriented unit;
    - (b) importer exporter code;
    - (c) green card issued by Software Technology Parks of India;
    - (d) income tax registration (PAN number) issued by the income tax accessing officer;
    - (e) central government sales tax registration number allotment made by the central government sales tax authorities;
    - (f) state government sales tax registration number allotment by the local sales tax authorities;
    - (g) service tax registration with the Superintendent of Central Excise;
    - (h) Shops and Establishment Act registration with the local municipal authorities;
    - (i) private bonded warehouse license issued by customs; and
    - (j) import of capital goods; and
  - 3.2.2 obtained exemption from taxation under sections 10A and 10B of the Indian Income Tax Act 1961 and any amending or replacement legislation of a similar nature;



- 3.3 The Client shall:
- 3.3.1 use all reasonable endeavours to ensure that, by the Effective Date as aforesaid, it has all necessary governmental, administrative and regulatory authorisations, licences, permits and consents and all necessary Intellectual Property Rights to enter into and to perform its obligations under the Insurance Services Framework Agreement and any Insurance Services Work Orders and to provide the services it receives under such agreements to each Client UK;
- 3.3.2 co-operate with EXL Holdings (US) by providing such information and assistance as may be reasonably required by EXL Holdings (US) in obtaining any of the approvals referred to in clause 3.1.
- 3.4 If EXL Holdings (US) has not fulfilled all of the requirements of clause 3.1 and 3.2 by the Effective Date and/or the Client has not fulfilled all of the requirements of clause 3.3.1 by the Effective Date then:
- 3.4.1 the Client shall act reasonably in agreeing to an extension of time for the fulfilment of those requirements, if such failure is for reasons which are outside the reasonable control of EXL Holdings (US) and the SPV;
- 3.4.2 the Client may, at its discretion by giving notice to EXL Holdings (US), commence negotiations in good faith with EXL Holdings (US) to agree such changes as may be required to the Transaction Documents to reflect the fact that such requirements cannot be or have not been fulfilled by the Effective Date or by such extended date under 3.4.1.
- 3.5 If:
- 3.5.1 EXL Holdings (US) has not complied with clause 3.1 and 3.2 by the Effective Date as extended in accordance with clause 3.4.1; or
- 3.5.2 having commenced negotiations in accordance with clause 3.4.2, such negotiations are not resolved to the reasonable satisfaction of the Client within 14 days of the Client giving notice to EXL Holdings (US) to commence such negotiations; or
- 3.5.3 for any reason and without prejudice to clause 3.5.1, the requirements of clauses 3.1 or 3.2 are not fulfilled within 12 months of the Effective Date; then the Client may, at its discretion, terminate this Agreement forthwith by notice, in which case the Client may also treat this as a Material Default pursuant to the Insurance Services Framework Agreement and terminate that Agreement and any Insurance Services Work Orders in accordance with clause 14 and 15 of the Insurance Services Framework Agreement.
- 3.6 Notwithstanding clause 3.5, the Client may not terminate this Agreement by reason of EXL Holdings (US) not having complied with clause 3.2 if the reason for such non-compliance is either that:
- (i) the approval or exemption referred to in clause 3.2 are no longer available to any person as a result of a change in Indian law or otherwise; or
- (ii) the Client has disregarded any advice previously given by EXL Holdings (US) and contrary to that advice, has instructed EXL Holdings (US) to do something which is the sole or predominant reason for any approval or exemption referred to in clause 3.2 being refused or removed.

- 3.7 If the Client terminates this Agreement pursuant to clause 3.5:
- 3.7.1 all monies paid by the Client to EXL Holdings (US) to enable EXL Holdings (US) or the SPV to attempt to comply with clause 3.1 or 3.2 shall be returned to the Client, provided however, that EXL Holdings (US) shall be under no obligation to return such amount or any part thereof if, at the date of termination, EXL Holdings (US) can demonstrate to the reasonable satisfaction of Client that such amount or any part thereof, had been properly expended by it or the SPV in seeking to comply with clause 3.1 or 3.2 or that such amount or any part thereof is required to be paid by it or the SPV as a result of seeking to comply with clause 3.1 or 3.2 (including, without limitation, the cost of any legal work wholly and necessarily undertaken by it or the SPV in respect thereof);
- 3.7.2 copies of all work undertaken by or on behalf of EXL Holdings (US) under or in connection with this Agreement, shall be provided to the Client.
- 3.8 For the avoidance of doubt, if this Agreement is terminated by the Client for any reason pursuant to clauses 3.6 above or 4.3 below, then any monies paid by Client to EXL Holdings (US) prior to the signing of this Agreement and used by EXL Holdings (US) or the SPV in attempting to comply with clause 3 should not be returned to the Client.

#### **4 THE TRANSACTION DOCUMENTS**

- 4.1 Forthwith on the signing of this Agreement:
- 4.1.1 EXL Holdings (US) shall, and shall procure that EXL India and SPV as necessary, enter into the Transaction Documents; and
- 4.1.2 Client shall, and shall procure that each Associated Company as necessary, enter into the Transaction Documents.
- 4.2 Within twenty eight (28) days of the Effective Date or as soon as reasonably practical thereafter EXL Holdings (US) and the SPV shall enter into the Insurance Services Framework Agreement (Intra-Group - SPV).
- 4.3 If clauses 4.1.1 and 4.2 have not been fully complied with by the date twenty eight (28) days after the Effective Date, or such date as the Client acting reasonably shall agree to, the Client may elect, in its sole discretion and without prejudice to other rights and remedies available in contract, tort or otherwise to terminate this Agreement forthwith by notice, in which case the Client may also treat this as a Material Default pursuant to the Insurance Services Framework Agreement and terminate that agreement and any Insurance Services Work Order No. 1 in accordance with clause 14 and 15 of the Insurance Services Framework Agreement.
- 4.4 If the Client terminates this Agreement pursuant to clause 4.3:
- 4.4.1 all monies paid by the Client to EXL Holdings (US) to enable EXL Holdings (US) or the SPV to attempt to comply with clauses 3.1, 4.1 or 4.2, shall be returned to the Client provided however that EXL Holdings (US) shall be under no obligation to return such amount or any part thereof if, at the date of termination. EXL Holdings (US) can demonstrate to the reasonable satisfaction of the Client that such amount or any part thereof had been properly expended by EXL Holdings (US) or SPV in seeking to comply with clause 3.1, 4.1 or 4.2 or that such amount or any part thereof is required to be paid by it or the SPV as a result of seeking to comply with clauses 3.1, 4.1 or 4.2 (including, without limitation, the cost of any legal work wholly and necessarily undertaken for it or the SPV in respect thereof);
- 4.4.2 copies of all work undertaken by or on behalf of EXL Holdings (US) under or in connection with this Agreement shall be provided to the Client.

## **5 OTHER FORMALITIES**

- 5.1 As soon as reasonably practical following the execution of the Transaction Documents, the Client shall deliver or make available to EXL Holdings (US):
- 5.1.1 a certified copy of the minutes of a meeting of the board of the relevant Associated Company at which the execution of the Guarantee by that company shall have been approved; and
  - 5.1.2 a certified copy of the minutes of a meeting of the board of the Client at which the Transaction Documents to which it is a party shall have been approved and executed.
- 5.2 As soon as reasonably practical following execution of the same, EXL Holdings (US) shall deliver or make available to the Client:
- 5.2.1 the Insurance Services Framework Agreement and the Insurance Services Work Order No 1 duly executed by EXL Holdings (US);
  - 5.2.2 a copy of the Insurance Services Framework Agreement (Intra Group – India) and the Insurance Services Framework Agreement (Intra Group – SPV).

## **6 CONFIDENTIALITY**

On the date hereof (and simultaneously with delivery of this Agreement and the Confidentiality Agreement duly executed) the Parties shall be deemed to acknowledge the termination of any confidentiality undertaking previously entered into between EXL Holdings (US) and Client UK and in force as at the date hereof in respect of any of the matters dealt with in the Transaction Documents.

## **7 FORCE MAJEURE**

- 7.1 For the purposes of this Agreement, the expression “Force Majeure” shall mean an event which is beyond the reasonable control of an affected Party including, without limitation, any Act of God, war, fire, flood, civil commotion, armed hostilities, act of terrorism, revolution or adverse weather and which such Party could not anticipate or mitigate whether by means of insurance, contingency planning or any other prudent business means. Any event will only be considered Force Majeure if it is not attributable to the wilful act, neglect, default or other failure to take reasonable precautions of the affected Party, its agents, employees or contractors. Industrial dispute or action shall not give rise to an event of Force Majeure. Any item, whether an item of a Party or any third party, failing to operate due to Year 2000 problems shall not give rise to an event of Force Majeure.
- 7.2 No Party shall in any circumstances be liable to the other for any loss of any kind whatsoever, including, but not limited to, any damages, whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 7.3 If any Party shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any failure or delay on its part, it shall promptly notify the other Party by the most expeditious method then available and shall inform the other Party of the period for which it is estimated that such failure or delay shall continue.
- 7.4 It is expressly agreed that any failure by the SPV, EXL (India) or EXL Holdings (US) to perform, or any delay by the SPV, EXL (India) or EXL Holdings (US) in performing, their liabilities, obligations and responsibilities under this Agreement which results from any failure or delay in the performance of its obligations by any person with which the SPV, EXL (India) or EXL Holdings (US) shall have entered into any contract, supply arrangement, sub-contract

or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement, sub-contract or otherwise as a result of circumstances of Force Majeure.

- 7.5 Where EXL Holdings (US), EXL India or SPV is subject to a Force Majeure event which is capable of being rectified or the impact of which is not material in the reasonable opinion of the Client, EXL Holdings (US) shall have three months from the time that event first came to, or should have come to, its attention to notify that event and resume its obligations in full pursuant to this Agreement and any Insurance Services Work Order. If the Force Majeure event, or the consequences of it, have not been rectified within that period, then the Parties shall agree to negotiate in good faith to agree changes to the relevant Insurance Services Work Order which properly reflects the capability of EXL Holdings (US) to perform its obligations pursuant to that Insurance Services Work Order.
- 7.6 For the avoidance of doubt, neither party shall have the right to terminate an Insurance Services Work Order or this Agreement because of a Force Majeure event, except in the circumstances set out in clauses 14.3.5,14.3.6,15.4.11 and 15.4.12 of the Insurance Services Framework Agreement.
- 7.7 For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder or as otherwise expressly provided in this Agreement.
- 7.8 Nothing in this Agreement shall be taken as preventing the Client from using any alternative facilities to meet its business needs during the continuance of Force Majeure.

## **8 TRANSFER OF UNDERTAKINGS**

- 8.1 In this clause 8, the following words shall have the following meanings set opposite them:

“Employee” means any employee of Client or any Associated Company whose contract of employment has effect as if originally made between EXL Holdings (US) or any of its subsidiaries (“the Transferee”) as a result of the application of the Regulations to the transactions contemplated by the Transaction Documents;

“Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended.

- 8.2 In respect of any Employee:

8.2.1 the Transferee may, upon becoming aware of the existence, or alleged existence, of any contract of employment with any such Employee, terminate it forthwith; and

8.2.2 the Client shall indemnify and hold harmless the Transferee against any costs, claims, liabilities and expenses of any nature (including legal expenses on an indemnity basis) arising out of such termination and against any sums payable to or on behalf of such Employee in respect of his employment whether arising before or after the date of this Agreement, including as a result of any failure to inform and consult with the Employee or representatives of the Employee in accordance with the Regulations.

- 8.3 Without prejudice to the foregoing, the Client shall indemnify and hold harmless the Transferee from and against all losses, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses on an indemnity basis) in connection with or as a result of:

8.3.1 any claim or demand by any Employee (whether or not his employment has ended) in respect of any matter whatsoever (including without limitation any claim for breach of

contract or wrongful or unfair dismissal) whether arising before, on or after the date of this Agreement; and

8.3.2 any claim or demand by any trade union, staff association or any other employee representative of any Employee in respect of any matter whatsoever whether arising before, on or after the date of this Agreement.

8.4 Without prejudice to the requirement to indemnify the Transferee under clauses 8.2 and 8.3, where the Transferee is entitled to any indemnity from the Client under this clause 8 the Client may at its entire discretion elect to take over the conduct and defend, settle or compromise any claim referred to within the said indemnity as it sees fit and, in return for the Transferee providing all reasonable assistance to the Client in connection with the conduct of such claim, the Client shall on demand indemnify and hold harmless the Transferee against all claims, costs, demands, liabilities and expenses whatsoever (including the Transferee's reasonable legal and other expenses incurred in co-operating with the Client) arising out of or in connection with the Client so doing.

## **9 ANCILLARY PROVISIONS**

### **9.1 Waiver**

No delay or failure by any of the Parties to exercise any of its powers, rights or remedies under this Agreement shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law. No waiver by any of the Parties of any breach by another of the Parties of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of that or any other provision of this Agreement.

### **9.2 Assignment**

None of the rights or obligations of any Party under this Agreement may be assigned or transferred without the prior written consent of the other Party (Parties) provided that no such consent shall be required in the case of an assignment or transfer of the rights or obligations of Client to any Associated Company and further provided that the Client shall procure that any such Associated Company shall assign or transfer such rights or obligations back to the Client immediately prior to it ceasing to be an Associated Company.

### **9.3 Severability**

If any part of this Agreement is found by any court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

### **9.4 Costs and expenses**

Except as expressly agreed in writing between the Parties, each Party shall pay its own costs and expenses incurred in connection with the preparation, negotiation, execution and implementation of this Agreement and the documents referred to in this Agreement.

### **9.5 Successors and assigns**

This Agreement is binding on and shall apply for the benefit of the Parties' personal representatives, successors in title and permitted assignees.

### **9.6 Entire agreement**

9.6.1 This Agreement together with the Transaction Documents constitutes the entire understanding between the Parties in relation to its subject matter.

9.6.2 Except as otherwise permitted by this Agreement, no change to its terms shall be effective unless it is in writing and signed by or on behalf of all of the Parties.

9.6.3 Except in respect of any fraudulent misrepresentation made by a Party, the Parties acknowledge that they have not relied on any representations, writings, negotiations or understandings, whether express or implied, (other than as set out in this Agreement) in entering into this Agreement.

**9.7 No partnership**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties and neither of them shall have the power to bind the other in any way.

**9.8 Further assurance**

At any time after the date hereof each Party shall do or procure that there shall be done all such acts and things as the other Parties hereto may reasonably require in order to give full effect to this Agreement. Upon demand by the Client, each of EXL Holdings (US), EXL (India) and the SPV will, in accordance with the charging principles set out in schedule 3 of Insurance Services Work Order No. 1, execute and register all further documents and do all such acts and things as the Client shall reasonably require to enable the Client to obtain the full benefit of this Agreement.

**9.9 Counterparts**

9.9.1 This Agreement may be executed in any one or more number of counterparts each of which, when executed, shall be deemed to form part of and together constitute this Agreement.

9.9.2 This Agreement shall be immediately binding and effective when each of the Parties has unconditionally executed either this Agreement or any of those counterparts.

**9.10 Notices**

9.10.1 Any notice or other communication to be given under this Agreement shall either be delivered by hand or sent by first class post pre-paid recorded delivery (or by air mail if overseas) or by a generally recognised international courier service (with relevant fees prepaid) or by facsimile transmission (provided that, in the case of facsimile transmission, the notice is confirmed by being delivered by hand or sent by first class post or by a recognised international courier service within two Business Days after transmission) as follows:

(a) for the Client:

Offshore Operations Director  
Surrey Street  
Norwich NR1 3NG;  
Fax Number: 01603 843344

copy to:

Director of Legal Services  
Norwich Union Legal Services  
Surrey Street  
Norwich NR1 3DR  
Fax Number: 01603 685857

- (b) for EXL Holdings (US):  
Rohit Kapoor, President & CFO  
ExIService Holdings, Inc  
350 Park Avenue, 10<sup>th</sup> Floor  
New York, NY 10022;
- (c) for EXL (India):  
Vikram Talwar  
exl Service.com (India) Private Ltd  
A48, Sector 58  
Noida 201 301 - UP  
India
- (d) for SPV:  
Vikram Talwar  
exl Service.com (India) Private Ltd  
A48, Sector 58  
Noida 201 301 - UP  
India

9.10.2 A Party may change the address or facsimile number or the name of the person for whose attention notices are to be addressed by serving a notice on the other.

9.10.3 In the absence of evidence of earlier receipt, all notices shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by post within the UK, two Business Days after the envelope containing it was posted;
- (c) if sent by international post, seven Business Days after the envelope containing it was posted;
- (d) if sent (with relevant fees prepaid) by a generally recognised international courier service, three Business Days after the envelope containing it was delivered to the relevant international courier; and
- (e) if sent by facsimile, on completion of transmission;

provided that where such delivery or transmission occurs after 5.00 pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9.00 am on the next following Business Day.

#### 9.11 **Governing Law**

This Agreement is governed by and shall be construed in accordance with English law.

#### 9.12 **Jurisdiction**

The Parties irrevocably agree that the courts of England are to have [exclusive] jurisdiction to settle any dispute which may arise out of or in connection with this Agreement. The Parties

irrevocably submit to the jurisdiction of such courts and waive any objection to proceedings in any such court on the ground that the proceedings have been brought in an inconvenient forum.

### **9.13 Appointment of Process Agent**

9.13.1 EXL (India) and EXL Holdings (US) irrevocably appoints Price Waterhouse Coopers LLP, Embankment Place, London WC2 6NN (for the attention of Nigel Fudd) as its agent to accept service of process in England in any legal action or proceedings arising out of or in connection with this Agreement.

9.13.2 If any such process agent ceases to be able to act as such or to have an address in England, EXL (India) and EXL Holdings (US) irrevocably agree to appoint a new process agent in England acceptable to the Client and to deliver to the Client within 10 Business Days a copy of a written acceptance of appointment by the process agent.

9.13.3 The Client irrevocably appoints Client UK as its agent to accept service of process at its registered office at Surrey Street, Norwich, England in any legal action or proceedings arising out of or in connection with this Agreement.

9.13.4 If any such process agent ceases to be able to act as such or to have an address in England, the Client irrevocably agree to appoint a new process agent in England acceptable to EXL Holdings (US) and to deliver to EXL Holdings (US) within 10 Business Days a copy of a written acceptance of appointment by the process agent.

9.13.5 Nothing in this Agreement shall affect the right by any Party to serve process on another Party in any other manner permitted by law or the right to bring proceedings in any other jurisdiction for the purposes of the enforcement or execution of any judgement or other settlement in any other courts.

### **9.14 Exclusion of Contracts (Rights of Third Parties) Act 1999**

Except as expressly provided in this Agreement, the Parties do not intend any of the terms of this Agreement to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

### **9.15 Proper authority etc**

9.15.1 The Client warrants that it is a company duly incorporated, validly existing and in good standing under the laws of Singapore and that this Agreement is executed by duly authorised representatives of the Client.

9.15.2 EXL (India) warrants that it is a company duly incorporated, validly existing and in good standing under the laws of India and that this Agreement is executed by duly authorised representatives of EXL (India).

9.15.3 EXL Holdings (US) warrants that it is a company duly incorporated, validly existing and in good standing under the laws of the State of Delaware and that this Agreement is executed by duly authorised representatives of EXL Holdings (US).

9.16 Without prejudice to clause 8, each of the Parties acknowledges and agrees that save as expressly provided for in this Agreement the only remedy available to it for breach of any provision of this Agreement shall be for damages for breach of contract under the terms of this Agreement and not rescission of this Agreement or damages in tort or under any statute (whether under the Misrepresentation Act 1967 or otherwise) nor any other remedy. However, nothing in this clause 9.16 shall exclude or limit any liability or remedy arising as a result of fraud.



9.17 The Client acknowledges that EXL Holdings (US) is entering into this Agreement for itself and as agent of certain of its subsidiaries (including, for the avoidance of doubt, the SPV). Any losses sustained by those subsidiaries as a result of the Client's failure to perform its obligations under this Agreement or any of the other Guaranteed Documents shall be treated as losses sustained by EXL Holdings (US) which shall be entitled to pursue the remedies provided for in, and in accordance with, this Agreement and the other Transaction Documents in respect of such failure.

This Agreement has been signed on the date first stated on page 1, above.

Signed for and on behalf of **the Client**

By /s/ Paul Robert Faulkner

Name Paul Robert Faulkner

Title Director

Date 30 August 2004

Signed for and on behalf of **EXL Holdings (US)**

By /s/ Rohit Kapoor

Name Rohit Kapoor

Title President and CFO

Date \_\_\_\_\_

By /s/ Vikram Talwar

Name Vikram Talwar

Title Vice Chairman and CEO

Date August 26, 2004

Signed for and on behalf of **EXL (India)**

By /s/ Vikram Talwar

Name Vikram Talwar

Title Vice Chairman and CEO

Date August 26, 2004

Signed for and on behalf of **SPV**

By /s/ Vikram Talwar

Name Vikram Talwar

Title \_\_\_\_\_

Date August 26, 2004

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**SCHEDULE 1**

**Part 1 – Insurance Services Framework Agreement (Intra Group – India)**

**Part 2 – Insurance Services Framework Agreement (Intra Group – SPV)**

**MASTER SERVICES AGREEMENT**

This Master Services Agreement (the “Agreement”), is entered into as of 22nd day of July, 2004 (the “Effective Date”) by and between:

Exl Service.com Holdings, Inc., a Delaware Corporation, having its principal offices at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022 1111 Broadway, Suite 2150, Oakland, CA 94607 (hereinafter referred to as “ExIHoldings”);

and

Noida Customer Operations Private Exl Limited., an Indian Corporation, with its registered office at 103A, Ashoka Estate, Barakhamba Road, New Delhi 110001 (hereinafter referred to as “NCOP”).

**WITNESSTH:**

**WHEREAS**, ExIHoldings is in the business of providing business process outsourcing services including, customer care, transaction processing and software development, primarily for Global 2000 e-commerce and financial services its customers located outside India;

**AND WHEREAS**, NCOP is in the business of providing Internet and voice-based customer care services, transaction processing and software development;

**AND WHEREAS**, ExIHoldings desires that NCOP assist ExIHoldings by performing Internet and voice-based customer care services, transaction processing and software development for the customers of ExIHoldings (hereinafter referred to as “Services”);

and

**AND WHEREAS**, NCOP has agreed to provide the Services for the customers of ExIHoldings on the terms and conditions set forth herein below;:

**NOW, THEREFORE**, in consideration of the representations, and covenants contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, ExIHoldings and NCOP hereby agree as follows:

- 1. Term.**

The initial term of this Agreement shall be three (3) months beginning on the Effective Date. This Agreement shall automatically renew for additional successive three months terms unless one party provides to the other party, 90 days advance written notice of its intention to terminate this Agreement.
- 2. Services.**
  - 2.1 During the term of this Agreement, NCOP shall provide for the customers of ExIHoldings, the Services identified in the statement of services (each a “Statement of Services”) executed, between NCOP and ExIHoldings, from time to time pursuant to this Agreement. Each Statement of Services shall be annexed to and form part of this Agreement.
  - 2.2 Unless otherwise specifically agreed in the Statement of Services, each Statement of Services, shall be governed by, and be deemed to incorporate the terms and conditions of, this Agreement. Statement of Services shall define the scope of the Services and the applicable Charges. Statement of Services may be amended from time to time by the written agreement of the parties.
  - 2.3 NCOP shall provide the Services in accordance with the Statement of Services and shall meet all the specific requirements of the customers of ExHoldings.

**3. Charges and terms of payment.**

- 3.1 ExlHoldings shall pay charges (the "Charges") to NCOP, for the Services provided at the rates agreed in each of the Statement of Services.
- 3.2 In addition to the Charges, ExlHoldings shall pay to NCOP any applicable service tax and/or other statutory taxes that are charged on the Services provided under this Agreement.
- 3.3 The Charges payable for the Services performed pursuant to this Agreement, shall be invoiced by NCOP, on a monthly basis, or on such other basis as mutually agreed, and shall be due within ninety (90) days of receipt of such invoice by ExlHoldings.

**4. Rights and obligations.**

- 4.1 NCOP shall provide the Services strictly in accordance with the Statement of Services and NCOP shall, to the extent applicable, comply with and be bound by all the terms of the agreements referred in the Statement of Services.
- 4.2 Unless otherwise agreed in the Statement of Service, ExlHoldings shall have exclusive title to all copyrights, patents, trade secrets, or other intellectual property rights associated with any software, procedure, work-flow, reports, manuals, visual aids, ideas, concepts, techniques, processes, inventions etc., developed or created by NCOP or its employees or contractors during the course of performing Services under this Agreement (hereafter "Work Products"). As to Work Products that may be legally protected, ExlHoldings shall arrange for the application and execution of letters patent and for the perfection of all other necessary protection for the rights to products and product lines.
- 4.3 NCOP shall maintain clear, complete and accurate records reflecting its costs of performing services pursuant to this Agreement. ExlHoldings shall have the right to examine and audit such records at reasonable times and upon reasonable notice. The amount of compensation paid by ExlHoldings to NCOP shall be properly adjusted to compensate for any errors and omissions disclosed by any such examination or audit.
- 4.4 The parties intend that ExlHoldings shall bear all risk associated with the development of intangible property pursuant to this Agreement.

**5. Relationships.**

- 5.1 Neither party to this Agreement is constituted an agent, employee or servant of the other party for purposes of this Agreement. Each party shall conduct its business in its own name and shall be solely responsible for its own acts, conduct and expenses and for the acts, conduct and expenses of its employees and agents.
- 5.2 For the term of this Agreement, NCOP shall not either on its own account or jointly in conjunction with or on behalf of any person, whether directly or indirectly, solicit business, entice clients, or interfere with the relationship between ExlHoldings and its' customers and clients, where it has dealt with such customers and clients in relation to the business of ExlHoldings.

**6. Confidentiality.**

- 6.1 The parties shall exercise utmost diligence in keeping confidential all the confidential, sensitive or other information of each other, that of the customers of ExlHoldings or the clients of the customers of ExlHoldings, and shall not make copies of any of the information or materials that may come to their attention/notice. Both Parties shall ensure that its employees, representatives shall not at any time, without the consent of the other in writing, divulge or make known any trust, accounts, matter or transaction undertaken or handled by either party and shall not disclose to any person information relating to the affairs of each other. This Clause does not apply to information, which is or becomes public knowledge, otherwise than

through the acts/omissions of either party or their representatives/employees.

- 6.2 If a subpoena or other legal process concerning confidential information is served upon NCOP, it shall notify ExlHoldings immediately and shall cooperate in any lawful effort of ExlHoldings or its customers to contest the legal validity of such subpoena or other legal process.
- 6.3 To the extent applicable, NCOP shall strictly adhere to and be bound by the terms of the confidentiality and non-disclosure agreements that ExlHoldings may have entered into with its customers and clients, copies of which shall be duly provided by ExlHoldings to NCOP.
- 6.4 The obligations of clauses 6.1 to 6.3 shall survive termination or cancellation of this Agreement.

#### **7. Termination.**

- 7.1 Unless expressly set forth in an applicable Statement of Service, ExlHoldings may terminate for convenience this Agreement, any Statement of Service or any portion of such Statement of Service at any time for any reason upon thirty (30) days advance written notice to NCOP.
- 7.2 NCOP may terminate this Agreement in the event ExlHoldings materially breaches any provisions of this Agreement and such breach is not cured within sixty (60) days after written notice is given to ExlHoldings.
- 7.3 Either party may immediately terminate this Agreement by giving written notice to the other party if the other party is insolvent or has a petition brought by or against it under the insolvency laws of any jurisdiction; if the other party makes an assignment for the benefit of creditors; if a receiver, trustee or similar agent is appointed with respect to any property or business of either party.

#### **8. Miscellaneous provisions.**

- 8.1 This Agreement shall be interpreted and construed in accordance with the laws of the State of New York. Any action brought to resolve disputes arising from the interpretation or construction of this Agreement, or to enforce this Agreement, shall be mutually resolved by the senior officers of the parties, failing which this can be referred to a sole arbitrator mutually agreed and if not resolved thereafter, such dispute shall be brought in a court of appropriate jurisdiction in the State of New York. The successful party in any such action shall be entitled to recover from the unsuccessful party, in addition to any other relief to which the party may be entitled, reasonable attorneys' fees and costs incurred in prosecuting or defending such action.
- 8.2 Neither party shall be responsible for failure or delay in performing any obligation under this Agreement due to causes beyond its control, including, but not limited to, fire, storm, flood, earthquake, explosion, accidents, acts of public enemies, war, insurrection, salvage, epidemic, quarantine, restrictions, embargoes, failures or delays in transportation, acts of God, laws, rules, regulations, directions or restrictions of any local or national government or any agency thereof, or any order of any court of competent jurisdiction.
- 8.3 Any provision that is prohibited by the laws of any jurisdiction in which this Agreement may be used or to which it may be applicable shall be, as to such jurisdiction, ineffective to the extent of such prohibition, without invalidating thereby any of the remaining provisions of this Agreement.
- 8.4 This Agreement supersedes and cancels all prior discussions, agreements and understandings with respect to the subject matter hereof between the parties, written, oral or implied, and evidences the entire agreement of the parties.
- 8.5 This Agreement may not be assigned by either party except with the other party's written consent; provided, however, either party may assign this Agreement to a successor in ownership of substantially the whole of the assigning party's business or to a company controlled by, or which controls, the assigning party or which is under common control with the assigning party, whether presently existing or hereafter formed. This Agreement shall inure to the benefit of and be binding upon the permitted assignees of the parties.

- 8.6 Any notice required or contemplated by this Agreement shall be in writing, by facsimile, hand delivery, courier, or by registered mail with return receipt requested, addressed to the parties at their addresses set forth in the initial paragraph of this Agreement or at such other address as may from time to time be substituted therefore by notice in writing sent by the party changing its address.
- 8.7 Either party reserves the right to propose amendment or modification, of the terms of this Agreement or any part of it by giving the other party a notice in writing. No variation, amendment, modification or addition to this Agreement shall be effective or binding on either of the parties unless set forth in writing and executed by them through their authorised representatives.
- 8.8 If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, or Clauses contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect.
- 8.9 Failure of either party to enforce or take advantage of any provision hereof shall not constitute a waiver of the right subsequently to enforce or take advantage of such provision. This Agreement or any of the terms or provisions thereof may not be changed or amended or waived, in any way whatsoever, except by written agreement executed by the parties.

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

**ExService Holdings, Inc.**

**Noida Customer Operations Private Ex Limited**

By  /s/  
Signature

By  /s/  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title



DATED 29 July 2004

- (1) NORWICH UNION CUSTOMER SERVICES (SINGAPORE) PRIVATE LIMITED
- (2) EXLSERVICE HOLDINGS, INC

INSURANCE SERVICES FRAMEWORK AGREEMENT

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# INSURANCE SERVICES FRAMEWORK AGREEMENT

Dated: 29 July 2004, effective from August 1, 2004

## BETWEEN:

- (1) **Norwich Union Customer Services (Singapore) Private Limited**, a company registered in Singapore with registration number 200303457R and whose registered office is at 4 Shenton Way, #01-01 SGX Centre 2, Singapore 068807 (the “**Client**”); and
- (2) **Exlservice Holdings, Inc**, a company registered in the State of Delaware and whose principal office is at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022 (“**EXL Holdings (US)**”).

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless inconsistent with the context or otherwise specified, the definitions set out in schedule 1 shall apply.
- 1.2 References to clauses and schedules are to clauses of and the schedules to this Agreement.
- 1.3 The schedules form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement.
- 1.4 References to paragraphs are to the paragraphs of an Insurance Services Work Order.
- 1.5 Words importing gender include each gender.
- 1.6 References to persons include bodies corporate, firms and unincorporated associations and that person’s legal personal representatives and successors.
- 1.7 The singular includes the plural and vice versa.
- 1.8 Clause headings are included for the convenience of the Parties only and do not affect its interpretation.
- 1.9 References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute.
- 1.10 References to any English legal or accounting term for any action, remedy, method of judicial proceeding, legal or accounting document, legal or accounting status, insolvency proceeding, event of incapacity, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept, practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned.
- 1.11 Any undertaking by either of the Parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing.

## **2 EXISTING AGREEMENTS**

- 2.1 With effect from the Effective Date, the following agreements (the “Existing Agreements”) shall terminate:
- 2.1.1 an Umbrella Agreement dated 28 May 2003;
  - 2.1.2 an Insurance Service Framework Agreement dated 28 May 2003;
  - 2.1.3 Work Order No 1 dated 2 June 2003;
  - 2.1.4 Guarantee and Indemnity dated 25 July 2003; and
  - 2.1.5 Data Protection Agreement dated 25 July 2003.

## **3 INSURANCE SERVICES WORK ORDERS**

- 3.1 Where the Client and EXL Holdings (US) agree to enter into a contract for the provision of services the Parties shall, subject to clause 3.3, complete an Insurance Services Work Order. For the avoidance of doubt, only Vikram Talwar and Rohit Kapoor, or such other persons who have been specifically identified to Client by EXL Holdings (US), shall be authorised to sign any Insurance Services Work Orders on behalf of EXL Holdings (US).
- 3.2 Each Insurance Services Work Order shall incorporate the terms of this Agreement as specified in the Insurance Services Work Order. Otherwise, the provisions of this Agreement shall only apply in agreements between the Parties where expressly stated to so apply.
- 3.3 EXL Holdings (US) shall not be under any obligation to agree to any new Insurance Services Work Order which would result in any financial arrangements which are in excess of the amount covered by the Guarantee.

## **4 THE SERVICES**

- 4.1 EXL Holdings (US) shall supply each of the Insurance Services as set out in an Insurance Services Work Order to the Client in accordance with the terms of the Insurance Services Work Order.
- 4.2 Subject to the Contract Change Control Procedures, EXL Holdings (US) and the Client shall comply with the agreed Project Timetable set out in the applicable Insurance Services Work Order.
- 4.3 Where the Client wishes to pass on the Insurance Services to an Authorised Agent, Associated Company or Authorised User, EXL Holdings (US) shall as directed by the Client, supply the Insurance Services so that Client can pass them on or procure that they are passed on to that Authorised Agent, Associated Company or Authorised User as the case may be provided that the obligations of EXL Holdings (US) in respect thereof shall be to Client and not the Authorised Agent, Associated Company or Authorised User. The Client shall procure that such Authorised Agent, Authorised Company or Authorised User shall, as necessary, comply with any obligations set out in the relevant Insurance Services Work Order which the parties are agreed as being necessary for these purposes.
- For the avoidance of doubt, it is expressly understood that Client (and not any Associated Companies, Authorised Agents or Authorised Users) shall be responsible for the payment of the Charges.
- 4.4 In the event that any Associated Company which receives the Insurance Services (or any part thereof) pursuant to clause 4.3 ceases to be an Associated Company of the Client (hereafter the “Divested Entity”) the Divested Entity shall (subject to the Client’s prior written agreement and subject to the Divested Entity being required by the Client to comply with all obligations, the Client remaining responsible for such compliance by the Divested Entity on it pursuant to this Agreement) be permitted to continue to receive the Insurance Services via or as directed by the Client for a period of one year from the date it so ceases to be an Associated Company of the Client.

- 4.5 The Insurance Services supplied under an Insurance Services Work Order shall be provided from the Insurance Centre.
- 4.6 EXL Holdings (US) shall not alter the location of the Insurance Centre without the prior written consent of the Client, such consent not to be unreasonably withheld.
- 4.7 For the avoidance of doubt, nothing in this Agreement or in any Insurance Services Work Order shall require or permit EXL Holdings (US) to bind the Client or any Associated Company to a contract of insurance to be underwritten by the Client or such Associated Company nor to enter into any such contract on behalf of the Client or such Associated Company, nor to collect any insurance premiums in respect of a contract of insurance underwritten by the Client or such Associated Company.
- 4.8 The Client agrees to comply with the Minimum Commitment. If in any continuous period of 12 months following the Effective Date the amount of the Management Fee paid to EXL Holdings (US) in that period pursuant to Schedule 3 is less than the amount of the Management Fee that would have been so paid had the Minimum Commitment been complied with, the Client agrees to pay to EXL Holdings (US) such difference within 21 days of receipt of a valid invoice prepared in accordance with clause 13 below. Any dispute between the parties as to whether the Minimum Commitment has been complied with or, if it has not, the amount of any difference so due to EXL Holdings (US) pursuant to this clause 4.8 shall be determined in accordance with clause 13.8 below. For the avoidance of doubt, the right to payment of the difference as described above, shall be EXL Holdings (US)' sole remedy in the event of the Client not complying with the Minimum Commitment.

## **5 COMMENCEMENT AND TERM**

- 5.1 This Agreement shall take effect on the Effective Date and shall continue for a minimum period of five (5) years unless and until terminated in accordance with the terms of this Agreement.
- 5.2 Each Insurance Services Work Order shall take effect on its Commencement Date and shall continue for the duration specified in that Insurance Services Work Order (in relation to each such Insurance Services Work Order, the "**Term**") unless and until terminated in accordance with the terms of this Agreement or the relevant Insurance Services Work Order or extended in accordance with clause 6.1.

## **6 EXTENSION OF TERM**

- 6.1 The Client may, at its sole option, extend the Term of an Insurance Services Work Order by such period as the Client requires (but not being less than three months) and (subject to the Parties reaching agreement on any maximum aggregate extension and on the Charges to apply to such extension), by serving notice on EXL Holdings (US) no less than three months prior to the date upon which the Term, or extended Term would otherwise expire. Subject to that minimum period for each extension and that maximum aggregate extension and the provision of such notice, the Client may extend the Term of an Insurance Services Work Order as many times as it requires. For the avoidance of doubt, nothing in this clause 6.1 shall require EXL Holdings (US) to agree to such extension if, for reasons beyond its control, it is unable to provide Insurance Services under that Insurance Services Work Order during the extended period.

## **7 ACCEPTANCE TESTING**

- 7.1 This clause 7 shall apply to all Deliverables specified in paragraph 5 of an Insurance Services Work Order.
- 7.2 EXL Holdings (US) shall complete the Deliverable, carry out its own successful internal tests of the Deliverable and notify the Client that it has done so as soon as reasonably practicable

and in any event by the date specified in paragraph 5 of the applicable Insurance Services Work Order and the Client shall start to carry out Acceptance Tests of the Deliverable in accordance with the Acceptance Tests. The Client shall use its reasonable endeavours to complete the Acceptance Tests within the specified time after receiving notification that EXL Holdings (US) has completed the Deliverable, where the "specified time" means that period specified for these purposes in paragraph 5 of the applicable Insurance Services Work Order. EXL Holdings (US) shall provide the assistance in respect of such Acceptance Testing as set out in the relevant Insurance Services Work Order and EXL Holdings (US) shall be permitted to be present at such Acceptance Tests.

- 7.3 If, and only if, in the reasonable opinion of the Client, the Deliverable meets all of the Acceptance Criteria, the Deliverable shall have passed its Acceptance Tests. The only evidence of such acceptance shall be an acceptance certificate in the form set out in paragraph 5 of the applicable Insurance Services Work Order signed by the Client or else a written decision to that effect from an expert appointed pursuant to clause 7.9 below.
- 7.4 If the Deliverable does not pass its Acceptance Tests, the Client shall provide to EXL Holdings (US) reasons for such failure. Except where the Acceptance Test Due Date has passed or passes prior to the Deliverable passing the Acceptance Tests (in which case clauses 7.5 and 7.6 shall apply), EXL Holdings (US) shall be given the opportunity to correct any errors in the Deliverable and resubmit the Deliverable for Acceptance Testing in accordance with clauses 7.2 and 7.3. In such circumstances, this clause 7.4 shall also apply to such resubmission.
- 7.5 Where there has been a Fundamental Failure on the part of EXL Holdings (US) to pass the Acceptance Tests, without prejudice to the Client's other rights and remedies (including but not limited to the right to claim contractual damages), the Client may terminate this Agreement or the relevant Insurance Services Work Order without any cost or liability whatsoever.
- 7.6 Save where there has been a Fundamental Failure on the part of EXL Holdings (US) to pass the Acceptance Tests, if the Deliverable has not passed the Acceptance Tests by the Acceptance Test Due Date, the Client shall extend the Acceptance Test Due Date for such reasonable period as the Client may specify in which case clause 7.7 shall apply.
- 7.7 In the event that the Client extends the Acceptance Test Due Date pursuant to clause 7.6 in circumstances where the failure to pass the Acceptance Tests is for a reason within the reasonable control of EXL Holdings (US) (but not otherwise) EXL Holdings (US) shall pay to the Client the daily rate for such Deliverable specified in paragraph 6 of the applicable Insurance Services Work Order for each day or part thereof for the period beginning on the original Acceptance Test Due Date and ending on the date upon which:
- 7.7.1 the applicable Insurance Services Work Order is terminated pursuant to clause 7.5 or 7.8; or
- 7.7.2 the Deliverable passes the Acceptance Tests pursuant to clause 7.3.
- 7.8 In the event that the Client extends the Acceptance Test Due Date pursuant to clause 7.6 and the Deliverable has not passed the Acceptance Tests by such extended Acceptance Test Due Date, the Client may, at its sole option, reapply clause 7.6 or alternatively terminate the applicable Insurance Services Work Order.
- 7.9 Any dispute as to whether or not a Deliverable meets all of the Acceptance Criteria shall be referred to the Director Offshore Operations for the Client and the Vice Chairman & Chief Executive Officer for EXL Holdings (US) who shall in good faith attempt to resolve such dispute within 14 days. If such persons fail to reach agreement the dispute shall be referred to the Independent Accountants at the request of either Party. The Independent Accountants shall act as an expert and not an arbitrator and decision shall (in the absence of clerical or manifest error) be final and binding on the parties. The Independent Accountant's fee for so acting shall be borne in equal shares by the Parties unless it

determines that the conduct of one of them is such that such Party should bear all or a greater proportion of those expert's fees.

## **8 SERVICE LEVELS AND SERVICE CREDITS**

- 8.1 EXL Holdings (US) shall perform the Insurance Services under an Insurance Services Work Order in accordance with the Service Levels set out in such Insurance Services Work Order.
- 8.2 Subject to clause 8.3, the Service Levels in respect of the Insurance Services to be provided under a particular Insurance Services Work Order shall be set by reference to the results of a pilot exercise undertaken by the Parties prior to signing that particular Insurance Services Work Order.
- 8.3 The Client shall have the right to require that the Service Levels in respect of the Insurance Services to be provided under a particular Insurance Services Work Order are set by reference to the equivalent service levels applicable to a similar service provided by Client UK or Other UK Clients from their operations in the United Kingdom, provided that EXL Holdings (US) has been provided with information as to those equivalent UK service levels. Where the Client exercises its rights under this clause 8.3, clause 8.2 shall not apply
- 8.4 Where EXL Holdings (US) meets or exceeds the relevant Service Levels the variable profit element determined in accordance with schedule 3 shall be applied to the Charges pursuant to the relevant Insurance Services Work Order.
- 8.5 Where EXL Holdings (US) fails to achieve the Service Levels then, without prejudice to the Client's other rights and remedies (including, but not limited to the right to claim damages and terminate the applicable Insurance Services Work Order):
- 8.5.1 if requested by the Client, EXL Holdings (US) shall arrange all such additional resources as are reasonable and necessary to perform the Insurance Services in accordance with the Service Levels as early as practicable after any failure to achieve the Service Levels;
- 8.5.2 EXL Holdings (US) shall correct the fault which caused the failure or re-perform any of the Insurance Services which have not met their applicable Service Level, in either case as soon as reasonably practical to do so; and
- 8.5.3 where such failure is wholly or predominantly due to matters which were or should reasonably have been within the control of EXL Holdings (US), the variable profit element and the Charges shall be reduced in accordance with schedule 3.

## **9 EXL HOLDINGS (US) PROPERTY**

EXL Holdings (US) shall be required to make available such of its property (including, but not limited to, office and call centre premises and other buildings, machinery, office equipment, computer hardware and software, telephone and other equipment) as is necessary to enable it to perform its obligations pursuant to an Insurance Services Work Order. In addition, the Parties may specify particular assets of EXL Holdings (US) ("EXL Holdings (US) Property") in paragraph 15 of an Insurance Services Work Order which shall be dealt with in accordance with that Insurance Services Work Order.

## **10 CLIENT ASSETS**

- 10.1 The Parties may specify particular assets of the Client (the "Client Assets") in paragraph 14 of an Insurance Services Work Order which shall be dealt with in accordance with that Insurance Services Work Order. In addition, the parties may agree from time to time that the Client shall provide to EXL Holdings (US) additional assets from time to time (such assets, if provided, shall also be deemed Client Assets).

## 11 TRADE MARK LICENCE, THIRD PARTY LICENCES AND OTHER AGREEMENTS

- 11.1 Subject to the restrictions set out in clauses 11.2 to 11.8 and this clause 11.1, the Client grants to EXL Holdings (US) a royalty free non-transferable, non-exclusive licence for its Sub-Contractors to use the Trade Marks solely for the purposes of branding the physical interior (but not the exterior) of any property during any period during which EXL Holdings (US) is providing services under an Insurance Services Work Order from such property and for no other purpose (the “**Trade Mark Licence**”).
- 11.2 Except for the purposes of allowing its Sub-Contractors to use the Trade Marks as set out in clause 11.1, the Trade Mark Licence is personal to EXL Holdings (US) and may not be sub-licensed, assigned or otherwise transferred to any third party, including, but not limited to any Sub-Contractors.
- 11.3 The Trade Mark Licence may be terminated at any time immediately by notice from the Client to the EXL Holdings (US) in the event that:
- 11.3.1 EXL Holdings (US) is in material breach of that licence;
- 11.3.2 this Agreement has been terminated by either Party pursuant to its terms (provided that such licence may continue after termination of this Agreement for so long as EXL Holdings (US) continues to provide Services under any Insurance Services Work Order),
- following which the EXL Holdings (US) shall forthwith remove all materials bearing or containing the Trade Marks from the relevant property and, at the Client’s option, promptly destroy such materials or return them to the Client.
- 11.4 EXL Holdings (US) shall, at the Client’s request and expense, execute and take all steps reasonably required for the registration or recordal of the Trade Mark Licence in respect of the Trade Marks. EXL Holdings (US) agrees that any such registration or recordal may be cancelled by the Client on the termination of the Trade Mark Licence and that EXL Holdings (US) will assist the Client so far as is necessary to achieve such cancellation by executing any necessary documents or doing any necessary acts in connection with it.
- 11.5 EXL Holdings (US) undertakes with the Client that:
- 11.5.1 it will use the Trade Marks only in compliance with such quality standards as the Client may from time to time reasonably require by written notice to the EXL Holdings (US);
- 11.5.2 it will only use the Trade Marks in such form as may from time to time be reasonably approved by the Client having regard to the shaping, printing style, colour and quality of materials used to display the Trade Marks;
- 11.5.3 it will not use or seek to register any other trade or service marks which are similar to or substantially similar to or so nearly resemble the Trade Marks as to be likely to cause deception or confusion;
- 11.5.4 it will where reasonably required by the Client in writing include on documentation and material referred to in clause 11.5.2 a statement that the relevant Trade Mark is the registered trade mark of the Client or, where the Client is itself a licensee of that Trade Mark, that the relevant Trade Mark is licensed by the Client. (For the avoidance of doubt, EXL Holdings (US) shall not be required to display the Trade Marks on the exterior of any buildings within which EXL Holdings (US) carries on its operations); and
- 11.5.5 it will use reasonable endeavours not to use the Trade Marks in a manner which is likely to cause material harm to the goodwill attached to the Trade Marks.



- 11.6 EXL Holdings (US) shall as soon as reasonably practicable give written notice to the Client of any of the following matters which may at any time during the continuance of the Trade Mark Licence come to its knowledge, giving full particulars of them:
- 11.6.1 any infringement or suspected or threatened infringement of the Trade Marks, whether by reason of imitation of get-up or otherwise;
  - 11.6.2 any allegation or complaint made by any person that the use by EXL Holdings (US) of the Trade Marks in accordance with this Agreement may be liable to cause deception or confusion to the public; or
  - 11.6.3 any other form of attack, charge or claim in respect of the Trade Marks.
- 11.7 EXL Holdings (US) shall not make any admissions in respect of the matters referred to in clause 11.6.1 other than to the Client. EXL Holdings (US) shall in every case furnish the Client with all information in its possession relating to such matters which may be reasonably required by the Client.
- 11.8 The Client shall have the right to assume the conduct of all actions and proceedings (whether in its own name or that of EXL Holdings (US)) relating to the Trade Marks and shall bear the costs and expenses of any such actions and proceedings. Any costs or damages recovered in connection with any such actions or proceedings shall be for the account of the Client.
- 11.9 The Parties may specify particular licenses and agreements (the “Client Licences and Other Agreements”) to be set out in an Insurance Services Work Order which shall be dealt with in accordance with paragraph 15 of an Insurance Services Work Order.

## **12 INTELLECTUAL PROPERTY RIGHTS OWNERSHIP**

- 12.1 Subject to clause 12.7, any Intellectual Property Rights created by or on behalf of EXL Holdings (US) and its sub-contractors wholly or predominantly in respect of or in furtherance of obligations and services provided under this Agreement or any Insurance Services Work Order shall vest absolutely in the Client immediately upon such rights coming into existence (the “Commissioned Intellectual Property Rights”). For the purposes of this clause 12.1, EXL Holdings (US):
- 12.1.1 assigns by way of assignment of future Intellectual Property Rights all such Intellectual Property Rights to the Client absolutely; and
  - 12.1.2 shall procure the assignment by its Sub-Contractors of all such Intellectual Property Rights to the Client absolutely, by way of assignment of future Intellectual Property Rights.
- 12.2 EXL Holdings (US), by this clause 12.2, unconditionally and irrevocably waives in relation to the Intellectual Property Rights referred to in clause 12.1 all moral rights conferred by Chapter IV of Part I of the Copyright, Designs and Patents Act 1988 and all author’s rights of a similar kind conferred by the law of any jurisdiction and shall procure such a waiver from its employees and sub-contractors.
- 12.3 The Client, by this clause 12.3, grants to EXL Holdings (US) a non-exclusive, non-transferable licence to use and copy the Commissioned Intellectual Property Rights (including the right to sub-licence such rights to its Sub-Contractors) solely for the purposes of fulfilling its obligations under this Agreement and the Insurance Services Work Orders.
- 12.4 For the avoidance of doubt, all Intellectual Property Rights in the Data shall vest in the Client upon their creation absolutely and neither EXL Holdings (US) nor any of the sub-contractors of EXL Holdings (US) shall obtain any rights, title or interest in the Data whatsoever, except that EXL Holdings (US) and its Sub-Contractors are permitted to use the Data solely for the purposes of fulfilling its obligations under this Agreement and the Insurance Services Work Orders.

- 12.5 EXL Holdings (US) undertakes that neither it nor its Sub-Contractors shall:
- 12.5.1 create, copy, implement, recreate or re-implement any Data or any part of any Data or any work or thing similar in any material respect to the Data without the written consent and agreement of the Client; or
  - 12.5.2 retain copies of the Data obtained, received, processed, created or otherwise used by EXL Holdings (US) or (as the case may be) any Sub-Contractor following the expiry or termination of the agreement or work order to which it relates without the prior written consent of the Client.
- 12.6 Each of the Parties shall take all reasonable steps to protect the Intellectual Property Rights of the other that are referred to in this clause 12 from unauthorised disclosure, use or other threat to that other's proprietary interests, including, but not limited to ensuring that all rights that are registrable under the law of India are at all times the subject of a current registration.
- 12.7 This clause 12 shall not affect the Intellectual Property Rights of EXL Holdings (US) and its respective Sub-Contractors that were in existence prior to the date of this Agreement. Further, in relation to the Intellectual Property Rights created by EXL Holdings (US) and its respective employees or sub-contractors after such date and which are not Commissioned Intellectual Property Rights, the Intellectual Property Rights therein shall vest in EXL Holdings (US) or the relevant Sub-Contractor, as the case may be.
- 12.8 In relation to those Intellectual Property Rights referred to in clause 12.7, EXL Holdings (US) shall grant, or procure the grant of a non-exclusive, perpetual, irrevocable, non-transferable, worldwide, sub-licensable, royalty-free licence for the Client and any Associated Company. For the avoidance of doubt, such royalty-free licence shall survive the termination or expiry of this Agreement, however and whenever arising. The Client and any Associated Company shall be entitled to sub-licence those Intellectual Property Rights referred to in 12.7 to any Authorised Agent and Authorised User to use such Intellectual Property Rights only for the purposes of the provision of services to Client and any Associated Company which are similar to the Insurance Services provided that under no circumstances shall the Client or an Associated Company grant such a sub-licence to any of the competitors of EXL Holdings (US) referred to in part C of Schedule 8.
- 12.9 The Intellectual Property Rights in those items listed in paragraph 13 of an Insurance Services Work Order shall be subject to clauses 12.7 and 12.8, so that such Intellectual Property Rights shall be owned by EXL Holdings (US) and/or its Sub-Contractors and shall be licensed to the Client in accordance with clause 12.8.

### **13 THE CHARGES**

- 13.1 EXL Holdings (US) warrants that, as at the Effective Date, the Charges are at least as favourable as those extended by EXL Holdings (US) or any EXL Affiliate to any other person for services similar to the Insurance Services.
- 13.2 In consideration of the provision of the Insurance Services and all other activities and services to be provided by EXL Holdings (US) under an Insurance Services Work Order, the Client shall pay to EXL Holdings (US) the Charges referred to in clause 13.4.
- 13.3 Except as specifically agreed between the Parties, the Charges in relation to each Insurance Services Work Order shall be determined in accordance with the Charging Principles set out in schedule 3. The Charges represent the entire payments to be paid by the Client pursuant to an Insurance Services Work Order and the Client shall not be subject to any other charges including but not limited to all other taxes, duties, royalties, or levies, all of which shall be borne by EXL Holdings (US). No travel, accommodation, subsistence or other expenses shall be due to EXL Holdings (US) from the Client save as set out in paragraph 9

of the applicable Insurance Services Work Order. The Client shall only be liable to make payment of Charges under an Insurance Services Work Order and not under this Agreement.

- 13.4 EXL Holdings (US) shall invoice the Client the amounts set out in paragraph 9 of the applicable Insurance Services Work Order according to the [principles set out in Schedule 3 and on the dates set out in clause 13.8 below. All invoices shall be calculated and paid in GB pounds. In the case of any part of the Charges which is comprised in a currency other than GB pounds, the amount payable under the relevant invoice shall be calculated by applying the mid-point between the rate for selling and the rate for buying such other currency in GB pounds as quoted by Barclays Bank plc, at close of business on the last Business Day of the month to which such invoice relates (or where such invoice relates to a period covering more than one (1) month, the last Business Day of the final month in such period).
- 13.5 Invoices shall be submitted to the following address, or such other address as may, from time to time, be advised in writing by the Client to EXL Holdings (US):
- Norwich Union Customer Services (Singapore) Private Limited  
4 Shenton Way  
#01-01 SGX Centre 2  
Singapore 068807  
For the attention of the Finance Director
- 13.6 The Charges under an Insurance Services Work Order and the Charging Principles set out in schedule 3 shall be varied only in accordance with schedule 4 (Contract Change Control Procedures).
- 13.7 Except in connection with the agreed Service Credits or as otherwise agreed between the Parties, no Party shall be entitled to set off amounts due to it against any amounts due to the other Party pursuant to, or in connection with, any Insurance Services Work Order.
- 13.8 Subject to clause 13.10, the Client shall pay a valid and properly due invoice within twenty-one (21) days of its receipt.
- 13.9 Subject to clause 13.10, if the Client does not pay a valid and properly due invoice by the date required pursuant to clause 13.8, EXL Holdings (US) may, in addition to the invoice amount, charge the Client late payment interest (“**Late Payment Interest**”) of two percent above the sterling base rate from time to time of Barclays Bank Plc of the invoice amount for the period from the expiry of the applicable Payment Period until such payment is made. Late Payment Interest shall accrue on a daily basis.
- 13.10 If the Client receives an invoice which the Client reasonably believes specifies a Charge which is not valid and properly due (“**Disputed Charge**”):
- 13.10.1 the client shall pay to EXL holdings (US) in accordance with clause 13.8 any part of the charge under that invoice which is not a Disputed charge;
- 13.10.2 the Client may withhold payment of the Disputed Charge in that invoice and in that case, the Client shall notify EXL Holdings (US) within the applicable Payment Period following receipt of the invoice, of the nature of the dispute and the Parties shall commence, within five days after the receipt of the Client’s notice, to resolve the dispute; and

13.10.3 once the dispute has been resolved by agreement of the Parties or pursuant to clause 13.9, the Client shall pay the amount due as part of that resolution as soon as reasonably possible and in any event within fifteen (15) days of resolution (such period in this case commencing on the date of such resolution). Late Payment Interest shall apply with respect to any such amount, and shall start to accrue pursuant to clause 13.9:

- (a) from the date for payment prescribed by clause 13.8 in the case of any Disputed Charge where the Client had not acted reasonably in so disputing; and.
- (b) from the date for payment prescribed by this clause 13.10.3 in all other cases.

13.11 Any dispute as to whether the Client is entitled to withhold payment of a Disputed Charge or the amount it should pay in respect of such Disputed Charge shall be referred to the Director of Offshore Operations for the Client or such other person as the Client from time to time may advise in writing and the Chief Executive Officer for EXL Holdings (US) (or such other person or persons as EXL Holdings (US) may nominate from time to time) who shall in good faith attempt to resolve such dispute within fourteen (14) days. If such persons fail to reach agreement, the dispute shall be referred to the Independent Accountants at the request of either Party. The Independent Accountants shall act as an expert and not an arbitrator and their decision shall (in the absence of clerical or manifest error) be final and binding on the Parties. The Independent Accountants' fee for so acting shall be borne in equal shares by the Parties unless the Independent Accountants determines that the conduct of one of them is such that such Party should bear all or a greater proportion of their fees.

13.12 The Client shall settle invoices submitted pursuant to this clause 13 by electronic transfer but if for any reason it is impossible for the Client to settle invoices in the way within the time limits in clauses 13.8 and 13.10, then settlement will be by cheque.

#### **14 TAX**

14.1 EXL Holdings (US) shall pay all taxes properly levied on it, and shall procure the payment by its sub-contractors (as the case may be) of all taxes properly levied on either of them, in any jurisdiction in respect of the Charges. For the purposes of this clause 14 "taxes" includes, but is not limited to, use or sales tax, Value Added Tax ("VAT"), GST, levies, duties, personal property, telecommunications or other taxes.

14.2 The Client shall be required to reimburse EXL Holdings (US), as part of the Charges, only those taxes that are set out in paragraph 9 of the relevant Insurance Services Work Order or as determined by the budget provision described in schedule 3 or otherwise agreed by the Parties. The Client shall be responsible for the payment of (or procuring the payment of) taxes levied on it or its Associated Companies but only to the extent that such taxes are not so levied by reason of the failure of EXL Holdings (US) to comply, or procure that its Sub-Contractors so comply, with its obligations under clause 14.1. The Client agrees to act reasonably in agreeing revisions to the Charges to take account of additional taxes to be paid by EXL Holdings (US) or its sub-contractors where the imposition of such additional taxes is beyond the control of EXL Holdings (US) and its sub-contractors (as the case may be) and could not have been foreseen by any of them when the relevant Insurance Services Work Order was signed. Otherwise, the Client shall not be responsible for any other taxes, including those which EXL Holdings (US) and its sub-contractors are obliged to pay, levy or collect in respect of the Charges.

14.3 EXL Holdings (US) shall provide and make available to the Client any tax exemption certificates or information requested by the Client with regard to EXL Holdings (US) and its Sub-Contractor's tax positions.

#### **15 TERMINATION OF INSURANCE SERVICES WORK ORDERS**

15.1 Any Party (the "First Party") may at any time by notice terminate an Insurance Services Work Order with immediate effect:

15.1.1 if the other Party is in Material Default of the applicable Insurance Services Work Order and the Default is not capable of remedy; and

15.1.2 the other Party is in Material Default of the applicable Insurance Services Work

Order and the Default is capable of remedy and that other Party shall have failed to remedy that Default within 40 days of notice from the First Party to that other Party specifying the Default and requiring its remedy.

15.2 “Material Default” for these purposes means any Default:

- 15.2.1 of such seriousness or persistence as to have a demonstrable and prejudicial impact on the First Party’s (or in the case of the Client, Client UK’s, any Associated Company’s or Other Client UK’s) business and/or its ability to conduct that business;
- 15.2.2 which results or (in the reasonable opinion of the First Party) is likely to result in the First Party (or in the case of the Client, Client UK, any Associated Company or Other Client UK) being subject to any regulatory sanction;
- 15.2.3 which results in or (in the reasonable opinion of the first Party) is likely to result in damage to the reputation of the first Party or any Associated Company or (in the case of the Client) Client UK or any Other Client UK; or
- 15.2.4 amounting to the persistent and unjustified refusal of the Client to comply with its obligations under clause 13 to pay the Charges.

15.3 The Client may by notice terminate an Insurance Services Work Order with immediate effect:

- 15.3.1 in accordance with clauses 7.5 and 7.8;
- 15.3.2 in the event that the Travel Unit of the UK Foreign and Commonwealth Office (or any successors assuming responsibility for the functions of such unit) advises against all travel to the Indian States in which any Insurance Centre(s) used for such Insurance Services Work Order are located and the consequences of complying with that advice are such that there is a material and adverse departure from the Service Levels set out in that Insurance Services Work Order which EXL Holdings (US) has been unable to correct within one month of being notified of the same;
- 15.3.3 where any new requirements or concerns have been raised by the FSA in relation to this Agreement, any Insurance Services Work Order or the Insurance Services and, as a consequence, the Client reasonably believes that it cannot or should not receive Insurance Services from EXL Holdings (US) or any of the sub-contractors of EXL Holdings (US);
- 15.3.4 in the event that another Insurance Services Work Order has been terminated by the Client under clauses 15.1 or 15.3 and the Client had advised EXL Holdings (US) at or before the commencement of that Insurance Services Work Order that there was a dependency between that Insurance Services Work Order and the Insurance Services Work Order to be terminated pursuant to this clause 15.3.4;
- 15.3.5 in the event that Client UK or Other UK Clients suffer a Force Majeure event in the United Kingdom which prevents or inhibits Client UK or Other UK Clients being able to receive Insurance Services from the Client, EXL Holdings (US) or any of the sub-contractors of EXL Holdings (US);
- 15.3.6 in accordance with clause 33.5;
- 15.3.7 in the event that EXL Holdings (US) fails to meet the Service Levels as set out in paragraph 7 of the applicable Insurance Services Work Order;
- 15.3.8 in the event that the Client has the right to terminate the Pune Agreement and/or any work order under the Pune Agreement;
- 15.3.9 in the event that the Client has the right to require EXL Holdings (US) to enter into the Asset Transfer Agreement in accordance with clause 17;

15.3.10 in the event that any Unauthorised Access by EXL Holdings (US) occurs as a result of the failure by EXL Holdings (US) to apply reasonable internal controls that would have prevented such access; and

15.3.11 in accordance with clause 25.3.

15.4 The Client may for any reason by giving not less than three months' prior notice in writing, terminate an Insurance Services Work Order without any cost or liability, subject always to the Minimum Commitment.

15.5 Where this Agreement terminates and, pursuant to clause 16.6 below, an Insurance Services Work Order does not terminate, the provisions of this Agreement that are incorporated into the Insurance Services Work Order pursuant to its terms shall continue to apply.

15.6 Termination of any Insurance Services Work Order in accordance with this clause 15 shall be without cost or other liability of the Party so terminating that Insurance Services Work Order.

15.7 Termination of an Insurance Services Work Order however and whenever occurring shall not prejudice or affect any right of action or remedy which shall have accrued to any Party up to and including the date of such termination.

15.8 Upon termination of an Insurance Services Work Order for whatever reason the relevant provisions of schedule 7 and paragraph 10 of the Insurance Services Work Order will apply. In addition, during the Term of the Insurance Services Work Order, EXL Holdings (US) shall comply with its obligations in respect of the Exit Management Plan under paragraph 4 of schedule 7.

15.9 The provisions of clauses 1, 11, 12, 19, 22, 23, 25, 28, 31, 34, 36, 37 and clause 15.8 and this clause 15.9 and the provisions of schedules 1 and 7 shall survive termination or expiry of an Insurance Services Work Order, however and whenever occurring.

## **16 TERMINATION OF THIS AGREEMENT**

16.1 Either Party may at any time by notice terminate this Agreement with effect from the date of such notice if the other Party becomes subject to an event referred to in clause 16.2 (and whether or not that other Party provides notice in accordance with clause 16.2).

16.2 Any Party (the "First Party") must notify the other Party immediately if:

16.2.1 the First Party disposes of the whole or any material part of its assets, operations or business other than in the normal course of business or as a voluntary liquidation for the purposes of amalgamation or reconstruction;

16.2.2 any step is taken to enter into any arrangement between the First Party and its creditors;

16.2.3 any step is taken to appoint a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the First Party's assets or business;

16.2.4 the First Party ceases to be able to pay its debts as they become due;

16.2.5 the First Party ceases to carry on business or any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the First Party's assets or business; or

- 16.2.6 any other circumstances analogous to those set out in clauses 16.2.1 to 16.2.5, and in any jurisdiction, arise.
- 16.3 In addition to clause 16.1, the Client may at any time by notice terminate this Agreement with effect from the date of such notice if EXL (India) becomes subject to an event referred to in clause 16.2 (and whether or not EXL Holdings (US) provides notice of such event).
- 16.4 Any Party (the “First Party”) may at any time by notice terminate this Agreement with immediate effect:
- 16.4.1 if the other Party is in Material Default of this Agreement and the Default is not capable of remedy; or
- 16.4.2 if the other Party is in Material Default of this Agreement and the Default is capable of remedy and that other Party shall have failed to remedy that Default within 40 days of notice from the First Party to that other Party specifying the Default and requiring its remedy; or
- 16.4.3 in the event that any Authorised Access by the other Party occurs as a result of a failure by that other Party to apply reasonable internal controls that would have prevented such access;
- and for the purposes of this clause 16.4, the term ‘Material Default’ shall have the same meaning as given to it in clause 15.2 above.
- 16.5 Each of the Parties agrees that it will only exercise its right to terminate this Agreement for any of the reasons referred to in 16.4.1 and 16.4.3 if the Default or Unauthorised Access complained of cannot be rectified by the termination of a single Insurance Services Work Order.
- 16.6 The Client may by written notice to EXL Holdings (US) terminate this Agreement with immediate effect:
- 16.6.1 in the event of any Change of Control pursuant to which the person which can exercise control of EXL Holdings (US), whether directly or through another company or person is one of the entities named in part A of schedule 8;
- 16.6.2 in the event of a breach by EXL Holdings (US) of clause 11, or any unauthorised use of the Trade Marks by EXL Holdings (US) or its Sub-Contractors;
- 16.6.3 in the event that the Travel Unit of the UK Foreign and Commonwealth Office (or any successors assuming responsibility for the functions of such unit) advises against all travel to the Indian States in which any Insurance Centre(s) are located and the consequences of complying with that advice are such that there is a material and adverse departure from the Service Levels set out in any Insurance Services Work Order which EXL Holdings (US) has been unable to correct within one month of being notified of the same;
- 16.6.4 in accordance with clauses 7.5 or 7.8;
- 16.6.5 where any new requirements or concerns have been raised by the FSA in relation to this Agreement, any Insurance Services Work Order or the Insurance Services and, as a consequence, Client (UK) or any Other Client UK reasonably believes it cannot or should not receive Insurance Services from the Client or direct from EXL Holdings (US) or the sub-contractors of EXL Holdings (US); for the avoidance of doubt, if the situation can be remedied by the termination of a particular Insurance Services Work Order only, then the Client will take this route;
- 16.6.6 in the event that EXL Holdings (US) or any applicable Sub-Contractor (including, but not limited to, EXL (India)) ceases to be authorised and licensed as required by clause 17.1.1;

- 16.6.7 if for any reason EXL India ceases to provide services to EXL Holdings (US) for the purposes of this Agreement;
- 16.6.8 in the event that Client UK or Other UK Clients suffer a Force Majeure event which prevents or inhibits Client UK or Other UK Clients being able to receive Insurance Services from the Client;
- 16.6.9 in accordance with clause 33.5;
- 16.6.10 in the event that any Unauthorised Access by EXL Holdings (US) occurs as a result of the failure by EXL Holdings (US) to apply reasonable internal controls that would have prevented such access;
- 16.6.11 in the event that the Client has terminated the Pune Agreement pursuant to clause 15.3 or 15.4.2 of that Agreement;
- 16.6.12 in the event that the Client gives notice under clause 17.2;
- 16.6.13 in the event that the Client has the right to require EXL Holdings (US) to enter into the BOT Agreement in accordance with clause 18; and
- 16.6.14 in accordance with clause 25.3.
- 16.7 Subject to clause 18, where this Agreement is terminated under clauses 16.1 to 16.6 above or 16.8 below, any Insurance Services Work Orders shall automatically terminate at the same time unless the Parties have agreed that a particular Insurance Services Work Order shall continue after termination of this Agreement, in which case the provisions of 15.5 above shall apply.
- 16.8 Either party may for any reason by giving not less than six months' notice terminate this Agreement without any cost or liability whatsoever where such notice takes effect after the fifth anniversary of the Effective Date. The Client may for any reason by giving not less than six months' notice terminate this Agreement before the fifth anniversary of the Effective Date but, in doing so, it shall be liable to pay to EXL the Break Option Fee applicable to any Insurance Services Work Order terminating at the same time.
- 16.9 The Client may, by giving not less than 12 months written notice of termination to EXL Holdings (US), terminate this Agreement in the event of a Change of Control pursuant to which the person which can exercise control of EXL Holdings (US), whether directly or through another company or person, is one of the entities named in part B of schedule 8.
- 16.10 Subject to clause 16.12 and unless expressly stated otherwise, termination of this Agreement in accordance with this clause 16 shall be without cost or other liability of the Party so terminating this Agreement.
- 16.11 Termination of this Agreement however and whenever occurring shall not prejudice or affect any right of action or remedy which shall have accrued to any Party up to and including the date of such termination.
- 16.12 Upon the termination of this Agreement for whatever reason the relevant provisions of schedule 7 will apply. In addition, during the Term of this Agreement, EXL Holdings (US) shall comply with its obligations with regard to the Exit Management Plan under paragraph 4 of schedule 7.
- 16.13 The provisions of clauses 1, 11, 12, 17, 18.4, 19, 22, 23, 25, 28, 31, 34, 36, 37 and clauses 16.11, 16.12 and this clause 16.13 and the provisions of schedule 1 and schedule 7 shall survive termination of this Agreement, however and whenever occurring.



## **17 STEP IN AND TRANSFER**

17.1 In the event that:

17.1.1 EXL Holdings (US) is in Material Default of its obligations under an Insurance Services Work Order and such default affects the Insurance Services provided by more than 300 full time employees or their equivalent;

17.1.2 A Change of Control in respect of EXL Holdings (US) has occurred that was not approved by the Client in advance and such Change of Control results or would result in EXL Holdings (US) being controlled by a company which is itself listed in Part A of Schedule 8 or which controls such a company or is a competitor of Client UK or any other Associated Company in the provision of life insurance, pensions, investment or general insurance products in the United Kingdom or controls such a competitor;

17.1.3 there has been a Material Default by EXL Holdings (US) that has prejudiced or is likely to prejudice the reputation of the Client, Client UK or any Other UK Client,

then the Client shall have the rights referred to in clause 17.2.

For the purposes of this clause 17.1, the term "Material Default" shall have the same meaning given to it in clause 15.2 above.

17.2 Where any of the events referred to in clause 17.1 have occurred, if the Client gives notice to EXL Holdings (US), EXL Holdings (US) shall procure that:

17.2.1 EXL (India) shall forthwith duly execute the Asset Transfer Agreement set out in schedule 15; and

17.2.2 EXL (India) complies with such Asset Transfer Agreement.

17.3 The Client shall have the right to nominate itself or any Associated Company as the counterparty to such agreement.

17.4 In the event that the Client gives notice under clause 17.2, the Client may forthwith step-in and assume immediate management control of the Insurance Centre and the provision of the Services, and for these purposes, EXL Holdings (US) shall provide all assistance, co-operation and permissions required to ensure that the Client is able to exercise full management control in respect of the Insurance Centre.

## **18 RESTRICTIVE COVENANTS**

18.1 Subject to the provisions of clause 18.2, unless it has obtained the Client's prior written consent, such consent not to be unreasonably withheld or delayed, EXL Holdings (US) undertakes to the Client that it will not, and will procure that none of its subsidiaries will, either alone or jointly with, through or on behalf of any person, directly or indirectly provide in India any services similar to the Insurance Services to any person listed in Part A of Schedule 8.

18.2 The restrictions set out in clause 18 shall apply only if the average number of full time equivalents (determined using the formula set out in clause 18.3) used to provide the services under both this Agreement and the Pune Agreement during any period of 12 months ending on any anniversary of the Effective Date is less than 600 in aggregate.

18.3 For the purposes of clause 18.2 above the term “full time equivalents” means the figure produced by the calculation:

$$F + H \\ 9.5$$

where

F = the number of employees employed by EXL Holdings (US) or any of its subsidiaries in providing the Insurance Services and whose contract of employment requires them to work not less than 9.5 hours in any day; and

H = the actual number of hours to be worked each day in aggregate by those employees of EXL Holdings (US) or any of its subsidiaries in providing the Insurance Services and whose contract of employment requires them to work less than 9.5 hours in any day.

18.4 Unless it has obtained EXL Holdings (US)’s prior written consent, such consent not to be unreasonably withheld or delayed, the Client undertakes to EXL Holdings (US) that it will not, and will procure that no Associated Company nor any person connected with it, either alone or jointly with, through or on behalf of any person directly or indirectly:

18.4.1 Provide in India any BPO service similar to the Insurance Services to any person other than an Associated Company;

18.4.2 Establish or be engaged, concerned or interested in the establishment of any business to provide services similar to the Insurance Services in India to persons other than Associated Companies;

18.4.3 Solicit or contact with an view to the engagement or employment by any person, any employee, officer or manager of EXL Holdings (US) or any of its subsidiaries or any person who has been an employee, officer or manager of any of those companies within the previous two year period; and

18.4.4 Employ or engage, or attempt to employ or engage, any employee, officer or manager of EXL Holdings (US) or any of its subsidiaries or any person who has been an employee, officer or manager of any of those companies during that period.

18.5 EXL Holdings (US) and the Client consider the restrictions comprised in this clause 18 to be reasonable. However, EXL Holdings (US) agrees to accept and observe such substituted restriction(s) in place of any of those comprised in clause 18.1 as the Client may from time to time specify and the Client agrees to accept and observe such substituted restrictions(s) in place of any of those comprised in clause 18.4 as EXL Holdings (US) may from time to time specify, on the condition in each case that such substituted restriction(s) are in all respects less restrictive in extent than those provided for in this clause 18 which they replace.

18.6 The restrictions set out in clause 18.4 shall cease to apply on the second anniversary of the termination of this Agreement. The restrictions contained in these clauses shall be construed during this period by reference to the employees, officers or managers of EXL Holdings (US) or any of its subsidiaries (as the case may be) as at that date or during the two year period prior to that date. Nothing in clause 18.4 shall prevent the Client or any Associated Company from entering into a contract of employment with any person referred to in clause 18.4 where such person has responded to a bona fide general recruiting campaign of the Client or such Associated Company which has not been directed specifically at employees of EXL Holdings (US) or its subsidiaries.

18.7 For the avoidance of doubt, nothing in this Agreement shall be construed as restricting the right of the Client to procure goods and services from third parties as it determines in its absolute discretion. In particular, but without limitation, the Client shall have the right, exercisable in its sole discretion, to procure services of the same or similar type to those supplied under this Agreement from any third party.

## 19 LIMITATIONS OF LIABILITY

- 19.1 Neither Party excludes the undertakings implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 or the application of any similar provisions of the law of India which cannot be excluded by contract.
- 19.2 Neither Party excludes or limits liability to the other Party in respect of:
- 19.2.1 death or personal injury;
  - 19.2.2 defects within the meaning of the Consumer Protection Act 1987;
  - 19.2.3 clause 12 (Intellectual Property Rights Ownership);
  - 19.2.4 any fraudulent pre-contractual misrepresentations made by it on which the other Party can be shown to have relied; or
  - 19.2.5 any claim under the indemnity in clause 19.8 below.
- 19.3 In respect of loss and damages not covered by clauses 19.1 and 19.2:
- 19.3.1 The total liability of EXL Holdings (US) for any one claim or for the total of all claims not covered by clauses 19.1 and 19.2 or from other act or default of EXL Holdings (US) pursuant to this Agreement or any Insurance Services Work Order not covered by clauses 19.1 and 19.2 shall be limited to the greater of:-
- (a) £6,000,000 (six million pounds sterling); or
  - (b) to a sum equal to one and a half times the total aggregate sums paid and payable by the Client under this Agreement and/or any Insurance Services Work Order in the 12 month period immediately preceding the breach giving rise to the claim by the Client; and
- 19.3.2 the total liability of the Client for all claims arising under this Agreement and/or any Insurance Services Work Order shall not exceed £3,000,000 in aggregate; but always provided that the total liability of the Client to pay the Charges shall be unlimited.
- 19.4 In the event that an Associated Company, Authorised Agent or Authorised User suffers loss or damage due to a Default of EXL Holdings (US), the Client may recover from EXL Holdings (US) an amount equal to the amount that the Client would have been able to recover had the loss or damage been suffered by the Client rather than the Associated Company, Authorised Agent or Authorised User.
- 19.5 In the event that EXL Holdings (US) suffers loss or damage due to a Default of an Associated Company, Authorised Agent or Authorised User, EXL Holdings (US) may recover from the Client an amount equal to that which EXL Holdings (US) would have been able to recover had the loss or damage been caused by the Client, rather than the Associated Company, Authorised Agent or Authorised User.
- 19.6 Neither Party shall be liable to the other for consequential loss sustained by that other due to a Default. For these purposes, the term “consequential loss” shall include loss of profits and anticipated savings, even if the Party in Default knew or should have known of the possibility of such losses being incurred by reason of its Default.
- 19.7 For the purposes of clauses 19.8 and 19.9, “instruction” shall not include any of the express obligations on either Party under this Agreement, as amended from time to time in accordance with the Contract Change Control Procedures.
- 19.8 Where a Party (“the Instructing Party”) instructs the other Party to carry out a particular act and that instruction is contrary to the advice received from that other Party, where such advice anticipated specified consequences arising directly from the carrying out of such

instruction, and those specified consequences have arisen from the carrying out of such instruction, the Instructing Party shall indemnify the other Party and keep that other Party indemnified for all damages, losses, claims, expenses, costs and liability of that other Party to any third party that arise in respect of the specified consequences.

- 19.9 Where a Party (“the Instructing Party”) instructs the other Party to carry out a particular act and the other Party could not reasonably have known the likely foreign legal and regulatory consequences of complying with the Instructing Party’s instruction (and for these purposes, “foreign legal and regulatory consequences” refers to consequences under English law in the case of EXL Holdings (US), and consequences under Indian law in the case of the Client) the Instructing Party shall indemnify the other Party and keep that other Party indemnified for all damages, losses, claims, expenses, costs and liability of that other Party to any third party that arise in respect of the legal and regulatory consequences.
- 19.10 For the purposes of the indemnity in clauses 19.8 and 19.9, a Party shall promptly notify the other Party in writing of any third party claim of which it has notice and for which it may wish to claim under clauses 19.8 and 19.9. The Party seeking an indemnity shall not make any admission as to liability in relation to, or agree to any settlement of or compromise any claim without the prior written consent of the indemnifying Party, which shall not be unreasonably withheld or delayed. The indemnifying Party shall be entitled to conduct all negotiation and litigation, and settle all litigation, arising from any claim and the Party seeking to rely on the indemnity shall give the indemnifying Party, at its request and cost, all reasonable assistance in connection with those negotiations and litigation.
- 19.11 Each of the Parties agrees that in respect:
- 19.11.1 any Default by it; or
- 19.11.2 any act or omission on the part of any of its employees, agents or (in the case of EXL Holdings (US)) its Sub-Contractors which results in a claim by any third party against the other Party, it shall indemnify and keep indemnified that other Party from and against all damages, loss, claims, demands and expenses, costs and liabilities arising from such third party claim.

## **20 CONTINUOUS IMPROVEMENT**

- 20.1 EXL Holdings (US) shall, during the one (1) month following the anniversary of the Effective Date in each year of this Agreement identify areas for development or improvement of the Insurance Services being provided under the Insurance Services Work Orders and the applicable Service Levels and for new services, functionality, facilities or features to be provided by the Insurance Services being provided under the Insurance Services Work Orders and shall present the results and conclusions of each such annual review at the first management meeting of the respective parties scheduled to take place after completion of the review.
- 20.2 The annual review referred to in Clause 20.1 shall include a review of the market place to identify ways in which EXL Holdings (US) can exploit falling technology costs and reduce the Charges.
- 20.3 In the event that opportunities for development or improvement are identified which would reduce EXL Holdings (US)’s costs of providing the Insurance Services EXL Holdings (US) shall, at the request of the Client submit proposals in accordance with schedule 4 (Contract Change Control Procedures).

## **21 GENERAL OBLIGATIONS**

- 21.1 In addition to its other obligations set out in the Agreement, EXL Holdings (US) shall ensure that:
- 21.1.1 it establishes, implements, maintains and operates the Insurance Centre and fulfils all of its other obligations under this Agreement so as to minimise the taxes, levies and other amounts payable to any Governmental authority. Without limiting the foregoing, EXL Holdings (US) shall ensure that it avails itself of all tax concessions that are available from time to time unless than the parties are agreed that such concessions shall not be pursued for good commercial reasons;

- 21.1.2 it will not, and will procure that no EXL Affiliate or other third party will not, use the Insurance Centre for any purposes other than the provision of the Insurance Services under this Agreement and the Insurance Services Work Orders;
- 21.1.3 it will not, and will procure that no EXL Affiliate will, either alone or jointly with, through or on behalf of any person, directly or indirectly provide in India any services to any person listed in Part A of schedule 8, provided this clause shall not apply if the average number of full time equivalents (as such term is defined in schedule 3) used to provide the Services aggregated under this Agreement and all Insurance Services Work Orders and the Pune Agreement and all work orders under the Pune Agreement during any twelve (12) months period of this Agreement (each twelve (12) month period commencing on the Effective Date or the anniversary of the Effective Date as applicable) is less than six hundred (600);
- 21.1.4 it has, and shall continue to have (and shall ensure that its Sub-Contractors have and shall continue to have) for the duration of this Agreement and for such time after the expiry or termination of this Agreement as is necessary for the proper performance of its obligations under this Agreement, full capacity and authority and all necessary governmental, administrative and regulatory authorisations, licences, permits and consents and all necessary Intellectual Property Rights to enter into and to perform this Agreement and to supply the Insurance Services;
- 21.1.5 all of EXL Holdings (US)'s liabilities, responsibilities and obligations pursuant to this Agreement shall be fulfilled by appropriately experienced, qualified and trained professional personnel with all due skill, care and diligence;
- 21.1.6 all of EXL Holdings (US)'s liabilities, responsibilities and obligations pursuant to this Agreement and all Insurance Services Work Orders shall be fulfilled in accordance with its own established internal procedures and such procedures shall be consistent with upper quartile industry practice;
- 21.1.7 all of EXL Holdings (US)'s liabilities, responsibilities and obligations pursuant to this Agreement and all Insurance Services Work Orders shall be fulfilled in compliance with all applicable laws, enactments, orders, regulations, codes of practice and other similar instruments;
- 21.1.8 the Deliverables will comply with their respective Specifications;
- 21.1.9 the Insurance Services shall be provided in accordance with the Service Levels;
- 21.1.10 EXL Holdings (US) has clear and unencumbered title to the Intellectual Property Rights to be used by it in the performance of its obligations pursuant to any Insurance Services Work Order, including (but not limited to) any Intellectual Property Rights specifically referred to in an Insurance Services Work Order or, where such Intellectual Property Rights are vested in a third party, that it has all relevant licences or permissions to so use the same;
- 21.1.11 as at the date of this Agreement and the date of each Insurance Services Work Order (if different), EXL Holdings (US) is not subject to any of the circumstances listed in clauses 16.2.1 to 16.2.6; and
- 21.1.12 to the best of EXL Holdings (US)'s knowledge and belief, as at the date of this Agreement there are no material outstanding litigation, arbitration or other disputed

matters to which EXL Holdings (US) is a Party which may have a material adverse effect upon the supply or operation of the Insurance Services or the fulfilment of EXL Holdings (US)'s liabilities, responsibilities and obligations pursuant to this Agreement.

21.2 The Client shall ensure that:

21.2.1 the Client has, and shall continue to have for the duration of this Agreement and the Term of any Insurance Services Work Order and for such time after the expiry or termination of this Agreement and any Insurance Services Work Order as is necessary for the proper performance of its obligations under this Agreement and all Insurance Services Work Orders, full capacity and authority and all necessary governmental, administrative and regulatory authorisations, licences, permits and consents and all necessary Intellectual Property Rights to enter into and to perform this Agreement and all Insurance Services Work Orders;

21.2.2 the Client is a company duly incorporated, validly existing and in good standing under the laws of Singapore and that this Agreement and all Insurance Services Work Orders are executed by duly authorised representatives of the Client;

21.2.3 as at the date of this Agreement and the date(s) of all Insurance Services Work Orders (where different), the Client is not subject to any of the circumstances listed in clauses 16.2.1 to 16.2.6; and

21.2.4 EXL Holdings (US) is kept reasonably informed of any matters pertaining to the business of the Client or any Associated company and which may have a material impact on the ability of EXL Holdings (US) to perform its obligations pursuant to this Agreement provided that nothing in this clause 21.2.4 shall require the Client to breach any confidentiality obligation owed to a third party or otherwise to disclose information in breach of any statutory or common law obligation.

21.3 Each of the parties shall take reasonable steps to ensure:

21.3.1 that the performance of its obligations pursuant to this Agreement shall not result in the introduction of anything into the other Party or any systems of the other Party, including, without prejudice to the generality of the foregoing, any computer program code, computer virus, computer worm, Trojan horse, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:

- (a) impair the operation of the Insurance Services or the performance by the other Party of its obligations hereunder;
- (b) impair the operation of any computer systems or programs in the possession of the other Party;
- (c) cause loss of, or corruption or damage to, any program or data held in relation to the Insurance Services or any other computer systems or programs in the possession of the other Party; or
- (d) damage the reputation of the Client, Client UK or any Other Client UK;

21.3.2 it obeys all lawful and reasonable directions of the other; and

21.3.3 it has regard to its respective areas of IT responsibility as described in schedule 10.

## **22 INSURANCE**

### **22.1 EXL Holdings (US) warrants that:**

- 22.1.1 it has taken out and undertakes to maintain appropriate insurance cover to the extent outlined below with a reputable insurance company against all its liabilities and indemnities that may arise under this Agreement and any Insurance Services Work Order; and
- 22.1.2 it has in effect and undertakes to maintain in effect during the continuance of this Agreement and any Insurance Services Work Order (where later) and for a period of seven years after termination or expiry of this Agreement and each Insurance Services Work Order:
- (a) public liability insurance cover with a reputable insurance company to a minimum indemnity limit of £5m for all claims;
  - (b) professional indemnity insurance and general commercial liability cover with a reputable insurance company to a minimum indemnity limit of £5m for all claims;
  - (c) workmen's liability insurance cover with a reputable insurance company to a minimum indemnity limit of £ 1m for all claims; and
  - (d) such other insurances shall be requested by the Client.

The Client may from time to time request increases to all or any of the above insurance limits of cover.

### **22.2 EXL Holdings (US) undertakes that it will not knowingly do or omit to do anything to vitiate either in whole or in part any of the insurance cover that it is obliged to have and maintain under clause 22.1 above and, to the extent permitted by the insurance conditions, shall provide to the Client copies of the policy documentation.**

### **22.3 EXL Holdings (US) shall, to the extent permitted by the insurance conditions, provide to the Client forthwith upon demand full details of any of the insurance cover that it is obliged to have and maintain under clause 22.1 above.**

### **22.4 In the event that EXL Holdings (US) and the Client agree that EXL Holdings (US) is unable to procure insurance in accordance with this clause 22, the Client shall have the right to procure such insurance on behalf of EXL Holdings (US) (but at Client's cost) and EXL Holdings (US) shall provide such assistance as is required by the Client in relation to the procurement of such insurance.**

### **22.5 The cost of any insurance cover procured by or on behalf of EXL Holdings (US) wholly and predominantly in connection with its obligations pursuant to this clause 22 shall be agreed under the Budget Process set out in Schedule 3 and, once agreed, shall be treated as an Actual Operating Cost to be borne by the Client.**

## **23 CONFIDENTIALITY**

The Parties shall comply with their obligations under the Confidentiality Agreement in relation to all Confidential Information disclosed under this Agreement.

## **24 ACCESS**

### **24.1 Subject to clause 24.3, each Party agrees to allow the other Party such access as is reasonably necessary to enable that other to perform its obligations under any Insurance Services Work Order and also to meet its obligations to comply with any investigation or demand for information by any Government Office, court or tribunal or regulatory body.**

- 24.2 If, pursuant to or in consequence of performing its obligations under any Insurance Services Work Order, one of the Parties needs Access to any computer system of the other:
- 24.2.1 such Access shall be strictly limited to that part of the computer system, software, hardware or firmware, (as the case may be) as is required for proper performance of its obligations under such Insurance Services Work Order;
  - 24.2.2 the Party gaining Access shall comply with all reasonable security, audit and other procedures and requirements notified to it from time to time by the other in relation to such Access; and
  - 24.2.3 each Party shall procure that only its employees and in the case of EXL Holdings (US), Sub-Contractors shall be permitted Access and such Access shall be to the extent strictly necessary for the proper performance of the employee's and/or the Sub Contractor's duties in relation to that Party's obligations pursuant to the relevant Insurance Services Work Order.
- 24.3 The Client shall not be obliged to give EXL Holdings (US) access under clause 24.1 in the event that the Client reasonably believes that such access would give rise to a breach of any legal or regulatory obligation.

## **25 EMPLOYEE ISSUES**

- 25.1 EXL Holdings (US) shall:
- 25.1.1 appoint appropriately qualified and skilled employees to fulfil those Key Personnel roles set out as such in schedule 12 of this Agreement and paragraph 12 of the applicable Insurance Services Work Order ensuring that in each case, the Client has provided prior approval of such appointment;
  - 25.1.2 continue to deploy each of the Key Personnel on a full-time basis except where he terminates his employment with EXL Holdings (US) (or the applicable Sub-Contractor), dies, becomes unfit for reasons of disability, is in material breach of his contract of employment with EXL Holdings (US) (or the applicable Sub-Contractor) or the Client gives notice requesting his removal;
  - 25.1.3 ensure that no person other than an employee of EXL Holdings (US) or a Sub-Contractor is deployed in relation to an Insurance Services Work Order.
- 25.2 Where a Key Personnel vacancy arises pursuant to clause 25.1.2, EXL Holdings (US) shall as soon as practicable, consult with the Client prior to the appointment of replacement Key Personnel who EXL Holdings (US) believes meets the Client's role profile for that vacancy (and the Client shall have the right to attend interviews and otherwise remain involved with the interview process) and following such consultation shall appoint such replacement Key Personnel, and clause 25.1.2 and this clause 25.2 shall apply to all such replacements.
- 25.3 Without prejudice to clause 25.2, in the event that more than two members of the Supplier Management Team specified in schedule 12 of this Agreement are no longer employed on a full time basis by EXL Holdings (US) or EXL (India) the Client shall have the right to terminate this Agreement and all Insurance Services Work Orders forthwith.

## **26 CONTRACT CHANGE CONTROL PROCEDURES**

- 26.1 The Parties shall, in respect of Changes, comply with their obligations as set out in schedule 4. All Changes shall be dealt with in accordance with schedule 4.
- 26.2 Any Change to this Agreement shall, in the absence of agreement to the contrary, constitute a Change to all Insurance Services Work Orders insofar as the Change relates to terms of this Agreement that are incorporated into such Insurance Services Work Orders.



## **27 REPORTING OBLIGATIONS**

- 27.1 EXL Holdings (US) shall provide the reports specified in paragraph 18 of an Insurance Services Work Order, to the Client, in the form and at the intervals specified in that paragraph. In addition, EXL Holdings (US) shall provide the reports specified in schedule 5 to the Client, in the form and at the intervals specified in that schedule.
- 27.2 Each Party shall inform the other as soon as reasonably practicable of any event which may have a material adverse impact on the other Party's ability to meet its obligations under this Agreement or any Insurance Services Work Order.
- 27.3 Each of the parties agrees that the other is permitted (but only to the extent that it is lawfully able to do so) to provide the FSA with all information the FSA may require in relation to the Insurance Services and this Agreement and any Insurance Services Work Order. Further, where the FSA requests that any Party provide information in relation to this Agreement, any Insurance Services Work Order or the Insurance Services, that Party shall promptly provide such relevant information as it has in its possession or control, but only to the extent that it is lawfully able to do so.

## **28 EXIT MANAGEMENT**

On termination or expiry of an Insurance Services Work Order however and whenever occurring, and throughout the continuance of such Insurance Services Work Order, the Parties shall comply with their responsibilities and obligations in respect of exit management as set out in schedule 7 and the applicable Insurance Services Work Order.

## **29 SECURITY**

EXL Holdings (US) shall perform the Insurance Services in accordance with the Security Requirements and procedures set out in schedule 2.

## **30 DISASTER RECOVERY AND BUSINESS CONTINUITY**

EXL Holdings (US) shall comply with its obligations in relation to Disaster Recovery and Business Continuity Services as set out in paragraph 11 of an Insurance Services Work Order.

## **31 PREMISES REGULATIONS**

- 31.1 Each Party agrees that whilst at or near any premises or offices of the other, it shall comply, and shall procure that its employees and Sub Contractors comply, with all reasonable requirements of the other made known to it, such compliance to be from the date that such requirements were so made known.
- 31.2 Subject to clause 31.1, EXL Holdings (US) agrees that the Client shall have the right to access the Insurance Centre (and permit its employees, agents, sub-contractors and professional advisers to undertake such access) whenever it requires.

## **32 TRANSFER AND SUB-CONTRACTING**

- 32.1 This Agreement and each Insurance Services Work Order is personal to EXL Holdings (US). EXL Holdings (US) shall not assign, novate or otherwise dispose of this Agreement or any Insurance Services Work Order or any part thereof, or purport to do so, without the prior consent in writing of the Client.
- 32.2 EXL Holdings (US) shall only be permitted to sub-contract all or part of its liabilities, obligations and responsibilities under this Agreement and any Insurance Services Work Order to those Sub-Contractors set out in schedule 14 (Permitted Sub-Contractors).
- 32.3 Notwithstanding that EXL Holdings (US) has express rights, liabilities, obligations and responsibilities under this Agreement, any sub-contracting permitted or required under this Agreement or the operation of this clause 32 shall not relieve EXL Holdings (US) from any of its liabilities, obligations and responsibilities hereunder. EXL Holdings (US) shall perform all

liabilities, obligations and responsibilities under this Agreement as prime contractor and shall remain primarily responsible and liable for the activities sub-contracted and for such of the acts and omissions of the Sub-Contractors in respect of such activities as would render EXL Holdings (US) liable to the Client, had such acts or omissions been EXL Holdings (US)'s own acts and omissions.

- 32.4 The Client shall be entitled to assign, novate or otherwise dispose of its rights, liabilities, obligations and/or responsibilities under this Agreement or any part thereof to any Associated Company of the Client which is not engaged in business activities in India which are in competition with EXL India by giving EXL Holdings (US) prior notice of such assignment, novation or other disposal.
- 32.5 Save as provided in clause 32.4, the Client shall only be entitled to assign, novate or otherwise dispose of its rights under this Agreement, or any part thereof, with the prior approval of EXL Holdings (US).
- 32.6 For the avoidance of doubt, any assigns, novation or disposal permitted under clause 32.4 and 32.5 shall be subject to the assignee or transferee agreeing to perform the obligations of the Client in respect thereof and to the Guarantee remaining in force in respect of such obligations.

### **33 FORCE MAJEURE**

- 33.1 For the purposes of this Agreement and all Insurance Services Work Orders, the expression "Force Majeure" shall mean an event which is beyond the reasonable control of an affected Party including, without limitation, any Act of God, war, fire, flood, civil commotion, armed hostilities, act of terrorism, revolution or, adverse weather, and which such Party could not reasonably anticipate or mitigate, whether by means of insurance, contingency planning or any other prudent business means. Any event will only be considered Force Majeure if it is not attributable to the wilful act, neglect, default or other failure to take reasonable precautions of the affected Party, its agents, employees or contractors. Industrial dispute or action shall not give rise to an event of Force Majeure. Any item, whether an item of a Party or any third party, failing to operate due to Year 2000 problems shall not give rise to an event of Force Majeure.
- 33.2 No Party shall in any circumstances be liable to the other for any loss of any kind whatsoever, including, but not limited to, any damages, whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder or any Insurance Services Work Order which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 33.3 If any Party shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any failure or delay on its part, it shall promptly notify the other Party by the most expeditious method then available and shall inform the other Party of the period for which it is estimated that such failure or delay shall continue.
- 33.4 It is expressly agreed that any failure by EXL Holdings (US) to perform, or any delay by EXL Holdings (US) in performing, its liabilities, obligations and responsibilities under any Insurance Services Work Order which results from any failure or delay in the performance of its obligations by any person with which EXL Holdings (US) shall have entered into any contract, supply arrangement, sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement, sub- contract or otherwise as a result of circumstances of Force Majeure affecting such ??.

33.5 Where:

33.5.1 EXL Holdings (US) or any of its Sub-Contractors are subject to a Force Majeure event, EXL Holdings (US) shall have ninety (90) days from the date of such event to resume its obligations in full pursuant to this Agreement and any Insurance Services Work Order. If the Force Majeure event, or the consequences of it, have not been rectified within that period, then either party shall have the right to terminate this Agreement and/or any Insurance Services Work Order forthwith by notice provided that EXL Holdings (US) shall only be entitled to exercise such rights where the Client has failed to pay Charges in accordance with 33.9 below; and

33.5.2 EXL Holdings or any of its Sub-Contractors are subject to a Force Majeure event which, in the Client's sole discretion, is not capable of being rectified within thirty (30) days of its occurrence, the Client shall have the right to terminate this Agreement and/or any Insurance Services Work Order forthwith by notice. This clause is without prejudice to clause 33.5.1.

33.6 For the avoidance of doubt, neither party shall have the right to terminate an Insurance Services Work Order or this Agreement because of a Force Majeure event, except in the circumstances set out in clauses 15.3.5, 15.3.6, 16.6.8 and 16.6.9.

33.7 For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder or as otherwise expressly provided in this Agreement or any Insurance Services Work Order.

33.8 Nothing in this Agreement or any Insurance Services Work Order shall be taken as preventing the Client from using any alternative facilities to meet its business needs during the continuance of Force Majeure.

33.9 For the avoidance of doubt, the Client shall be liable to pay the Charges in respect of any activities not carried out due to Force Majeure, provided that, during the period of such Force Majeure, EXL Holdings (US) shall be required to mitigate the consequences thereof, including, where possible, by re-deploying any of its staff elsewhere in its business or in the business of its subsidiaries.

**34 THIRD PARTY RIGHTS**

34.1 In this clause 34, the term "Right" shall mean the benefit of any of the following:

34.1.1 a right of the Client under this Agreement or an Insurance Services Work Order;

34.1.2 an obligation on EXL Holdings (US) under this Agreement or an Insurance Services Work Order; or

34.1.3 a warranty or other representation by EXL Holdings (US) under this Agreement or an Insurance Services Work Order.

34.2 This Agreement and all Insurance Services Work Orders shall confer those Rights specified in clause 34.3 on each Authorised Agent, Associated Company and Authorised User without in each case any additional charge to the Client or any Authorised Agent, Associated Company or Authorised User. Subject to the prior written consent of the Client (such consent to be provided in its absolute discretion), an Authorised Agent, Associated Company or Authorised User shall be entitled to enforce in its own capacity such Rights pursuant to this Agreement or any Insurance Services Work Order.

34.3 Authorised Agents, Associated Companies and Authorised Users shall have conferred on them the Rights granted to the Client under the following provisions of this Agreement (and as such provisions become terms of each Insurance Services Work Order), as if the Authorised Agents, Associated Companies and Authorised Users were the Client:

34.3.1 clause 12 (Intellectual Property Rights Ownership);

- 34.3.2 clause 19 (Limitations of Liability);
- 34.3.3 clause 21.1 (General Obligations);
- 34.3.4 clause 22 (Insurance);
- 34.3.5 clause 23 and the Confidentiality Agreement;
- 34.3.6 clause 24 (Access);
- 34.3.7 clause 31 (Premises Regulations);
- 34.3.8 clause 35 (Data Protection); and
- 34.3.9 clause 36 (Audit).

34.4 Notwithstanding section 2(1) of the Contracts (Rights of Third Parties) Act 1999, the Parties may in accordance with this Agreement, vary, rescind or terminate this Agreement or any Insurance Services Work Order (whatever the nature of such variation, rescission or termination) without seeking the consent of any third party on whom this clause 34 confers Rights.

34.5 Subject to clauses 33.2 and 33.3, neither this Agreement nor any Insurance Services Work Order creates, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a Party.

## **35 DATA PROTECTION**

As of the date of this Agreement, the parties shall duly execute and procure the execution of the Data Protection Agreement which shall apply in respect of this Agreement and each Insurance Services Work Order.

## **36 AUDIT AND INFORMATION**

36.1 At no additional cost to the Client, EXL Holdings (US) shall grant, or procure the grant, to the Client and any auditors of the Client and their respective authorised agents the right of access without notice and during normal business hours at any time to EXL Holdings (US) and all Sub-Contractors' records relating to this Agreement and employees and sub-contractors of EXL Holdings (US) and the Sub-Contractors and shall provide such reasonable assistance at all reasonable times during the Term in relation to audits of the performance of all of EXL Holdings (US) obligations under this Agreement and any Insurance Services Work Order including but not limited to:

36.1.1 the ongoing compliance by EXL Holdings (US) with clause 13.1;

36.1.2 the accuracy and calculation of the Charges;

36.1.3 that the Insurance Services are being provided in accordance with the Service Levels;

36.1.4 that EXL Holdings (US) and its Sub-Contractors as appropriate are complying with its obligations in relation to the Security Requirements set out in schedule 2; and

36.1.5 that EXL Holdings (US) and its Sub-Contractors are operating procedures in accordance with this Agreement and all Insurance Services Work Orders in relation to the Data and any other resources provided by the Client to EXL Holdings (US), including without limitation, the Client Assets.

- 36.2 Without prejudice to the foregoing, at no additional cost to the Client, in the event of an investigation into suspected fraudulent activity or other legal or regulatory impropriety by EXL Holdings (US), its Sub-Contractors, the employees of EXL Holdings (US) or its Sub-Contractors or any security concerns in relation to this Agreement or any Insurance Services Work Order, the Client reserves for itself, any auditors of the Client and their respective authorised agents, the right of access without notice and at any time to EXL Holdings (US) and its Sub-Contractor's records relating to this Agreement or any Insurance Services Work Order, and employees and officers of EXL Holdings (US) and agree to render all necessary assistance to the conduct of such investigation and to allow or procure such access at all times during the currency of this Agreement or for any time thereafter, and EXL Holdings (US) shall procure the same agreement from the employees and officers of all Sub-Contractors.
- 36.3 At no additional cost to the Client except where agreed in writing, EXL Holdings (US) shall make any changes which are reasonably necessary and take other actions which are reasonably necessary in order to maintain compliance with applicable laws or regulations and so that the performance of EXL Holdings (US)'s obligations complies with the Client's internal and external audit requirements from time to time.
- 36.4 For the purposes of observing the performance, quality and progress of EXL Holdings (US)'s and its Sub-Contractors' performance of its obligations under this Agreement and any Insurance Services Work Order, the Client's personnel and consultants shall be allowed to observe work being performed by or on behalf of EXL Holdings (US) and the Sub-Contractors in order to verify that EXL Holdings (US) and the Sub-Contractors are complying with their obligations under this Agreement and any Insurance Services Work Order. For the avoidance of doubt, the Client may appoint an appropriate third party to act on its behalf in connection with its rights under this clause 36.
- 36.5 In addition to clauses 36.1 to 36.4 above, EXL Holdings (US) shall grant, or procure the grant of access by FSA, other regulators and the police to all records, sites and/or materials used in conjunction with this Agreement or any Insurance Services Work Order in the event such persons wish to carry out an audit.

## **37 ANCILLARY PROVISIONS**

### **37.1 Waiver**

No delay or failure by either Party to exercise any of its powers, rights or remedies under this Agreement or any Insurance Services Work Order shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. The remedies provided in this Agreement and each Insurance Services Work Order are cumulative and not exclusive of any remedies provided by law. No waiver by either Party of any breach by the other Party of any provision of this Agreement or any Insurance Services Work Order shall be deemed to be a waiver of any subsequent breach of that or any other provision of this Agreement or any Insurance Services Work Order.

### **37.2 Severability**

If any part of this Agreement or any Insurance Services Work Order is found by any court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement or any Insurance Services Work Order which shall continue to be valid and enforceable to the fullest extent permitted by law.

### **37.3 Costs and expenses**

Unless otherwise agreed in writing between the Parties, each Party shall pay its own costs and expenses incurred in connection with the preparation, negotiation, execution and implementation of this Agreement and all Insurance Services Work Orders and the documents referred to in this Agreement or any Insurance Services Work Order.

**37.4 Successors and assigns**

This Agreement and all Insurance Services Work Orders are binding on and shall apply for the benefit of the Parties' personal representatives, successors in title and permitted assignees.

**37.5 Entire agreement**

37.5.1 This Agreement and the Insurance Services Work Orders constitute the entire understanding between the Parties in relation to its subject matter.

37.5.2 Except in respect of any fraudulent misrepresentation made by a Party, the Parties acknowledge that they have not relied on any representations, writings, negotiations or understandings, whether express or implied, (other than as set out in this Agreement) in entering into this Agreement.

**37.6 No partnership**

Nothing in this Agreement or any Insurance Services Work Order shall constitute or be deemed to constitute a partnership between the Parties and neither of them shall have the power to bind the other in any way.

**37.7 Governing Law**

This Agreement and all Insurance Services Work Orders are governed by and shall be construed in accordance with English law.

**37.8 Jurisdiction**

37.8.1 The Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement or any Insurance Services Work Order. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection to proceedings in any such court on the ground that the proceedings have been brought in an inconvenient forum.

37.8.2 Nothing in this Agreement or any Insurance Services Work Order shall affect the right to serve process in any other manner permitted by law or the right to bring proceedings in any other jurisdiction for the purposes of the enforcement or execution of any judgement or other settlement in any other courts.

**37.9 Appointment of Process Agent**

37.9.2 EXL Holdings (US) hereby appoints PricewaterhouseCoopers LLP, Embankment Place, London WC2 6NN (for the attention of Nigel Fudd) as its agent to accept service of process in England in any legal action or proceedings arising out of or in connection with this Agreement and any Insurance Services Work Order.

37.9.3 If any such process agent ceases to be able to act as such or to have an address in England, EXL Holdings (US) (as applicable) irrevocably agrees to appoint a new process agent in England acceptable to the Client and to deliver to the Client within ten (10) Business Days a copy of a written acceptance of appointment by the process agent.

**37.10 Notices**

37.10.1 Any notice or other communication to be given under this Agreement shall either be delivered by hand or sent by first class post pre-paid recorded delivery (or by air mail if overseas) or by a generally recognised international courier service (with relevant

fees prepaid) or by facsimile transmission (provided that, in the case of facsimile transmission, the notice is confirmed by being delivered by hand or sent by first class post or by a recognised international courier service within two Business Days after transmission) as follows:

- (a) for the Client:  
Offshore Operations Director  
Surrey Street  
Norwich NR1 3NG;  
Fax Number: 01603 843344  
  
copy to Director of Legal Services  
Norwich Union Legal Services  
Surrey Street  
Norwich NR1 3DR  
Fax Number: 01603 685857

- (b) for EXL Holdings (US):  
Rohit Kapoor, President & CFD  
ExlService Holdings, Inc  
350 Park Avenue, 10<sup>th</sup> Floor  
New York, NY 10022;

37.10.2 A Party may change the address or facsimile number or the name of the person for whose attention notices are to be addressed by serving a notice on the other.

37.10.3 In the absence of evidence of earlier receipt, all notices shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by post within the UK, two Business Days after the envelope containing it was posted;
- (c) if sent by international post, seven Business Days after the envelope containing it was posted;
- (d) if sent (with relevant fees prepaid) by a generally recognised international courier service, three Business Days after the envelope containing it was delivered to the relevant international courier; and
- (e) if sent by facsimile, on completion of transmission;

provided that where such delivery or transmission occurs after 5.00 pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9.00 am on the next following Business Day.

This Agreement has been signed on the date first stated on page 1 above.

Signed for and on behalf of **the Client**

By /s/ Paul Robert Faulkner

Name Paul Robert Faulkner

Title Director

Date 29/07/2004

Signed for and on behalf of **EXL Holdings (US)**

By /s/

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



DATED 26 August 2004

- (1) NORWICH UNION CUSTOMER SERVICES (SINGAPORE) PTE LTD
- (2) EXLSERVICE HOLDINGS, INC

INSURANCE SERVICES FRAMEWORK AGREEMENT

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## INSURANCE SERVICES FRAMEWORK AGREEMENT

Dated: 26 August 2004, effective from 1 January 2004

### BETWEEN:

- (1) **Norwich Union Customer Services (Singapore) Pte Ltd**, a company registered in Singapore with registration number 200303457R and whose registered office is at 4 Shenton Way, #27-02 SGX Centre 2, Singapore 068807 (the “**Client**”); and
- (2) **Exlservice Holdings, Inc.**, a company registered in the State of Delaware and whose principal office is at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022 (“**EXL Holdings (US)**”).

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless inconsistent with the context or otherwise specified, the definitions set out in schedule 1 shall apply.
- 1.2 References to clauses and schedules are to clauses of and the schedules to this Agreement.
- 1.3 The schedules form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement.
- 1.4 References to paragraphs are to the paragraphs of an Insurance Services Work Order.
- 1.5 Words importing gender include each gender.
- 1.6 References to persons include bodies corporate, firms and unincorporated associations and that person’s legal personal representatives and successors.
- 1.7 The singular includes the plural and vice versa.
- 1.8 Clause headings are included for the convenience of the Parties only and do not affect its interpretation.
- 1.9 References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute.
- 1.10 References to any English legal or accounting term for any action, remedy, method of judicial proceeding, legal or accounting document, legal or accounting status, insolvency proceeding, event of incapacity, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept, practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned.
- 1.11 Any undertaking by either of the Parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing.

### 2 INSURANCE SERVICES WORK ORDERS

- 2.1 Where the Client and EXL Holdings (US) agree to enter into a contract for the provision of services (which may include the provision of equipment and other assets), the Parties shall, subject to clause 2.3, complete an Insurance Services Work Order. For the avoidance of

doubt, only Vikram Talwar and Rohit Kapoor, or such other persons who have been specifically identified to Client by EXL Holdings (US), shall be authorised to sign any Insurance Services Work Orders on behalf of EXL Holdings (US).

- 2.2 Each Insurance Services Work Order shall incorporate the terms of this Agreement as specified in the Insurance Services Work Order. Otherwise, the provisions of this Agreement shall only apply in agreements between the Parties where expressly stated to so apply.
- 2.3 In respect of each Insurance Services Work Order, EXL Holdings (US) shall complete, and shall procure that the SPV completes, an Insurance Services Work Order (Intra-Group - SPV) in the form set out in Schedule 9, Part 2 under which EXL Holdings (US) shall sub-contract to the SPV all of its obligations under each Insurance Services Work Order, save for the management services listed in section 16 of an Insurance Services Work Order, which EXL Holdings (US) shall sub-contract to EXL (India) under an Insurance Services Work Order (Intra-Group - India). EXL (India) and the SPV shall not sub-contract any obligations sub contracted to them under this clause 2.3 without the prior written consent of the Client.
- 2.4 EXL Holdings (US) shall and shall procure that SPV and EXL India shall comply with their respective obligations under any Intra-Group Work Order entered into pursuant to clause 2.3 above.
- 2.5 EXL Holdings (US) shall not be under any obligation to agree to any new Insurance Services Work Order which would result in the prospective aggregate annual financial commitment of Client under all Insurance Services Work Orders, including any such proposed new work order, exceeding the amount covered by the Guarantees.

### **3 THE SERVICES**

- 3.1 EXL Holdings (US) shall supply each of the Insurance Services as set out in an Insurance Services Work Order to the Client in accordance with the terms of this Agreement and the Insurance Services Work Order.
- 3.2 Subject to the Contract Change Control Procedures EXL Holdings (US) and the Client shall comply with the agreed Project Timetable set out in the applicable Insurance Services Work Order.
- 3.3 Where the Client is under an obligation to pass on the Insurance Services to an Authorised Agent, Associated Company or Authorised User, EXL Holdings (US) shall as directed by the Client, supply the Insurance Services so that Client can pass them on or procure that they are passed on to that Authorised Agent, Associated Company or Authorised User as the case may be provided that the obligations of EXL Holdings (US) in respect thereof shall be to Client and not the Authorised Agent, Associated Company or Authorised User. The Client shall procure that such Authorised Agent, Authorised Company or Authorised User shall, as necessary, comply with the obligations of the Client hereunder. For the avoidance of doubt, it is expressly understood that Client shall be responsible for the payment of the charges.
- 3.4 In the event that any Associated Company which receives the Insurance Services (or any part thereof) pursuant to clause 3.3 ceases to be an Associated Company of the Client (hereafter the "Divested Entity") the Divested Entity shall (subject to the Client's prior written agreement and subject to the Divested Entity being required by the Client to comply with all obligations, the Client remaining responsible for such compliance by the Divested Entity on it pursuant to this Agreement) be permitted to continue to receive the Insurance Services via or as directed by the Client for a period of one year from the date it so ceases to be an Associated Company of the Client.
- 3.5 The Insurance Services supplied under an Insurance Services Work Order shall be provided from the location(s) specified in such Insurance Services Work Order (the "Insurance Services Centre").

- 3.6 EXL Holdings (US) shall not alter the location of the Insurance Services Centre without the prior written consent of the Client.
- 3.7 For the avoidance of doubt, nothing in this Agreement or in any Insurance Services Work Order shall require or permit EXL Holdings (US), EXL (India) or the SPV to bind any Associated Company to a contract of insurance to be underwritten by such Associated Company nor to issue or enter into any such contract on behalf of such Associated Company nor to collect any insurance premiums on behalf of such Associated Company.

#### **4 COMMENCEMENT AND TERM**

- 4.1 This Agreement shall take effect on the Effective Date and shall continue for a minimum period of three years unless and until terminated in accordance with the terms of this Agreement.
- 4.2 Each Insurance Services Work Order shall take effect on its Commencement Date and shall continue for the duration specified in that Insurance Services Work Order (in relation to each such Insurance Services Work Order, the “Term”) unless and until terminated in accordance with the terms of this Agreement or the relevant Insurance Services Work Order or extended in accordance with clause 5.1.
- 4.3 For the avoidance of doubt, neither party shall be under an obligation to comply with its obligations hereunder or otherwise to receive or provide Insurance Services (as the case may be) prior to the signing of an Insurance Services Work Order.

#### **5 EXTENSION OF TERM**

- 5.1 The Client may, at its sole option, extend the Term of an Insurance Services Work Order by such period as the Client requires (but not being less than three months) and (subject to the Parties reaching agreement on any maximum aggregate extension and on the Charges to apply to such extension), by serving notice on EXL Holdings (US) no less than three months prior to the date upon which the Term, or extended Term would otherwise expire. Subject to that minimum period for each extension and that maximum aggregate extension and the provision of such notice, the Client may extend the Term of an Insurance Services Work Order as many times as it requires. For the avoidance of doubt, nothing in this clause 5.1 shall require EXL Holdings (US) to agree to such extension if, for reasons beyond its control, it is unable to provide Insurance Services under that Insurance Services Work Order during the extended period.

#### **6 ACCEPTANCE TESTING**

- 6.1 This clause 6 shall apply to all Deliverables specified in paragraph 4 of an Insurance Services Work Order.
- 6.2 EXL Holdings (US) shall complete the Deliverable, carry out its own successful internal tests of the Deliverable and notify the Client that it has done so as soon as reasonably practicable and in any event by the date specified in paragraph 4 of the applicable Insurance Services Work Order and the Client shall start to carry out Acceptance Tests of the Deliverable in accordance with the Acceptance Tests. The Client shall use its reasonable endeavours to complete the Acceptance Tests within the specified time after receiving notification that EXL Holdings (US) has completed the Deliverable, where the “specified time” means that period specified for these purposes in paragraph 4 of the applicable Insurance Services Work Order. EXL Holdings (US) shall provide the assistance in respect of such Acceptance Testing as set out in the Acceptance Tests and EXL Holdings (US) shall be permitted to be present at such Acceptance Tests.
- 6.3 If, and only if, in the reasonable opinion of the Client, the Deliverable meets all of the Acceptance Criteria, the Deliverable shall have passed its Acceptance Tests. The only evidence of such acceptance shall be an acceptance certificate in the form set out in

paragraph 4 of the applicable Insurance Services Work Order signed by the Client or else a written decision to that effect from an expert appointed pursuant to clause 6.9 below.

- 6.4 If the Deliverable does not pass its Acceptance Tests, the Client shall provide to EXL Holdings (US) reasons for such failure. Except where the Acceptance Test Due Date has passed or passes prior to the Deliverable passing the Acceptance Tests (in which case clauses 6.5 and 6.6 shall apply), EXL Holdings (US) shall be given the opportunity to correct any errors in the Deliverable and resubmit the Deliverable for Acceptance Testing in accordance with clauses 6.2 and 6.3. In such circumstances, this clause 6.4 shall also apply to such resubmission.
- 6.5 Where there has been a Fundamental Failure on the part of EXL Holdings (US) to pass the Acceptance Tests, without prejudice to the Client's other rights and remedies (including but not limited to the right to claim contractual damages), the Client may terminate this Agreement or the relevant Insurance Services Work Order without any cost or liability whatsoever.
- 6.6 Save where there has been a Fundamental Failure on the part of EXL Holdings (US) to pass the Acceptance Tests, if the Deliverable has not passed the Acceptance Tests by the Acceptance Test Due Date, the Client shall extend the Acceptance Test Due Date for such reasonable period as the Client may specify in which case clause 6.7 shall apply.
- 6.7 In the event that the Client extends the Acceptance Test Due Date pursuant to clause 6.6 in circumstances where the failure to pass the Acceptance Tests is for a reason within the reasonable control of EXL Holdings (US) (but not otherwise) EXL Holdings (US) shall pay to the Client the daily rate for such Deliverable specified in paragraph 4 of the applicable Insurance Services Work Order for each day or part thereof for the period beginning on the original Acceptance Test Due Date and ending on the date upon which:
  - 6.7.1 the applicable Insurance Services Work Order is terminated pursuant to clause 6.5 or 6.8; or
  - 6.7.2 the Deliverable passes the Acceptance Tests pursuant to clause 6.3.
- 6.8 In the event that the Client extends the Acceptance Test Due Date pursuant to clause 6.6 and the Deliverable has not passed the Acceptance Tests by such extended Acceptance Test Due Date, the Client may, at its sole option, reapply clause 6.6 or alternatively terminate the applicable Insurance Services Work Order and, if the failure to pass the Acceptance Test is for a reason within the reasonable control of EXL Holdings (US) (but not otherwise) then such termination shall be in accordance with Schedule 7. This is whether or not the reason for the failure to pass the Acceptance Tests by such extended Acceptance Test Due Date is due to a Fundamental Failure.
- 6.9 Any dispute as to whether or not a Deliverable meets all of the Acceptance Criteria shall be referred to Director Offshore Operations for the Client and Vice Chairman & Chief Executive Officer for EXL Holdings (US) for the time being (or, in the case of EXL Holdings (US) such other person or persons authorised by its board of directors, each of whom shall in good faith attempt to resolve such dispute within 14 days. If such persons fail to reach agreement the dispute shall be referred to the Independent Accountants at the request of either Party. The Independent Accountants shall act as an expert and not an arbitrator and decision shall (in the absence of clerical or manifest error) be final and binding on the parties. The Independent Accountant's fee for so acting shall be borne in equal shares by the Parties unless it determines that the conduct of one of them is such that such Party should bear all or a greater proportion of those expert's fees.

## **7 SERVICE LEVELS AND SERVICE CREDITS**

- 7.1 The Parties agree that Service Levels in respect of the Insurance Services to be provided under a particular Insurance Services Work Order shall be set by reference to the results of any pilot exercise undertaken by the Parties prior to signing that particular Insurance Services

Work Order or else by reference to the equivalent service levels applicable to a similar service provided by Client UK or Other UK Clients from its operations in the United Kingdom (EXL Holdings (US) having been provided with information as to those equivalent UK service levels). EXL Holdings (US) shall perform the Insurance Services under an Insurance Services Work Order in accordance with the Service Levels set out in such Insurance Services Work Order.

- 7.2 Where EXL Holdings (US) meets or exceeds the relevant Service Levels the variable profit element determined in accordance with Schedule 3 shall be applied to the operating costs and management fee element of the Charges pursuant to the relevant Insurance Services Work Order.
- 7.3 Where EXL Holdings (US) fails to achieve the Service Levels then, without prejudice to the Client's other rights and remedies (including, but not limited to the right to claim damages and terminate the applicable Insurance Services Work Order):
- 7.3.1 if requested by the Client, EXL Holdings (US) shall, in accordance with the charging arrangements in schedule 3, arrange all such additional resources as are reasonable and necessary to perform the Insurance Services in accordance with the Service Levels as early as practicable after any failure to achieve the Service Levels;
- 7.3.2 EXL Holdings (US) shall, in accordance with the charging arrangements in schedule 3, where applicable, use all reasonable endeavours to correct the fault which caused the failure or re-perform any of the Insurance Services which have not met their applicable Service Level, in either case as soon as reasonably practical to do so; and
- 7.3.3 where such failure is wholly or predominantly due to matters which were or should reasonably have been within the control of EXL Holdings (US), the variable profit element and the Charges shall be reduced in accordance with Schedule 3.

## **8 EXL HOLDINGS (US) PROPERTY**

EXL Holdings (US) shall be required to make available such of its property (including, but not limited to, office and call centre premises and other buildings, machinery, office equipment, computer hardware and software, telephone and other equipment) as is necessary to enable it to perform its obligations pursuant to an Insurance Services Work Order. In addition, the Parties may specify particular assets of EXL Holdings (US) (EXL Holdings (US) Property) in paragraph 15 of an Insurance Services Work Order which shall be dealt with in accordance with that Insurance Services Work Order.

## **9 CLIENT ASSETS**

The Client shall be required to make available such of its assets as are reasonably necessary to enable EXL Holdings (US) to perform its obligations pursuant to any Insurance Services Work Order. In addition, the Parties may specify particular assets of the Client (the Client Assets). The Client Assets set out in paragraph 14 of an Insurance Services Work Order shall be dealt with in accordance with that Insurance Services Work Order.

## **10 CLIENT LICENCES AND OTHER AGREEMENTS**

It shall be the Client's responsibility to ensure that any licences and agreements it or an Associated Company has with third parties, are in terms or are subject to consents from those third parties which do not prevent EXL Holdings (US) from performing its obligations pursuant to an Insurance Services Work Order. In addition, the Parties may specify particular licences and agreements (the Client Licences and Other Agreements) to be set out in paragraph 7 an Insurance Services Work Order which shall be dealt with in accordance with that Insurance Services Work Order.

## **11 INTELLECTUAL PROPERTY RIGHTS OWNERSHIP**

- 11.1 Subject to clause 11.7, any Intellectual Property Rights created by or on behalf of either SPV, EXL Holdings (US) or EXL India (or their respective employees or sub-contractors) wholly and exclusively for the Client pursuant to the Umbrella Agreement or this Agreement shall vest absolutely in the Client immediately upon such rights coming into existence and to that end EXL Holdings (US) by this clause 11.1, assigns by way of assignment (and shall procure that SPV, EXL India and its and their respective employees and sub-contractors assign by way of assignment) all such Intellectual Property Rights to the Client absolutely.
- 11.2 By this clause 11.2, EXL Holdings (US) unconditionally and irrevocably waives (and agrees to procure a similar waiver from SPV, EXL India and its or their respective employees and sub-contractors ) in relation to the Intellectual Property Rights referred to in clause 11.1 all moral rights conferred by Chapter IV of Part I of the Copyright, Designs and Patents Act 1988 and all author's rights of a similar kind conferred by the law of any jurisdiction.
- 11.3 The Client, by this clause 11.3, grants to each of EXL Holdings (US), SPV and EXL India a non-exclusive, non-transferable licence to use and copy the Intellectual Property Rights referred to in clause 11.1 solely for the purposes of fulfilling their respective obligations under the Umbrella Agreement and this Agreement.
- 11.4 For the avoidance of doubt, all Intellectual Property Rights in the Data shall vest in the Client upon their creation absolutely and neither EXL Holdings (US), SPV nor EXL India (nor their respective sub-contractors or employees) shall obtain any rights, title or interest in the Data whatsoever, except that each of EXL Holdings (US), SPV nor EXL India is permitted to use the Data solely for the purposes of fulfilling their respective obligations under the Umbrella Agreement and this Agreement.
- 11.5 EXL Holdings (US) undertakes with the Client that it shall not and shall procure that neither of SPV nor EXL India shall:
- 11.5.1 create, copy, implement, recreate or re-implement any Data or any part of any Data or any work or thing similar in any material respect to the Data without the written consent and agreement of the Client; or
- 11.5.2 retain copies of the Data obtained, received, processed, created or otherwise used by EXL Holdings, SPV nor EXL India following the expiry or termination of this Agreement or an Insurance Services Work Order to which it relates without the prior written consent of the Client.
- 11.6 EXL Holdings (US) shall take all reasonable steps (and shall procure that SPV and EXL India takes such steps) to protect the Intellectual Property Rights referred to in this clause 11 from unauthorised disclosure, use or other threat to the Client's proprietary interests, including, but not limited to ensuring that all rights that are registrable under the law of India are at all times the subject of a current registration.
- 11.7 This clause 11 shall not affect the Intellectual Property Rights of EXL Holdings (US), SPV and EXL India and their respective sub-contractors that were in existence prior to the date of this Agreement. Further, in relation to the Intellectual Property Rights created by EXL Holdings (US), SPV and EXL India or their respective employees or sub-contractors after such date, and which are not for the exclusive use of the Client pursuant to the Umbrella Agreement or this Agreement, such rights shall, subject to clause 11.8, vest absolutely in EXL Holdings (US), SPV and EXL India (as the case may be) immediately on such rights coming into existence.
- 11.8 In relation to those Intellectual Property Rights referred to in clause 11.7, EXL Holdings (US) shall grant, or procure that SPV or EXL India (as the case may be) shall grant, (or procure the grant by their respective employees or sub-contractors) of a non-exclusive, non-transferable, perpetual, worldwide licence for the Client and any Associated Company. For the avoidance of doubt, such royalty-free licence shall survive the termination or expiry of this



Agreement however and whenever arising. The Client and any Associated Company shall be entitled to sub-licence those Intellectual Property Rights referred to in 11.7 to an Authorised User or Authorised Agent to use such Intellectual Property Rights, only for the purposes of the provision of services to the Client and any Associated Company which are similar to the Insurance Services provided that, under no circumstances, shall the Client or an Associated Company grant such a sub-licence to any of the competitors of EXL Holdings (US) referred to in Part B of Schedule 8.

## 12 THE CHARGES

- 12.1 In consideration of the provision of the Insurance Services and all other activities and services to be provided by EXL Holdings (US) under an Insurance Services Work Order, the Client shall pay to EXL Holdings (US) the Charges referred to in clause 12.2. Except as specifically agreed between the Parties, the Charges in relation to each Insurance Services Work Order shall be determined in accordance with the Charging Principles set out in schedule 3. The Charges represent the entire payments to be paid by the Client pursuant to an Insurance Services Work Order and the Client shall not be subject to any other charges including but not limited to all other taxes, duties, royalties, or levies, all of which shall be borne by EXL Holdings (US). No travel, accommodation, subsistence or other expenses shall be due to EXL Holdings (US) from the Client save as expressly set out in the applicable Insurance Services Work Order. The Client shall only be liable to make payment under an Insurance Services Work Order and not under this Agreement.
- 12.2 EXL Holdings (US) shall invoice the Client the amounts set out in paragraph 8 of the applicable Insurance Services Work Order and in accordance with the principles set out in Schedule 3 on the dates set out in that schedule. All invoices shall be calculated and paid in GB pounds unless the Client authorises any part of the invoice to be calculated and paid in another currency (not in any event to be Indian Rupees). In the case of any part of the Charges which is comprised in a currency other than GB pounds, the amount payable under the relevant invoice shall be calculated by applying the mid-point between the rate for selling and the rate for buying such other currency in GB pounds as quoted by Barclays Bank plc, at close of business on the last Business Day of the month to which such invoice relates (or where such invoice relates to a period covering more than one month, the last Business Day of the final month in such period).
- 12.3 Invoices shall be submitted to the following address, or such other address as may, from time to time, be advised by the Client to EXL Holdings (US):  
Norwich Union Customer Services (Singapore) Pte Ltd  
4 Shenton Way  
#27-02 SGX Centre 2  
Singapore 068807  
For the attention of the Finance Director
- 12.4 The Charges under an Insurance Services Work Order and the Charging Principles set out in schedule 3 shall be varied only in accordance with schedule 4 (Contract Change Control Procedures).
- 12.5 Except in connection with the agreed Service Credits or as otherwise agreed between the Parties, no Party shall be entitled to set off amounts due to it against any amounts due to the other Party pursuant to, or in connection with, any Insurance Services Work Order.
- 12.6 Subject to clause 12.8, the Client shall pay a valid and properly due invoice within 21 days of its receipt.
- 12.7 Subject to clause 12.8, if the Client does not pay a valid and properly due invoice by the date required pursuant to clause 12.6, EXL Holdings (US) may, in addition to the invoice amount, charge the Client late payment interest ("Late Payment Interest") of two percent above the sterling base rate from time to time of Barclays Bank Plc of the invoice amount for the period from the expiry of the applicable Payment Period until such payment is made. Late Payment

Interest shall accrue on a daily basis. Where the client does not pay a valid and properly due invoice within six weeks of the due date for payment pursuant to clause 12.6, EXL Holdings (US) shall be entitled to send a notice of non-payment to the Client, requiring the Client to settle undisputed amounts in respect of that invoice within two weeks of receipt of that notice, failing which, in addition to its other remedies, EXL Holdings (US) shall be entitled to terminate this Agreement pursuant to clause 15.8.1.

- 12.8 If the Client receives an invoice which the Client reasonably believes specifies a Charge which is not valid and properly due (“Disputed Charge”):
- 12.8.1 the Client shall pay to EXL Holdings (US) in accordance with clause 12.6 any part of the Charges under that invoice which is not a Disputed Charge;
- 12.8.2 the Client may withhold payment of the Disputed Charge in that invoice and in that case, the Client shall notify EXL Holdings (US) within the applicable Payment Period following receipt of the invoice, of the nature of the dispute and the Parties shall commence, within five days after the receipt of the Client’s notice, to resolve the dispute; and
- 12.8.3 once the dispute has been resolved by agreement of the Parties or pursuant to clause 12.9, the Client shall pay the amount due as part of that resolution as soon as reasonably possible and in any event within fifteen (15) days of resolution in relation to the Pass Through Costs and within thirty (30) days of resolution in relation to the Other Costs (such period in this case commencing on the date of such resolution). Late Payment Interest shall apply with respect to any such amount, and shall start to accrue pursuant to clause 12.7:-
- (a) from the date for payment prescribed by clause 12.6 in the case of any Disputed Charge which the Client was not entitled to dispute or else had not acted reasonably in so disputing; and
  - (b) from the date for payment prescribed by this clause 12.8.3 in the case of an invoice, or an amount due for payment thereunder, which the Client was entitled to dispute.
- 12.9 Any dispute as to whether the Client is entitled to withhold payment of a Disputed Charge or the amount it should pay in respect of such Disputed Charge shall be referred to the Director of Offshore Operations for the Client (or such other person as the Client may from time to time advise in writing) and Vice Chairman and Chief Executive Officer for EXL Holdings (US) (or such other person or persons as EXL Holdings (US) may from time to time advise in writing) who shall in good faith attempt to resolve such dispute within fourteen (14) days. If such persons fail to reach agreement, the dispute shall be referred to the Independent Accountants at the request of either Party. The Independent Accountants shall act as an expert and not an arbitrator and their decision shall (in the absence of clerical or manifest error) be final and binding on the Parties. The Independent Accountants’ fee for so acting shall be borne in equal shares by the Parties unless the Independent Accountants determines that the conduct of one of them is such that such Party should bear all or a greater proportion of their fees.
- 12.10 The Client shall settle invoices submitted pursuant to this clause 12 by electronic transfer but if for any reason it is impossible for the Client to settle invoices in this way within the time limits in clauses 12.6 and 12.8, then settlement will be by cheque:
- 12.11 Where the Client gives notice to exercise the Call Option or EXL Holdings (US) gives notice to exercise the Put Option pursuant to clause 10 of the Virtual Shareholders Agreement, the Client shall assume control of payments in and out of the relevant bank account of SPV into which for the Notice Period (as that term is defined in the Virtual Shareholders Agreement), specifically:
- 12.11.1 all amounts in respect of Pass Through Costs shall be controlled and allocated to EXL Holdings (US) or the SPV or EXL India as appropriate by the Client; and

12.11.2 all amounts in respect of Other Costs shall be paid for onward transmission to EXL Holdings (US) pursuant to the Insurance Services Framework Agreement (Intra Group) and it shall be the responsibility of EXL Holdings (US) to allocate costs to EXL India as it sees fit (the Client's responsibility in this regard being fully discharged by payment of Other Costs to EXL Holdings (US)); but

12.11.3 the Client shall not be entitled without the prior consent of EXL Holdings to make payments to itself out of such bank account.

### **13 TAX**

13.1 EXL Holdings (US) shall pay all taxes properly levied on it, and shall procure the payment by EXL India or SPV (as the case may be) of all taxes properly levied on either of them, in any jurisdiction in respect of the Charges. For the purposes of this clause 13 "taxes" includes but is not limited to, use or sales tax, Value Added Tax ("VAT"), GST, levies, duties, personal property, telecommunications or other taxes.

13.2 The Client shall be required to reimburse EXL Holdings (US), as part of the Charges, only those taxes that are set out in paragraph 8 of the relevant Insurance Services Work Order or as determined by the budget provision described in Schedule 3 or otherwise agreed by the Parties. The Client shall be responsible for the payment of (or procuring the payment of) taxes (as defined in clause 13.1) levied on it or its Associated Companies but only to the extent that such taxes are not so levied by reason of the failure of EXL Holdings (US) to comply, or procure that EXL India or SPV so comply, with its or their respective obligations under clause 13.1. The Client agrees to act reasonably in agreeing revisions to the Charges to take account of additional taxes to be paid by EXL Holdings (US), EXL India or SPV where the imposition of such additional taxes is beyond the control of EXL Holdings (US), EXL India or SPV (as the case may be) and could not have been foreseen by any of them when the relevant Insurance Services Work Order was signed. Otherwise, the Client shall not be responsible for any other taxes, including those which EXL Holdings (US), EXL (India) or the SPV are obliged to pay, levy or collect in respect of the Charges.

13.3 EXL Holdings (US) shall ensure that it avails itself of all tax concessions that are available from time to time unless the parties are agreed that such concessions shall not be pursued for good commercial reasons.

13.4 EXL Holdings (US) shall provide and make available to the Client any tax exemption certificates or information requested by the Client with regard to EXL Holdings (US), EXL (India) or the SPV's tax positions.

### **14 TERMINATION OF INSURANCE SERVICES WORK ORDERS**

14.1 Any Party (the "First Party") may at any time by notice terminate an Insurance Services Work Order with immediate effect

14.1.1 if the other Party is in Material Default of the applicable Insurance Services Work Order and the Default is not capable of remedy; or

14.1.2 the other Party is in Material Default of the applicable Insurance Services Work Order and the Default is capable of remedy and that other Party shall have failed to remedy that Default within 40 days of notice from the First Party to that other Party specifying the Default and requiring its remedy.

- 14.1.3 in the event that any Unauthorised Access by the other Party occurs as a result of the failure by that other Party to apply reasonable internal controls that would have prevented such access.
- 14.2 'Material Default' for these purposes means any Default:-
- 14.2.1 of such seriousness or persistence as to have a demonstrable and prejudicial impact on the First Party's business and/or its ability to conduct that business (which, in the case of the Client, includes a demonstrable and prejudicial impact on the business of a Client (UK) and/or that Client (UK)'s ability to conduct that business); or
- 14.2.2 which results or (in the reasonable opinion of the First Party) is likely to result in the First Party (or, in the case of the Client, any Associated Company, Authorised Agent or Authorised User) being subject to any material regulatory sanction; or
- 14.2.3 which results in or (in the reasonable opinion of the First Party) is likely to result in damage to the reputation of the first Party (or, in the case of the Client, to any Associated Company, Authorised Agent or Authorised User).
- 14.3 The Client may by notice terminate an Insurance Services Work Order with immediate effect:
- 14.3.1 in accordance with clause 6.5 or 6.8;
- 14.3.2 in the event that the Travel Unit of the UK Foreign and Commonwealth Office (or any successors assuming responsibility for the functions of such unit) advises against all travel to the Indian States in which any Insurance Services Centre(s) used for such Insurance Services Work Order are located and the consequences of complying with that advice are such that there is a material and adverse departure from the Service Levels set out in that Insurance Services Work Order which EXL Holdings (US) has been unable to correct within one month of being notified of the same;
- 14.3.3 where any new requirements or concerns have been raised by the FSA in relation to this Agreement, any Insurance Services Work Order or the Insurance Services and, as a consequence, a Client (UK) reasonably believes that it cannot or should not receive Insurance Services from Client or direct from EXL Holdings (US), EXL India or SPV;
- 14.3.4 in the event that another Insurance Services Work Order has been terminated by the Client under clauses 14.1 or 14.3 and the Client had advised EXL Holdings (US) at or before the commencement of that work order that there was a dependency between that work order and the Insurance Services Work Order to be terminated pursuant to this clause 14.3.4;
- 14.3.5 in the event that a Client UK suffers a Force Majeure event in the United Kingdom which prevents or inhibits that Client UK being able to receive Insurance Services from the Client.
- 14.3.6 In the event that EXL Holdings (US), EXL India or SPV suffers a Force Majeure which prevents or inhibits EXL Holdings (US) from meeting its obligations under that Insurance Services Work Order and such Force Majeure event has subsisted for three months or more and is incapable of being remedied.
- 14.4 The Client may for any reason
- 14.4.1 by giving not less than three months' prior notice in writing terminate an Insurance Services Work Order before the third anniversary of the ISWO Effective Date of the same subject to payment of the Break Option Fee;

- 14.4.2 by giving not less than six months' notice in writing terminate an Insurance Services Work Order without any cost or liability (including without paying the Break Option Fee), provided that such notice may not take effect before the third anniversary of the relevant ISWO Effective Date.
- 14.5 The Client may by notice terminate an Insurance Services Work Order with immediate effect on Completion under the Share Sale and Purchase Agreement (as "Completion" is defined in the Share Sale and Purchase Agreement).
- 14.6 Where this Agreement terminates and, pursuant to clause 15.5 below, an Insurance Services Work Order does not terminate the provisions of this Agreement that are incorporated into the Insurance Services Work Order pursuant to its terms shall continue to apply.
- 14.7 Subject to the payment of a Break Option Fee in the event of termination under clause 14.4 and unless expressly stated otherwise, termination of this Agreement or any Insurance Services Work Order in accordance with this clause 14 shall be without cost or other liability of the Party so terminating this Agreement.
- 14.8 Termination of an Insurance Services Work Order however and whenever occurring shall not prejudice or affect any right of action or remedy which shall have accrued to any Party up to and including the date of such termination.
- 14.9 Upon termination of an Insurance Services Work Order, the relevant provisions of Schedule 7, Part A shall apply.
- 14.10 The provisions of clauses 1, 11, 16, 18, 19, 21, 24, 27, 30, 32, 34 and clauses 14.8, 14.9 and this clause 14.10 and the provisions of schedules 1 and Part A of Schedule 7 shall survive termination or expiry of an Insurance Services Work Order, however and whenever occurring.

## **15 TERMINATION OF THIS AGREEMENT**

- 15.1 Either Party may at any time by notice terminate this Agreement with effect from the date of such notice if the other Party becomes subject to an event referred to in clause 15.2 (and whether or not that other Party provides notice in accordance with clause 15.2).
- 15.2 Any Party (the "First Party") must notify the other Party immediately if:
- 15.2.1 the First Party disposes of the whole or any material part of its assets, operations or business other than in the normal course of business or as a voluntary liquidation for the purposes of amalgamation or reconstruction;
- 15.2.2 any step is taken to enter into any arrangement between the First Party and its creditors;
- 15.2.3 any step is taken to appoint a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the First Party's assets or business;
- 15.2.4 the First Party ceases to be able to pay its debts as they become due;
- 15.2.5 the First Party ceases to carry on business or any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the First Party's assets or business; or
- 15.2.6 any other circumstances analogous to those set out in clauses 15.2.1 to 15.2.5, and in any jurisdiction, arise; or
- 15.2.7 any of the circumstances set out in 15.2.1 to 15.2.6 applies to EXL India (in which case EXL Holdings (US) shall be the First Party for the purposes of this clause 15.2 and shall notify Client accordingly).

- 15.3 Any Party (the “First Party”) may at any time by notice terminate an this Agreement with immediate effect:
- 15.3.1 if the other Party is in Material Default of this Agreement and the Default is not capable of remedy;
  - 15.3.2 the other Party is in Material Default of this Agreement and the Default is capable of remedy and that other Party shall have failed to remedy that Default within 40 days of notice from the First Party to that other Party specifying the Default and requiring its remedy; or
  - 15.3.3 in the event that any Unauthorised Access by the other Party occurs as a result of the failure by that other Party to apply reasonable internal controls that would have prevented such access.
- For the purposes of this clause 15.3, the term ‘Material Default’ shall have the same meaning as given to it in clause 14.2 above. Each of the Parties agrees that it will only exercise its right to terminate this Agreement for any of the reasons referred to in 15.3.1 to 15.3.3 inclusive if the Default or Unauthorised Access complained of cannot be rectified by the termination of a single Insurance Services Work Order.
- 15.4 The Client may by written notice to EXL Holdings (US) terminate this Agreement with immediate effect:
- 15.4.1 in the event of any Change of Control pursuant to which the person which can exercise control of EXL Holdings (US), whether directly or through another company or person, is one of the entities named in part A of Schedule 8;
  - 15.4.2 in the event of a breach by the SPV of the Trade Mark Licence, or any unauthorised use of the Trade Marks by EXL Holdings (US) or EXL India or their respective Sub-Contractors (including, but not limited to, the SPV);
  - 15.4.3 in the event that the Travel Unit of the UK Foreign and Commonwealth Office (or any successors assuming responsibility for the functions of such unit) advises against all travel to the Indian States in which any Insurance Services Centre(s) is/are located and the consequences of complying with that advice are such that there is a material and adverse departure from the Service Levels set out in any Insurance Services Work Order which EXL Holdings (US) has been unable to correct within one month of being notified of the same;
  - 15.4.4 in accordance with clause 6.5;
  - 15.4.5 where any new requirements or concerns have been raised by the FSA in relation to this Agreement, any Insurance Services Work Order or the Insurance Services and, as a consequence, a Client (UK) reasonably believes it cannot or should not receive Insurance Services from the Client or direct from EXL Holdings (US), EXL India or SPV; for the avoidance of doubt, if the situation can be remedied by the termination of a particular Insurance Services Work Order only, then the Client will take this route;
  - 15.4.6 in the event that EXL Holdings (US), EXL (India) or the SPV ceases to be authorised and licensed as required by clause 17.1.1 and 17.1.2;
  - 15.4.7 on Completion under the Share Sale and Purchase Agreement (as “Completion” is defined in the Share Sale and Purchase Agreement);
  - 15.4.8 in the event that the Client terminates the Umbrella Agreement pursuant to clauses 3.5 or 7.5 of the Umbrella Agreement;
  - 15.4.9 if for any reason, EXL Holdings (US) or EXL India terminates an Insurance Services Work Order (Intra-Group - India) or EXL India ceases to provide services to EXL

Holdings (US) pursuant to that Work Order, save that this clause 15.4.9 shall not apply in respect of an Insurance Services Work Order (Intra-Group - India) where the corresponding Insurance Services Work Order has terminated;

15.4.10 if for any reason, EXL Holdings (US) or SPV terminates an Insurance Services Work Order (Intra-Group - SPV) or SPV ceases to provide services to EXL Holdings (US) pursuant to that Work Order, save that this clause 15.4.10 shall not apply in respect of an Insurance Services Work Order (Intra-Group - SPV) where the corresponding Insurance Services Work Order has terminated;

15.4.11 in the event that a Client UK suffers a Force Majeure event which prevents or inhibits that Client UK being able to receive Insurance Services from the Client;

15.4.12 in the event that EXL Holdings (US), EXL India or SPV suffers a Force Majeure event which prevents or inhibits EXL Holdings from meeting its obligations pursuant to this Agreement and such Force Majeure event has subsisted for three months or more and is incapable of being rectified; or

15.4.13 in the event that the Client has the right to terminate the Noida Agreement on any of the grounds set out in clauses 16.4 or 16.6.2 of that Agreement.

15.5 Where this Agreement is terminated under clauses 15.1 to 15.4 above or 15.7 below, any Insurance Services Work Orders shall automatically terminate at the same time in accordance with the provisions of Schedule 7 unless the Parties have agreed that a particular Insurance Services Work Order shall continue after termination of this Agreement, in which case the provisions of 14.6 above shall apply.

15.6 The Client may for any reason by giving not less than six months' notice terminate this Agreement without any cost or liability (including without paying the Break Option Fee), provided that such notice may not take effect before the third anniversary of the Effective Date.

15.7 The Client may, by giving not less than 12 months written notice of termination to EXL Holdings (US), terminate this Agreement in the event of a Change of Control pursuant to which the person which can exercise control of EXL Holdings (US), whether directly or through another company or person, is one of the entities named in part B of Schedule 8.

15.8 EXL Holdings (US) may terminate this Agreement by giving not less than six months' written notice of termination to the Client in the event that:

15.8.1 the Client is in breach of 12.7;

15.8.2 in any period of six consecutive months following the third anniversary of the Effective Date, the Insurance Services purchased by Client under all Insurance Services Work Orders in that period are less than 90% of the average purchase of Insurance Services under all Insurance Services Work Orders in any corresponding period in the 12 months prior to the third anniversary of the Effective Date; for the avoidance of doubt, the purchase of Insurance Services for the purposes of this clause 15.8.2 shall be measured by reference to the number of full time equivalents employed by SPV in Pune in the provision of those Services. The term "full time equivalents" shall be calculated in accordance with clause 11.3 of the Virtual Shareholders Agreement.

15.9 Subject to clause 15.11 and unless expressly stated otherwise, termination of this Agreement in accordance with this clause 15 shall be without cost or other liability of the Party so terminating this Agreement.

15.10 Termination of this Agreement however and whenever occurring shall not prejudice or affect any right of action or remedy which shall have accrued to any Party up to and including the date of such termination.

- 15.11 Upon termination of this Agreement for whatever reason the relevant provisions of Schedule 7, Part B shall apply.
- 15.12 Where the assets purchased by the SPV have been identified by the parties as being of a “Systems & Network” nature and unlikely to be of a type that would normally be purchased by EXL Holdings (US) to provide services to its other customers. Accordingly, in the event that the Insurance Services Framework Agreement is terminated before the value of that asset has been written down to nil and the Client declines to exercise the Call Option, EXL Holdings (US) may require the Client to purchase that asset for an amount equal to the net book value of these assets. For avoidance of doubt, net book value is computed using a rate of depreciation of 3 years for all the years.
- 15.13 The provisions of clauses 1,11,16,18,19, 21, 24, 27, 30, 32, 34 and clause 15.11 and this clause 15.13 and the provisions of Schedule 1 and Part B of Schedule 7 shall survive termination of this Agreement, however and whenever occurring.

## **16 LIMITATIONS OF LIABILITY**

- 16.1 Neither Party excludes the undertakings implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 or the application of any similar provisions of the law of India which cannot be excluded by contract.
- 16.2 Neither Party excludes or limits liability to the other Party in respect of:
- 16.2.1 death or personal injury;
  - 16.2.2 defects within the meaning of the Consumer Protection Act 1987;
  - 16.2.3 clause 11 (Intellectual Property Rights Ownership);
  - 16.2.4 any fraudulent pre-contractual misrepresentations made by it on which the other Party can be shown to have relied; or
  - 16.2.5 any claim under the indemnity in clause 16.8 below.
- 16.3 In respect of loss and damages not covered by clauses 16.1 and 16.2:
- 16.3.1 The total liability of EXL Holdings (US) for any one claim or for the total of all claims not covered by clauses 16.1 and 16.2 or from other act or default of EXL Holdings (US) pursuant to this Agreement or any Insurance Services Work Order not covered by clauses 16.1 and 16.2 shall be limited to damages of an amount equal to the amount of insurance cover which EXL Holdings (US) is required to have in place pursuant to clause 18 below in respect of such a claim; and
  - 16.3.2 The total liability of the Client for any one claim or for the total of all claims arising from any of the other provisions of this clause 16 or from other act or default of the Client pursuant to this Agreement shall be limited to damages not exceeding £3,000,000; but always provided that
  - 16.3.3 The total liability of the Client to pay the Charges and any amounts due under Schedule 7 shall be unlimited.
- 16.4 In the event that an Associated Company, Authorised Agent or Authorised User suffers loss or damage due to a Default of EXL Holdings (US), EXL India, SPV or any of their respective Sub Contractors the Client may recover from EXL Holdings (US) an amount equal to the amount that the Client would have been able to recover had the loss or damage been suffered by the Client rather than the Associated Company, Authorised Agent or Authorised User.



- 16.5 In the event that EXL Holdings (US) or EXL India suffers loss or damage due to a Default of an Associated Company, Authorised Agent or Authorised User, EXL Holdings (US) may recover from the Client an amount equal to that which EXL Holdings (US) would have been able to recover had the loss or damage been caused by the Client, rather than the Associated Company, Authorised Agent or Authorised User.
- 16.6 Neither Party shall be liable to the other for consequential loss sustained by that other due to a Default. For these purposes, the term “consequential loss” shall include loss of profits and anticipated savings, even if the Party in Default knew or should have known of the possibility of such losses being incurred by reason of its Default.
- 16.7 Each of the Parties agrees that in respect:
- 16.7.1 any Default by it or, (in the case of EXL Holdings (US), by EXL India, SPV or any of their respective Sub Contractors); or
- 16.7.2 any act or omission on the part of any of its employees, agents or (in the case of EXL Holdings (US)) by EXL India, SPV or any of their respective Sub Contractors
- which results in a claim by any third party against the other Party, it shall indemnify and keep indemnified that other Party from and against all damages, loss, claims, demands and expenses, costs and liabilities arising from such third party claim.
- 16.8 Where a Party (“the Instructing Party”) instructs the other Party to carry out a particular act and either:-
- 16.8.1 that instruction is contrary to the advice received from that other Party; or
- 16.8.2 the other Party could not reasonably have known the likely consequences of complying with the Instructing Party’s instruction;
- the Instructing Party shall indemnify the other Party and keep that other Party indemnified for all damages, losses, claims, expenses, costs and liability of that other Party to any third party, as a result of carrying out such instruction.
- 16.9 For the purposes of the indemnity in clause 16.7 and 16.8, a Party shall promptly notify the other Party in writing of any third party claim of which it has notice and for which it may wish to claim under clause 16.7 or 16.8. The Party seeking an indemnity shall not make any admission as to liability in relation to, or agree to any settlement of or compromise any claim without the prior written consent of the indemnifying Party, which shall not be unreasonably withheld or delayed. The indemnifying Party shall be entitled to conduct all negotiation and litigation, and settle all litigation, arising from any claim and the Party seeking to rely on the indemnity shall give the indemnifying Party, at its request and cost, all reasonable assistance in connection with those negotiations and litigation.
- 16.10 For the avoidance of doubt, the indemnity given under clause 16.7 shall not apply to the extent that any claim by a third party has arisen from.
- 16.10.1 any modifications of the Insurance Services, including any Intellectual Property comprised therein, made by Client without EXL Holdings (US) prior written consent or authorisation; or
- 16.10.2 the application of the Insurance Services in combination with any other materials, software, equipment or systems not supplied or approved in writing by EXL Holdings (US) and in a manner not contemplated by this Agreement; or
- 16.10.3 a material breach by the Party seeking the indemnity of its obligations under this Agreement.

## 17 GENERAL OBLIGATIONS

17.1 In addition to its other obligations set out in the Agreement, EXL Holdings (US) shall ensure that:

17.1.1 the SPV has, and shall continue to have for the duration of each Insurance Services Work Order including but not limited to the Insurance Services Work Order (Intra-Group - SPV) and for such time after the expiry or termination of each Insurance Services Work Order including but not limited to the Insurance Services Work Order (Intra-Group - SPV) as is necessary for the proper performance of its obligations under the Insurance Services Work Order (Intra-Group - SPV), and to ensure that EXL Holdings (US) can perform its obligations under each Insurance Services Work Order full capacity and authority and all necessary governmental, administrative and regulatory authorisations, licences, permits and consents (to the extent that these are available from the relevant Government Office or administrative or regulatory body) and all necessary Intellectual Property Rights to enter into and to perform each Insurance Services Work Order (Intra-Group - SPV) and to supply the Insurance Services including, but not limited to:

- (a) international call centre registration with the Department of Telecommunications, Government of India; and
- (b) approval under Software Technology Parks of India scheme including but not limited to approvals/permissions/authorisations for:
  - (i) status as a 100% export oriented unit;
  - (ii) importer exporter code;
  - (iii) green card issued by Software Technology Parks of India;
  - (iv) income tax registration (PAN number) issued by the income tax accessing officer;
  - (v) central government sales tax registration number allotment made by the central government sales tax authorities;
  - (vi) state government sales tax registration number allotment by the local sales tax authorities;
  - (vii) service tax registration with the Superintendent of Central Excise;
  - (viii) Shops and Establishment Act registration with the local municipal authorities;
  - (ix) private bonded warehouse license issued by customs; and (x) import of capital goods;
- (c) maintaining the right to exemption from taxation under sections 10A and 10B of the Indian Income Tax Act 1961 and any amending or replacement legislation of a similar nature;
- (d) making appropriate filings with the Reserve Bank of India/ Ministry of Finance for foreign direct investment, if any; and
- (e) obtaining necessary corporate approvals;

17.1.2 EXL (India) has, and shall continue to have for the duration of each Insurance Services Work Order including but not limited to the Insurance Services Work Order (Intra-Group - India) and for such time after the expiry or termination of each Insurance Services Work Order including but not limited to the Insurance Services Work Order (Intra-Group - India) as is necessary for the proper performance of its obligations under the Insurance Services Work Order (Intra-Group - India) and to ensure that EXL Holdings (US) can perform its obligations under each Insurance Services Work Order, full capacity and authority and all necessary governmental, administrative and regulatory authorisations, licences, permits and consents (to the extent that these are available from the relevant Government Office or administrative or regulatory body) and all necessary Intellectual Property Rights to enter into and to perform each Insurance Services Work Order (Intra-Group - India) and to supply the Insurance Services including, but not limited to:

- (a) international call centre registration with the Department of Telecommunications, Government of India; and
- (b) approval under Software Technology Parks of India scheme including but not limited to approvals/permissions/authorisations for:
  - (i) status as a 100% export oriented unit;
  - (ii) importer exporter code;
  - (iii) green card issued by Software Technology Parks of India;
  - (iv) income tax registration (PAN number) issued by the income tax accessing officer;
  - (v) central government sales tax registration number allotment made by the central government sales tax authorities;
  - (vi) state government sales tax registration number allotment by the local sales tax authorities;
  - (vii) service tax registration with the Superintendent of Central Excise;
  - (viii) Shops and Establishment Act registration with the local municipal authorities;
  - (ix) private bonded warehouse license issued by customs; and
  - (x) import of capital goods;
- (c) maintaining the right to exemption from taxation under sections 10A and 10B of the Indian Income Tax Act 1961 and any amending or replacement legislation of a similar nature;
- (d) making appropriate filings with the Reserve Bank of India/ Ministry of Finance for foreign direct investment, if any; and
- (e) obtaining necessary corporate approvals;

17.1.3 EXL Holdings (US) has, and shall continue to have (and shall ensure that EXL India and SPV has and shall continue to have) for the duration of this Agreement and for such time after the expiry or termination of this Agreement as is necessary for the proper performance of its obligations under this Agreement, full capacity and authority and all necessary governmental, administrative and regulatory authorisations,

licences, permits and consents and all necessary Intellectual Property Rights to enter into and to perform this Agreement and to supply the Insurance Services;

17.1.4 as reasonably determined or agreed between the Parties all of EXL Holdings (US)'s liabilities, responsibilities and obligations pursuant to this Agreement shall be fulfilled by appropriately experienced, qualified and trained professional personnel with all due skill, care and diligence;

17.1.5 all of EXL Holdings (US)'s liabilities, responsibilities and obligations pursuant to this Agreement and all Insurance Services Work Orders shall be fulfilled in accordance with its own established internal procedures and such procedures shall be consistent with upper quartile industry practice;

17.1.6 all of EXL Holdings (US)'s liabilities, responsibilities and obligations pursuant to this Agreement and all Insurance Services Work Orders shall be fulfilled in compliance with all applicable laws, enactments, orders, regulations, codes of practice and other similar instruments to the extent reasonably possible and within the reasonable knowledge of EXL Holdings (US);

17.1.7 the Deliverables will comply with their respective Specifications;

17.1.8 the Insurance Services shall be provided in accordance with the Service Levels;

17.1.9 EXL Holdings (US) has clear and unencumbered title to the Intellectual Property Rights to be used by it in the performance of its obligations pursuant to any Insurance Services Work Order, including (but not limited to) any Intellectual Property Rights specifically referred to in an Insurance Services Work Order or, where such Intellectual Property Rights are vested in a third party, that it has all relevant licences or permissions to so use the same;

17.1.10 as at the date of this Agreement and the date of each Insurance Services Work Order (if different), EXL Holdings (US) is not subject to any of the circumstances listed in clauses 15.2.1 to 15.2.6;

17.1.11 to the best of EXL Holdings (US)'s knowledge and believe, as at the date of this Agreement there are no material outstanding litigation, arbitration or other disputed matters to which EXL Holdings (US) is a Party which may have a material adverse effect upon the supply or operation of the Insurance Services or the fulfilment of EXL Holdings (US)'s liabilities, responsibilities and obligations pursuant to this Agreement.

17.2 The Client shall ensure that:

17.2.1 the Client has, and shall continue to have for the duration of this Agreement and the Term of any Insurance Services Work Order and for such time after the expiry or termination of this Agreement and any Insurance Services Work Order as is necessary for the proper performance of its obligations under this Agreement and all Insurance Services Work Orders, full capacity and authority and all necessary governmental, administrative and regulatory authorisations, licences, permits and consents and all necessary Intellectual Property Rights to enter into and to perform this Agreement and all Insurance Services Work Orders;

17.2.2 the Client is a company duly incorporated, validly existing and in good standing under the laws of the country in which incorporated and that this Agreement and all Insurance Services Work Orders are executed by duly authorised representatives of the Client; and

17.2.3 as at the date of this Agreement and the date(s) of all Insurance Services Work Orders (where different), the Client is not subject to any of the circumstances listed in clauses 15.2.1 to 15.2.6.

17.2.4 EXL Holdings (US) is kept reasonably informed of any matters pertaining to the business of the Client or any Associated company and which may have a material impact on the ability of EXL Holdings (US) to perform its obligations pursuant to this Agreement provided that nothing in this clause 17.2.4 shall require the Client to breach any confidentiality obligation owed to a third party or otherwise to disclose information in breach of any statutory or common law obligation.

17.3 Each of the parties shall take reasonable steps to ensure:

17.3.1 that the performance of its obligations (and, in the case of EXL Holdings (US) the performance by EXL India and SPV of their respective obligations also) pursuant to this Agreement shall not result in the introduction of anything into the other Party or any systems of the other Party, including, without prejudice to the generality of the foregoing, any computer program code, computer virus, computer worm, Trojan horse, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:

- (a) impair the operation of the Insurance Services or the performance by the other Party of its obligations hereunder;
- (b) impair the operation of any computer systems or programs in the possession of the other Party; or
- (c) cause loss of, or corruption or damage to, any program or data held in relation to the Insurance Services or any other computer systems or programs in the possession of the other Party; or
- (d) damage the reputation of the Client;

17.3.2 it obeys all lawful and reasonable directions of the other; and

17.3.3 it has regard to its respective areas of IT responsibility as described in Schedule 10.

## **18 INSURANCE**

18.1 EXL Holdings (US) warrants that:

18.1.1 it has taken out and undertakes to maintain appropriate insurance cover to the extent outlined below with a reputable insurance company against all its liabilities and indemnities that may arise under this Agreement and any Insurance Services Work Order; and

18.1.2 it has in effect and undertakes to maintain in effect during the continuance of this Agreement and any Insurance Services Work Order (where later) and for a period of seven years after termination or expiry of this Agreement and each Insurance Services Work Order:

- (a) public liability insurance cover with a reputable insurance company to a minimum indemnity limit of £5m for all claims;
- (b) professional indemnity insurance and general commercial liability cover with a reputable insurance company to a minimum indemnity limit of [£5m] for all claims. For the avoidance of doubt, including but not limited to, claim by Client for breach by EXL Holdings (US) of its contractual obligations under this Agreement; and
- (c) workmen's liability insurance cover with a reputable insurance company to a minimum indemnity limit of £1m for all claims

and such other insurances as shall be requested by the Client, the cost of which is to be reimbursed pursuant to clause 18.5.

- 18.2 EXL Holdings (US) undertakes that it will not knowingly do or omit to do anything to vitiate either in whole or in part any of the insurance cover that it is obliged to have and maintain under clause 18.1 above and, to the extent permitted by the insurance conditions, shall provide to the Client copies of the policy documentation.
- 18.3 EXL Holdings (US) shall, to the extent permitted by the insurance conditions, provide to the Client forthwith upon demand full details of any of the insurance cover that it is obliged to have and maintain under clause 18.1 above.
- 18.4 In the event that EXL Holdings (US) and the Client agree that EXL Holdings (US) is unable to procure insurance in accordance with this clause 18, the Client shall have the right to procure such insurance on behalf of EXL Holdings (US) and EXL Holdings (US) shall provide such assistance as is required by the Client in relation to the procurement of such insurance.
- 18.5 The Client shall reimburse EXL Holdings (US) for the cost of the premiums for the insurance referred to in clause 18.1 and also the cost of the premiums for any additional insurance which the Client requires EXL Holdings (US) to take out in accordance with paragraph 8 of the Insurance Services Work Order.

## **19 CONFIDENTIALITY**

The Parties shall comply with their obligations under the Confidentiality Agreement in relation to all Confidential Information disclosed under this Agreement.

## **20 ACCESS**

- 20.1 Each Party agrees to allow the other Party such access as is reasonably necessary to enable that other to perform its obligations under any Insurance Services Work Order and also to meet its obligations to comply with any investigation or demand for information by any Government Office, court or tribunal or regulatory body.
- 20.2 If, pursuant to or in consequence of performing its obligations under any Insurance Services Work Order, one of the Parties needs Access to any computer system of the other:
  - 20.2.1 such Access shall be strictly limited to that part of the computer system, software, hardware or firmware, (as the case may be) as is required for proper performance of its obligations under such Insurance Services Work Order;
  - 20.2.2 the Party gaining Access shall comply with all reasonable security, audit and other procedures and requirements notified to it from time to time by the other in relation to such Access; and
  - 20.2.3 each Party shall procure that only its employees and (in the case of EXL Holdings (US)) Sub-Contractors shall be permitted Access and such Access shall be to the extent strictly necessary for the proper performance of the employee's and/or the Sub Contractor's duties in relation to that Party's obligations of pursuant to the relevant Insurance Services Work Order;

## **21 EMPLOYEE ISSUES**

- 21.1 EXL Holdings (US) shall ensure that the SPV and EXL (India) shall:
  - 21.1.1 appoint appropriately qualified and skilled employees to fulfil those Key Personnel roles set out in paragraph 11 of the applicable Insurance Services Work Order ensuring that in each case, the Client has previously been consulted with regard to such appointment;

21.1.2 continue to deploy each of the Key Personnel on a full-time basis except where he terminates his employment with the SPV, dies, becomes unfit for reasons of disability, is in material breach of his contract of employment with the SPV or EXL (India) or the Client gives notice requesting his removal;

21.1.3 ensure that no person other than an employee of EXL Holdings (US) or a Sub-Contractor is deployed in relation to an Insurance Services Work Order.

21.2 Where a Key Personnel vacancy arises pursuant to clause 21.1.2, EXL Holdings (US) shall as soon as practicable, consult with the Client prior to the appointment of replacement Key Personnel who EXL Holdings (US) believes meets the Client's role profile for that vacancy (and the Client shall have the right to attend interviews and otherwise remain involved with the interview process) and following such consultation shall appoint such replacement Key Personnel, and clause 21.1.2 and this clause 21.2 shall apply to all such replacements.

21.3 Each of the Parties agrees that it will not, without the other's prior consent, solicit or contact with a view to the engagement or employment by it of any employee of that other Party. For the avoidance of doubt, nothing in this clause 21.3 shall prevent a Party offering employment to the employee of the other Party where that employee has responded to a bona fide recruiting campaign directed at suitable persons wheresoever they may be employed.

## **22 CONTRACT CHANGE CONTROL PROCEDURES**

22.1 The Parties shall, in respect of Changes, comply with their obligations as set out in schedule 4. All Changes shall be dealt with in accordance with schedule 4.

22.2 Any Change to this Agreement shall, in the absence of agreement to the contrary, constitute a Change to all Insurance Services Work Orders insofar as the Change relates to terms of this Agreement which are incorporated into such Insurance Services Work Orders.

## **23 SERVICES MANAGEMENT**

The Parties shall comply with their respective obligations under paragraph 17 of an Insurance Services Work Order.

## **24 EXIT MANAGEMENT**

24.1 On termination or expiry of an Insurance Services Work Order however and whenever occurring, and throughout the continuance of such Insurance Services Work Order, the Parties shall comply with their responsibilities and obligations in respect of exit management as set out in this clause 24 and the applicable Insurance Services Work Order.

24.2 Following any notice of termination of an Insurance Services Work Order and in the month preceding the expiry of an Insurance Services Work Order, EXL Holdings (US) shall, as soon as is practicable following a request from the Client, provide (or procure that EXL India or SPV as necessary provides) the Client or, if requested by the Client, any contractor ("a Replacement Contractor") appointed by Client to replace EXL Holdings (US) with:

24.2.1 all information EXL Holdings (US), EXL India or SPV (as the case may be) has in its possession or control or is able to produce relating to the Deliverables and the Services that is reasonably necessary to enable an operational transition of the Deliverables and the Services or is required in respect of any operational or contractual due diligence in respect of the provision of the Deliverables and the Services by the Client, an Associated Company or a Replacement Contractor;

24.2.2 an up-to-date copy and archive and back-up copies of all Data;

24.2.3 an up-to-date copy of the Object Code and the Source Code for any software comprised in any Deliverable;

24.2.4 any reasonable assistance, expertise and advice requested by the Client in connection with any proposed or envisaged transfer of operations or to facilitate a successful transfer of operations to the Client, an Associated Company or a Replacement Contractor; and

24.2.5 all reasonable assistance in connection with the preparation by the Client of any request or proposal or other similar tender documentation in connection with services similar to some or all of the Deliverables and the Service to be provided by a Replacement Contractor

and EXL Holdings (US) shall be entitled to charge the Client for such assistance at the Charging Rates specified in the relevant Insurance Services Work Order or as otherwise agreed between the parties, such payments to be paid to EXL Holdings (US) in accordance with clause 12 once the termination assistance detailed in this clause 24.2 has been satisfactorily rendered or procured by EXL Holdings (US).

## **25 SECURITY**

EXL Holdings (US) shall perform the Insurance Services in accordance with the Security Requirements and procedures set out in schedule 2.

## **26 DISASTER RECOVERY AND BUSINESS CONTINUITY**

26.1 EXL Holdings (US) agrees that it will throughout the duration of this Agreement implement, maintain and keep under regular review a Business Continuity Plan for the Services it provides to the Client which, so far as is reasonably practicable, adherence to which will enable it to continue to operate in accordance with the Service Levels and which is in accordance with any regulatory requirements.

26.2 Without prejudice to the generality of 26.1 above EXL Holdings (US) shall comply with its obligations in relation to Disaster Recovery and Business Continuity Services as set out in paragraph 10 of an Insurance Services Work Order.

## **27 PREMISES REGULATIONS**

27.1 Each Party agrees that whilst at or near any premises or offices of the other, it shall comply, and shall procure that its employees and Sub Contractors comply, with all reasonable requirements of the other made known to it, such compliance to be from the date that such requirements were so made known.

27.2 Nothing in this Agreement or any Insurance Services Work Order shall be construed as granting to either Party, its employees or Sub Contractors a right of access to the premises or offices of the other.

## **28 TRANSFER AND SUB-CONTRACTING**

28.1 This Agreement and each Insurance Services Work Order is personal to EXL Holdings (US). EXL Holdings (US) shall not assign, novate or otherwise dispose of this Agreement or any Insurance Services Work Order or any part thereof, or purport to do so, without the prior consent in writing of the Client.

28.2 Notwithstanding that EXL Holdings (US) has express rights, liabilities, obligations and responsibilities under this Agreement, any sub-contracting permitted or required under this Agreement or the operation of clause 2.3 or this clause 28 shall not relieve EXL Holdings (US) from any of its liabilities, obligations and responsibilities hereunder. EXL Holdings (US) shall perform all liabilities, obligations and responsibilities under this Agreement as prime contractor and shall remain primarily responsible and liable for the activities to be carried out by EXL India or SPV or otherwise sub-contracted and for such of the acts and omissions of EXL India or SPV or the Sub-Contractors in respect of such activities as would render EXL



Holdings (US) liable to the Client, had such acts or omissions been EXL Holdings (US)'s own acts and omissions.

- 28.3 The Client shall be entitled to assign, novate or otherwise dispose of its rights under this Agreement or any part thereof to any Associated Company of the Client by giving EXL Holdings (US) prior notice of such assignment, novation or other disposal. For the avoidance of doubt, no such assignment, novation or other disposal shall be permitted if it is an Associated Company which is providing services similar to those provided by EXL India to customers which are not Associated Companies, Authorised Agents or Authorised Users.
- 28.4 Save as provided in clause 28.3, the Client shall only be entitled to assign, novate or otherwise dispose of its rights under this Agreement, or any part thereof, with the prior approval of EXL Holdings (US).
- 28.5 For the avoidance of doubt, any assigns, novation or disposal permitted under clause 28.3 and 28.4 shall be subject to the assignee or transferee agreeing to perform the obligations of the Client in respect thereof and to the Guarantees remaining in force in respect of such obligations.

## **29 FORCE MAJEURE**

- 29.1 For the purposes of this Agreement and all Insurance Services Work Orders, the expression "Force Majeure" shall mean an event which is beyond the reasonable control of an affected Party including, without limitation, any Act of God, war, fire, flood, civil commotion, armed hostilities, act of terrorism, revolution, adverse weather and which such Party could not reasonably anticipate or mitigate whether by means of insurance, contingency planning or any other prudent business means. Any event will only be considered Force Majeure if it is not attributable to the wilful act, neglect, default or other failure to take reasonable precautions of the affected Party, its agents, employees or contractors. Industrial dispute or action shall not give rise to an event of Force Majeure. Any item, whether an item of a Party or any third party, failing to operate due to Year 2000 problems shall not give rise to an event of Force Majeure.
- 29.2 No Party shall in any circumstances be liable to the other for any loss of any kind whatsoever, including, but not limited to, any damages, whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder or any Insurance Services Work Order which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 29.3 If any Party shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any failure or delay on its part, it shall promptly notify the other Party by the most expeditious method then available and shall inform the other Party of the period for which it is estimated that such failure or delay shall continue.
- 29.4 It is expressly agreed that any failure by EXL Holdings (US) to perform, or any delay by EXL Holdings (US) in performing, its liabilities, obligations and responsibilities under any Insurance Services Work Order which results from any failure or delay in the performance of its obligations by any person with which EXL Holdings (US) shall have entered into any contract, supply arrangement, sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement, sub-contract or otherwise as a result of circumstances of Force Majeure.
- 29.5 Where EXL Holdings (US), EXL India or SPV is subject to a Force Majeure event which is capable of being rectified or the impact of which is not material in the reasonable opinion of the Client, EXL Holdings (US) shall have three months from the time that event first came to, or should have come to, its attention to notify that event and resume its obligations in full pursuant to this Agreement and any Insurance Services Work Order. If the Force Majeure

event, or the consequences of it, have not been rectified within that period, then the Parties shall agree to negotiate in good faith to agree changes to the relevant Insurance Services Work Order which properly reflects the capability of EXL Holdings (US) to perform its obligations pursuant to that Insurance Services Work Order.

- 29.6 For the avoidance of doubt, neither party shall have the right to terminate an Insurance Services Work Order or this Agreement because of a Force Majeure event, except in the circumstances set out in clauses 14.3.5, 14.3.6, 15.4.11 and 15.4.12.
- 29.7 For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder or as otherwise expressly provided in this Agreement or any Insurance Services Work Order.
- 29.8 Nothing in this Agreement or any Insurance Services Work Order shall be taken as preventing the Client from using any alternative facilities to meet its business needs during the continuance of Force Majeure.
- 29.9 For the avoidance of doubt, the Client shall be liable to pay the Charges in respect of any activities not carried out due to Force Majeure, provided that, during the period of such Force Majeure, EXL Holdings (US) shall be required to mitigate the consequences thereof, including, where possible, by re-deploying any of its staff elsewhere in its business or in the business of its subsidiaries.

### **30 THIRD PARTY RIGHTS**

- 30.1 In this clause 30, the term "Right" shall mean the benefit of any of the following:
- 30.1.1 a right of the Client under this Agreement or an Insurance Services Work Order;
  - 30.1.2 an obligation on EXL Holdings (US) under this Agreement or an Insurance Services Work Order; or
  - 30.1.3 a warranty or other representation by EXL Holdings (US) under this Agreement or an Insurance Services Work Order.
- 30.2 This Agreement and all Insurance Services Work Orders shall confer those Rights specified in clause 30.3 on each Authorised Agent, Associated Company and Authorised User without in each case any additional charge to the Client or any Authorised Agent, Associated Company or Authorised User. Subject to the prior written consent of the Client (such consent to be provided in its absolute discretion), an Authorised Agent, Associated Company or Authorised User shall be entitled to enforce in its own capacity such Rights pursuant to this Agreement or any Insurance Services Work Order.
- 30.3 Authorised Agents, Associated Companies and Authorised Users shall have conferred on them the Rights granted to the Client under the following provisions of this Agreement (and as such provisions become terms of each Insurance Services Work Order), as if the Authorised Agents, Associated Companies and Authorised Users were the Client:
- 30.3.1 clause 11 (Intellectual Property Rights Ownership);
  - 30.3.2 clause 16 (Limitations of Liability);
  - 30.3.3 clause 17.1 (General Obligations);
  - 30.3.4 clause 18 (Insurance);
  - 30.3.5 clause 19 and the Confidentiality Agreement;

#### **34.2 Severability**

If any part of this Agreement or any Insurance Services Work Order is found by any court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement or any Insurance Services Work Order which shall continue to be valid and enforceable to the fullest extent permitted by law.

#### **34.3 Costs and expenses**

Unless otherwise agreed in writing between the Parties, each Party shall pay its own costs and expenses incurred in connection with the preparation, negotiation, execution and implementation of this Agreement and all Insurance Services Work Orders and the documents referred to in this Agreement or any Insurance Services Work Order.

#### **34.4 Successors and assigns**

This Agreement and all Insurance Services Work Orders are binding on and shall apply for the benefit of the Parties' personal representatives, successors in title and permitted assignees.

#### **34.5 Entire agreement**

34.5.1 This Agreement and the Insurance Services Work Orders constitute the entire understanding between the Parties in relation to its subject matter.

34.5.2 Except as otherwise permitted by this Agreement, no change to its terms or the terms of any Insurance Services Work Order shall be effective unless it is in writing and signed by or on behalf of both Parties.

34.5.3 Except in respect of any fraudulent misrepresentation made by a Party, the Parties acknowledge that they have not relied on any representations, writings, negotiations or understandings, whether express or implied, (other than as set out in this Agreement) in entering into this Agreement.

#### **34.6 No partnership**

Nothing in this Agreement or any Insurance Services Work Order shall constitute or be deemed to constitute a partnership between the Parties and neither of them shall have the power to bind the other in any way.

#### **34.7 Further assurance**

Upon demand by the Client, EXL Holdings (US) will at its expense (unless otherwise agreed in writing between the Parties) execute and register all further documents and do all such acts and things as the Client shall reasonably require to enable the Client to obtain the full benefit of this Agreement and all Insurance Services Work Orders.

#### **34.8 Counterparts**

34.8.1 This Agreement may be executed in any one or more number of counterparts each of which, when executed, shall be deemed to form part of and together constitute this Agreement.

34.8.2 This Agreement shall be immediately binding and effective when each of the Parties has unconditionally executed either this Agreement or any of those counterparts.

- 30.3.6 clause 20 (Access);
- 30.3.7 clause 27 (Premises Regulations);
- 30.3.8 clause 31 (Data Protection);
- 30.3.9 clause 32 (Audit); and
- 30.3.10 clause 34.7 (Further Assurance).

- 30.4 Notwithstanding section 2(1) of the Contracts (Rights of Third Parties) Act 1999, the Parties may in accordance with this Agreement, vary, rescind or terminate this Agreement or any Insurance Services Work Order (whatever the nature of such variation, rescission or termination) without seeking the consent of any third party on whom this clause 30 confers Rights.
- 30.5 Subject to clauses 30.2 and 30.3, neither this Agreement nor any Insurance Services Work Order creates, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a Party.

### **31 DATA PROTECTION**

In addition to complying or procuring compliance with the Data Protection Agreement, the Parties shall comply or procure compliance with those data protection requirements for each of them set out in paragraph 18 of any Insurance Services Work Order.

### **32 AUDIT AND INFORMATION**

- 32.1 At no additional cost to the Client except as agreed in writing between the Parties or through normal budgeting processes, EXL Holdings (US) shall grant, or procure the grant, to the Client and any auditors of the Client and their respective authorised agents the right of access without notice and during normal business hours at any time to EXL Holdings (US)'s, EXL (India)'s and the SPV's records relating to this Agreement and Sub-Contractors and employees of EXL Holdings (US), EXL (India) and the SPV and shall provide such reasonable assistance at all reasonable times during the Term in relation to audits of the performance of all of EXL Holdings (US)'s, EXL (India)'s and the SPV's obligations under this Agreement, any Insurance Services Work Order, any Insurance Services Work Order (Intra-Group-India) or any Insurance Services Work Order (Intra-Group-SPV) including but not limited to:
  - 32.1.1 the accuracy and calculation of the Charges;
  - 32.1.2 that the Insurance Services are being provided in accordance with the Service Levels;
  - 32.1.3 that EXL Holdings (US), EXL (India) or SPV as appropriate is complying with its obligations in relation to the Security Requirements set out in schedule 2; and
  - 32.1.4 that EXL Holdings (US) is operating procedures in accordance with this Agreement and all Insurance Services Work Orders in relation to the Data and any other resources provided by the Client to EXL Holdings (US), including without limitation, the Client Assets.
- 32.2 Without prejudice to the foregoing, at no additional cost to the Client, in the event of an investigation into suspected fraudulent activity or other legal or regulatory impropriety by EXL Holdings (US), EXL (India) or the SPV, their employees, Sub-Contractors or any security concerns in relation to this Agreement or any Insurance Services Work Order, the Client reserves for itself, any auditors of the Client and their respective authorised agents, the right of access without notice and at any time to EXL Holdings (US)'s, EXL (India)'s and the SPV's records relating to this Agreement or any Insurance Services Work Order, and employees

and officers of EXL Holdings (US), EXL (India) and the SPV agree to render all necessary assistance to the conduct of such investigation and to allow or procure such access at all times during the currency of this Agreement or for any time thereafter.

- 32.3 At no additional cost to the Client except where agreed in writing, EXL Holdings (US) agrees to make any changes which are reasonably necessary and take other actions which are reasonably necessary in order to maintain compliance with applicable laws or regulations and so that the performance of EXL Holdings (US)'s obligations complies with the Client's internal and external audit requirements from time to time.
- 32.4 For the purpose of observing the performance, quality and progress of EXL Holdings (US)'s performance of its obligations under this Agreement and any Insurance Services Work Order, the Client's personnel and consultants shall be allowed to observe work being performed by or on behalf of EXL Holdings (US), EXL (India) and the SPV in order to verify that EXL Holdings (US), EXL (India) and the SPV are complying with their obligations under this Agreement, any Insurance Services Work Order, any Insurance Services Work Order (Intra-Group-India) or any Insurance Services Work Order (Intra-Group-SPV). For the avoidance of doubt, the Client may appoint an appropriate third party to act on its behalf in connection with its rights under this clause 32.
- 32.5 In addition to clauses 32.1 to 32.4 above, EXL Holdings (US) shall act reasonably in granting or procuring to grant, or procure the grant of access by FSA, other regulators and the police to all records, sites and/or materials used in conjunction with this Agreement or any Insurance Services Work Order in the event such persons wish to carry out an audit.

### **33 REPORTING OBLIGATIONS**

- 33.1 EXL Holdings (US) shall provide the reports specified in paragraph 17 of an Insurance Services Work Order, to the Client, in the form and at the intervals specified in that paragraph. In addition, EXL Holdings (US) shall provide the reports specified in schedule 5, to the Client, in the form and at the intervals specified in that schedule.
- 33.2 Each Party shall inform the other as soon as reasonably practicable of any event which may have a material adverse impact on the other Party's ability to meet its obligations under this Agreement or any Insurance Services Work Order.
- 33.3 Each of the parties agrees that the other is permitted (but only to the extent that it is lawfully able to do so) to provide the FSA with all information the FSA may require in relation to the Insurance Services and this Agreement and any Insurance Services Work Order. Further, where the FSA requests that any Party provide information in relation to this Agreement, any Insurance Services Work Order or the Insurance Services, that shall promptly provide such relevant information as it has in its possession or control, but only to the extent that it is lawfully able to do so.

### **34 ANCILLARY PROVISIONS**

#### **34.1 Waiver**

No delay or failure by either Party to exercise any of its powers, rights or remedies under this Agreement or any Insurance Services Work Order shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. The remedies provided in this Agreement and each Insurance Services Work Order are cumulative and not exclusive of any remedies provided by law. No waiver by either Party of any breach by the other Party of any provision of this Agreement or any Insurance Services Work Order shall be deemed to be a waiver of any subsequent breach of that or any other provision of this Agreement or any Insurance Services Work Order.

## 34.9 Notices

34.9.1 Any notice or other communication to be given under this Agreement or any Insurance Services Work Order shall either be delivered by hand or sent by first class post pre-paid recorded delivery (or by air mail if overseas) or by a generally recognised international courier service (with relevant fees prepaid) or by facsimile transmission (provided that, in the case of facsimile transmission, the notice is confirmed by being delivered by hand or sent by first class post or by a recognised international courier service within two Business Days after transmission) as follows:

(a) for the Client:

to:

The Company Secretary  
Norwich Union Customer Services (Singapore) Pte Ltd  
4 Shenton Way  
#27-02, SGX Centre 2  
Singapore 068807

Fax Number: (65) 6827 7850

Copy to:

Offshore Operations Director  
Surrey Street  
Norwich NR1 3NG

Fax Number: 01603 843344

(b) for EXL Holdings (US):

Rohit Kapoor, President & CFD  
Exlservice Holdings, Inc  
350 Park Avenue, 10<sup>th</sup> Floor  
New York, NY 10022

34.9.2 A Party may change the address or facsimile number or the name of the person for whose attention notices are to be addressed by serving a notice on the other.

34.9.3 In the absence of evidence of earlier receipt, all notices shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by post within the UK, two Business Days after the envelope containing it was posted;
- (c) if sent by international post, seven Business Days after the envelope containing it was posted;
- (d) if sent (with relevant fees prepaid) by a generally recognised international courier service, three Business Days after the envelope containing it was delivered to the relevant international courier; and

- (e) if sent by facsimile, on completion of transmission, provided that where such delivery or transmission occurs after 5.00 p.m. on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9.00 a.m. on the next following Business Day.

#### **34.10 Governing Law**

This Agreement and all Insurance Services Work Orders are governed by and shall be construed in accordance with English law.

#### **34.11 Dispute Resolution**

- 34.11.1 If there is any dispute between the Parties arising out of this Agreement or an Insurance Services Work Order (“a Dispute”), the Parties shall use their reasonable endeavours to resolve the Dispute in accordance with this clause 34.11. A Party is not required to comply with this clause 34.11 if the other Party fails to comply with, or to give effect to, this clause 34.11;
- 34.11.2 All Disputes between the Parties arising out of or relating to this Agreement or any Insurance Services Work Order shall be referred, by either Party, to the Client to Sean Egan and EXL Holdings (US) to Vikram Talwar, or to such other persons as either party may nominate, for resolution;
- 34.11.3 If any Dispute has not been resolved by the representatives identified in clause 34.11.2 within a maximum of fourteen (14) days after it has been referred under clause 34.11.2, that Dispute shall be referred to the Offshore Operations Director for the time being of the Client and the President and CFD for the time being of EXL Holdings (US);
- 34.11.4 If the Dispute has not been resolved by the representatives identified in clause 34.11.3 within a maximum of fourteen (14) days after it has been referred under clause 34.11.3 either of the Parties shall be free to refer the Dispute to alternative dispute resolution in accordance with clause 34.11.5;
- 34.11.5 If any Dispute is not resolved in accordance with the provisions and timescales set out above in this clause 34.11, the Parties will attempt in good faith to settle the Dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 34.11.6 If the matter has not been resolved by mediation within 7 days of the initiation of such procedure, or if either Party refuses to participate in the mediation procedure, either Party may commence court proceedings.
- 34.11.7 The Parties shall continue to perform their obligations under this Agreement and the Insurance Services Work Orders (so far as the same is reasonably possible in view of the matters in dispute) until such time as any Dispute has been resolved by agreement, mediation or court proceedings and thereafter shall continue to do so except as agreed or ordered.
- 34.11.8 Each Party acknowledges that, notwithstanding the provisions of this clause 34.11, nothing herein shall prevent either Party from bringing proceedings in any court of competent jurisdiction to protect the Intellectual Property Rights or rights of confidentiality in respect of that Party.

#### **34.12 Appointment of Process Agent**

- 34.12.1 EXL Holdings (US) hereby appoints Price Waterhouse Coopers LLP, Embankment Place, London WC2 6NN (for the attention of Nigel Fudd) as its agent to accept service of process in England in any legal action or proceedings arising out of or in connection with this Agreement and any Insurance Services Work Order.

34.12.2 If any such process agent ceases to be able to act as such or to have an address in England, EXL Holdings (US) (as applicable) irrevocably agrees to appoint a new process agent in England acceptable to the Client and to deliver to the Client within 10 Business Days a copy of a written acceptance of appointment by the process agent.

34.13 Nothing in this Agreement or any Insurance Services Work Order shall affect the right to serve process in any other manner permitted by law or the right to bring proceedings in any other jurisdiction for the purposes of the enforcement or execution of any judgement or other settlement in any other courts.



This Agreement has been signed on the date first stated on page 1 above.

Signed for and on behalf of **the Client**

By  /s/ \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Signed for and on behalf of **EXL Holdings (US)**

By  /s/ \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

DATED 29 July 2004

- (1) NORWICH UNION CUSTOMER SERVICES (SINGAPORE) PRIVATE LIMITED
- (2) NORWICH UNION INSURANCE LIMITED
- (3) EXLSERVICE HOLDINGS, INC
- (4) EXLSERVICE.COM (INDIA) PRIVATE LIMITED

DATA PROTECTION AGREEMENT

## DATA PROTECTION AGREEMENT

Dated: 29 July 2004

### BETWEEN:

- (1) **Norwich Union Customer Services (Singapore) Private Limited**, a company registered in Singapore with registration number 200303457R and whose registered office is at 4 Shenton Way, #27-02 SGX Centre 2, Singapore 068807 (“the Client”); and
- (2) **Norwich Union Insurance Limited**, a company registered in England and Wales with registration number 99122 and whose registered office is at Surrey Street, Norwich, NR1 3NG (“NUT”);  
(Parties (1) and (2) shall be collectively referred to as “Norwich Union”), and
- (3) **Exlservice Holdings, Inc**, a company registered in the State of Delaware, whose principal office is at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY10022 (“EXL Holdings (US)”; and
- (4) **Exlservice.com (India) Private Limited**, a company incorporated in India with registered number 55-99888 and whose registered office is at 103A, Ashoka Estate, Barakhamba Road, New Delhi, India (“EXL India”).  
(Parties (3) and (4) shall be collectively referred to as “the **Service Providers**”)

**NOW IT IS HEREBY AGREED** as follows:

### 1 DEFINITION AND INTERPRETATION

In this Agreement, unless otherwise specified or inconsistent with the context;

1.1 the following expressions shall have the following meanings:

- |                        |   |  |
|------------------------|---|--|
| “Associated Company”   | : | any holding company from time to time of the Client and any subsidiary from time to time of the Client or of any such holding company and the terms “holding company and “subsidiary” shall have the meaning given to them by Section 736 Companies Act 1985;  |
| “Authorised Agent”     | : | (a) any third party contracting with the Client for the provision of services including, but not limited to, facilities management or maintenance services’ or<br>(b) any third party contracting with an Associated Company for the provision of services including, but not limited to, facilities management or maintenance services. |
| “Data Protection Laws” | : | has the meaning set out in clause 5;   |
| “Data Controller”      | : | shall have the same meaning as set out in the Directive;   |
| “Data Subject”         | : | shall have the same meaning as set out in the Directive;   |
| “Directive”            | : | means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;   |

“Information Commissioner”	:	means the United Kingdom supervisory authority for data protection located at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF;
“Insurance Services Framework Agreement”	:	the agreement dated with the date of this agreement between the Client and EXL Holdings (US);
“Parties”	:	means the Parties to this Agreement, and. a “Party” means any one of them;
“Personal Data”	:	shall have the same meaning as set out in the Directive;
“Process/Processing”	:	shall have the same meaning as set out in the Directive and “Processed” shall be construed accordingly;
“Protected Data”	:	any Personal Data Processed by the Service Providers in connection with the Insurance Services Framework Agreement and any Work Order;
“Special Categories of Data”	:	shall have has the same meaning set out in the Directive;
“Work Order”	:	means an Insurance Services Work Order entered into pursuant to the Insurance Services Framework Agreement.

- 1.2 references to clauses and appendices are to clauses of and the schedules to this Agreement;
- 1.3 the appendices form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement;
- 1.4 words importing gender include each gender;
- 1.5 references to persons include bodies corporate, firms and unincorporated associations and that person’s legal personal representatives and successors;
- 1.6 the singular includes the plural and vice versa;
- 1.7 clause headings are included for the convenience of the Parties only and do not affect its interpretation;
- 1.8 references to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute; and
- 1.9 references to any English legal or accounting term for any action, remedy, method of judicial proceeding, legal or accounting document, legal or accounting status, insolvency proceeding, event of incapacity, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept, practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned; and

- 1.10 any undertaking by either of the Parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing.

## **2 DETAILS OF THE TRANSFER**

- 2.1 The details of transfers of Protected Data, and in particular the categories of Protected Data and the purposes for which they are transferred, are specified in appendix 1.
- 2.2 The Parties agree that the Client is and will remain the Data Controller in relation to the Protected Data and that the Service Providers will solely act as Data Processors with respect to such Protected Data.

## **3 OBLIGATIONS OF NORWICH UNION**

- 3.1 Norwich Union agrees and warrants:
  - 3.1.1 that the Processing, including the transfer itself, of the Personal Data by Norwich Union has been and, up to the moment of the transfer, will continue to be carried out in accordance with the relevant provisions of the Data Protection Act 1998;
  - 3.1.2 to make available to the Data Subjects upon request a copy of this Agreement; and
  - 3.1.3 to respond in a reasonable time and to the extent reasonably possible to enquiries from the Information Commissioner on the Processing of the relevant Protected Data by Norwich Union or any one of them and to any enquiries from the Data Subject concerning the Processing of the Protected Data by the Service Providers.

## **4 OBLIGATIONS OF THE SERVICE PROVIDERS**

- 4.1 The Service Providers agree and warrant:
  - 4.1.1 that they have no reason to believe that the legislation applicable to them prevents them from fulfilling their obligations under this Agreement and that in the event of a change in which is likely to have a substantial adverse effect on the guarantees provided by this Agreement, they will notify the change to the Client and to such other relevant Norwich Union company and if necessary to the Information Commissioner, in which case the Client or NUI will be entitled to suspend the transfer of the Protected Data and/or terminate this Agreement;
  - 4.1.2 to process the Protected Data in accordance with the mandatory data protection principles set out in Appendix 2 and to process in all other respects the Protected Data in accordance with:
    - (a) the relevant provisions of the Data Protection Act 1998 protecting the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the Processing of Personal Data applicable to a Data Controller in England, or
    - (b) the relevant provisions of any Commission Decision under Article 25(6) of the Directive finding that a third country provides adequate protection in certain sectors of activity only, if the Service Providers are based in that third country and is not covered by those provisions, in so far as those provisions are of a nature which makes them applicable in the sector of the transfer;
  - 4.1.3 to deal promptly and properly with all reasonable inquiries from the Client or NUI or the Data Subject relating to its Processing of the Protected Data subject to the transfer and to co-operate with the Information Commissioner in the course of all its inquiries and abide by the advice of the Information Commissioner with regard to the Processing of the Protected Data transferred;
  - 4.1.4 at the request of the Client or NUI to submit its data processing facilities for audit which shall be carried out by the Client or NUI or an inspection body composed of independent members and in possession of the required professional qualifications, selected by the Client or NUI, where applicable, in agreement with the Information Commissioner; and

4.1.5 to make available to the Data Subject upon request a copy of this Agreement and indicate the office which handles complaints.

- 4.2 Without prejudice to clause 4.1, the Service Providers shall ensure that they only Process the Protected Data for the purposes notified to them by Norwich Union and/or the relevant Data Subjects and that they maintain appropriate technical and organisational measures (including but not limited to, appropriate policies communicated to their employees, management of ongoing compliance and effective security measures) in respect of the Protected Data to prevent unauthorised or unlawful Processing of the Protected Data and against accidental loss or destruction of, or damage to, the Protected Data.
- 4.3 The Service Providers will take all steps required and communicated in writing to them by Norwich Union that the Client or NUI reasonably considers are necessary in order to comply with their respective obligations under the Data Protection Act 1998.
- 4.4 The Service Providers, for the purposes of facilitating Norwich Union's compliance with the Data Protection Laws, shall furnish to the Client or NUI copies of such security, audit and control reports generated by the Service Providers' auditors as are directly relevant to such compliance.
- 4.5 In the event that either Norwich Union or the Service Providers become aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Protected Data, such Party shall notify the other Party thereof.

## 5 DATA PROTECTION LAWS

Without prejudice to clauses 3 and 4 above, each Party shall comply with any data protection, privacy or similar laws anywhere in the world ("Data Protection Laws"), including but not limited to, the Data Protection Act 1998, that apply in relation to any Protected Data and render such assistance and co-operation as is reasonably necessary or reasonably requested by the other Party, including, but not limited to, the provision of information regarding the existence, applicability and extent of application of Data Protection Laws in particular jurisdictions to Protected Data.

## 6 LIABILITY

- 6.1 The Parties agree that a Data Subject who has suffered damage as a result of any violation of the provisions referred to in clause 12 is entitled to receive compensation from the Parties for the damage suffered. The Parties agree that they may be exempted from this liability only if they prove that neither of them is responsible for the violation of those provisions.
- 6.2 Without prejudice to clause 6.3, Norwich Union and the Service Providers agree that, as between the Parties and a Data Subject, the Parties will be jointly and severally liable to such Data Subject for damage to the Data Subject resulting from any violation referred to in clause 6.1. In the event of such a violation, the Data Subject may bring an action before a court against either the relevant Norwich Union company or the Service Providers or both.
- 6.3 Each Party (an "Indemnifying Party") shall indemnify any of the other Parties (an "Indemnified Party") and keep the Indemnified Party indemnified against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a full indemnity basis, and whether arising under clauses 6.1 and 6.2 or otherwise) losses and damages arising from or incurred by reason of any wrongful Processing of any Protected Data by the Indemnifying Party or breach of its obligations or warranties under this Agreement, but not to the extent that such disclosure or breach occurs due to the act or omission of the Indemnified Party.

## 7 MEDIATION AND JURISDICTION

- 7.1 The Parties agree that if there is a dispute between a Data Subject and either Party which is not amicably resolved and the Data Subject invokes the Third-Party Beneficiary provision in clause 12, they will accept the decision of the Data Subject:
- 7.1.1 to refer the dispute to mediation by an independent person or, where applicable, by the Information Commissioner; and

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7.1.2 to refer the dispute to the English courts in accordance with clause 10.

7.2 The Parties agree that by agreement between a Data Subject and the relevant Party a dispute can be referred to an arbitration body, if that Party is established in a country which has ratified the New York convention on enforcement of arbitration awards.

7.3 The Parties agree that clauses 7.1 and 7.2 apply without prejudice to the Data Subject's substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## 8 **CO-OPERATION WITH SUPERVISORY AUTHORITIES**

The Parties agree to deposit a copy of this Agreement with the Information Commissioner if it so requests.

## 9 **TERMINATION**

The Parties agree that the termination of this Agreement at any time, in any circumstances and for whatever reason does not exempt them from the obligations and/or conditions under this Agreement as regards the Processing of any Protected Data transferred.

## 10 **LAW AND JURISDICTION**

This Agreement shall be considered as a contract made in England and according to English law and shall be subject to the exclusive jurisdiction of the English courts, to which jurisdiction the Parties hereby irrevocably submit.

## 11 **VARIATION OF THE CONTRACT**

The Parties undertake not to vary or modify the terms of this Agreement.

## 12 **THIRD-PARTY BENEFICIARY CLAUSE**

The Data Subjects can enforce this clause, clause 3.1.2 and 3.1.3, clause 4.1.1, 4.1.2, 4.1.3 and 4.1.5, clause 6.1 and 6.2, and clauses 7, 9 and 11 of this Agreement as Third-Party Beneficiaries. The Parties do not object to the Data Subjects being represented by an association or other bodies if they so wish and if permitted by law.

Signed for and on behalf of **Client**

By /s/ Paul Robert Faulkner

Name Paul Robert Faulkner

Title Director

Date 29/07/2004

Signed for and on behalf of **NUI**

By /s/ Victoria Helen Metcalf Smith

Name Victoria Helen Metcalf Smith

Title Solicitor

Date 28 July 2004

and

By /s/ Fay Corinne Gammer

Name Fay Corinne Gammer

Title Solicitor

Date 28 July 2004

Signed for and on behalf of **EXL Holdings (US)**

By /s/ Rohit Kapoor

Name Rohit Kapoor

Title \_\_\_\_\_

Date \_\_\_\_\_

Signed for and on behalf of **EXL India**

By /s/ Vikram Talwar

Name Vikram Talwar

Title \_\_\_\_\_

Date \_\_\_\_\_



DATED August 26, 2004

- (1) NORWICH UNION CUSTOMER SERVICES (SINGAPORE) PTE LTD
- (2) NORWICH UNION INSURANCE LIMITED
- (3) NORWICH UNION LIFE SERVICES LIMITED
- (4) EXLSERVICE HOLDINGS, INC
- (5) EXLSERVICE.COM (INDIA) PRIVATE LIMITED
- (6) NOIDA CUSTOMER OPERATIONS PRIVATE LIMITED

**DATA PROTECTION AGREEMENT**

# DATA PROTECTION AGREEMENT

Dated: August 26, 2004

## BETWEEN:

- (1) **Norwich Union Customer Services (Singapore) Pte Ltd**, a company registered in Singapore with registration number 200303457R and whose registered office is at 4 Shenton Way, #27-02 SGX Centre 2, Singapore 068807 (“the Client”); and
- (2) **Norwich Union insurance Limited**, a company registered in England and Wales with registration number 99122 and whose registered office is at Surrey Street, Norwich, NR1 3NG (“NUT”);
- (3) **Norwich Union Life Services Limited**, a company registered in England and Wales with registration number 02403746 and whose registered office is at 2 Rougier Street, York YO90 1UU (“NU Life”);  
(Parties (1), (2) and (3) shall be collectively referred to as “Norwich Union”), and
- (4) **Exlservice Holdings, Inc**, a company registered in the State of Delaware, whose principal office is at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY10022 (“EXL Holdings (US)”);
- (5) **Exlservice.com (India) Private Limited**, a company incorporated in India with registered number 55-99888 and whose registered office is at 103A, Ashoka Estate, Barakhamba Road, New Delhi, India (“EXL India”); and
- (6) **Noida Customer Operations Private Limited**, a company incorporated in India with registered number U72900DL2003PTC122175 and whose registered office is at 103A Ashoka Estate, Barakhamba Road, New Delhi, India (“SPV”).  
(Parties (4), (5) and (6) shall be collectively referred to as “the Service Providers”)

**NOW IT IS HEREBY AGREED** as follows:

## 1 DEFINITION AND INTERPRETATION

In this Agreement, unless otherwise specified or inconsistent with the context;

1.1 the following expressions shall have the following meanings:

- “Associated Company” : any holding company from time to time of the Client and any subsidiary from time to time of the Client or of any such holding company and the terms “holding company and “subsidiary” shall have the meaning given to them by Section 736 Companies Act 1985;
- “Authorised Agent” : (a) any third party contracting with the Client for the provision of services including, but not limited to, facilities management or maintenance services’ or  
(b) any third party contracting with an Associated Company for the provision of services including, but not limited to, facilities management or maintenance services.
- “Data Protection Laws” : has the meaning set out in clause 5;
- “Data Controller” : shall have the same meaning as set out in the Directive;

“Data Subject”	:	shall have the same meaning as set out in the Directive;
“Directive”	:	means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
“Information Commissioner”	:	means the United Kingdom supervisory authority for data protection located at Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF;
“Insurance Services Framework Agreement”	:	the agreement dated with the date of this agreement between the Client and EXL Holdings (US);
“Parties”	:	means the Parties to this Agreement, and a “Party” means any one of them;
“Personal Data”	:	shall have the same meaning as set out in the Directive;
“Process/Processing”	:	shall have the same meaning as set out in the Directive and “Processed” shall be construed accordingly;
“Protected Data”	:	any Personal Data Processed by the Service Providers in connection with the Insurance Services Framework Agreement and any Work Order and the Virtual Shareholders Agreement;
“Special Categories of Data”	:	shall have has the same meaning set out in the Directive;
“Virtual Shareholders Agreement”	:	the agreement dated with the date of this agreement between the Client, EXL Holdings (US), EXL India and SPV.
“Work Order”	:	means an Insurance Services Work Order entered into pursuant to the Insurance Services Framework Agreement.

- 1.2 references to clauses and appendices are to clauses of and the schedules to this Agreement;
- 1.3 the appendices form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement;
- 1.4 words importing gender include each gender;
- 1.5 references to persons include bodies corporate, firms and unincorporated associations and that person’s legal personal representatives and successors;
- 1.6 the singular includes the plural and vice versa;
- 1.7 clause headings are included for the convenience of the Parties only and do not affect its interpretation;
- 1.8 references to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be

construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute; and

- 1.9 references to any English legal or accounting term for any action, remedy, method of judicial proceeding, legal or accounting document, legal or accounting status, insolvency proceeding, event of incapacity, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept, practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned; and
- 1.10 any undertaking by either of the Parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing.

## **2 DETAILS OF THE TRANSFER**

- 2.1 The details of transfers of Protected Data, and in particular the categories of Protected Data and the purposes for which they are transferred, are specified in appendix 1.
- 2.2 The Parties agree that the Client is and will remain the Data Controller in relation to the Protected Data and that the Service Providers will solely act as Data Processors with respect to such Protected Data.

## **3 OBLIGATIONS OF NORWICH UNION**

- 3.1 Norwich Union agrees and warrants:
  - 3.1.1 that the Processing, including the transfer itself, of the Personal Data by Norwich Union has been and, up to the moment of the transfer, will continue to be carried out in accordance with the relevant provisions of the Data Protection Act 1998;
  - 3.1.2 to make available to the Data Subjects upon request a copy of this Agreement; and
  - 3.1.3 to respond in a reasonable time and to the extent reasonably possible to enquiries from the Information Commissioner on the Processing of the relevant Protected Data by Norwich Union or any one of them and to any enquiries from the Data Subject concerning the Processing of the Protected Data by the Service Providers.

## **4 OBLIGATIONS OF THE SERVICE PROVIDERS**

- 4.1 The Service Providers agree and warrant:
  - 4.1.1 that they have no reason to believe that the legislation applicable to them prevents them from fulfilling their obligations under this Agreement and that in the event of a change in which is likely to have a substantial adverse effect on the guarantees provided by this Agreement, they will notify the change to the Client and to such other relevant Norwich Union company and if necessary to the Information Commissioner, in which case the Client, NUI or NU Life will be entitled to suspend the transfer of the Protected Data and/or terminate this Agreement;
  - 4.1.2 to process the Protected Data in accordance with the mandatory data protection principles set out in Appendix 2 and to process in all other respects the Protected Data in accordance with:
    - (a) the relevant provisions of the Data Protection Act 1998 protecting the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the Processing of Personal Data applicable to a Data Controller in England, or
    - (b) the relevant provisions of any Commission Decision under Article 25(6) of the Directive finding that a third country provides adequate protection in certain sectors of activity only, if the Service Providers are based in that third country and is not

covered by those provisions, in so far as those provisions are of a nature which makes them applicable in the sector of the transfer;

4.1.3 to deal promptly and properly with all reasonable inquiries from the Client, NUI or NU Life or the Data Subject relating to its Processing of the Protected Data subject to the transfer and to co-operate with the Information Commissioner in the course of all its inquiries and abide by the advice of the Information Commissioner with regard to the Processing of the Protected Data transferred;

4.1.4 at the request of the Client, NUI or NU Life to submit its data processing facilities for audit which shall be carried out by the Client, NUI or NU Life or an inspection body composed of independent members and in possession of the required professional qualifications, selected by the Client, NUI or NU Life, where applicable, in agreement with the Information Commissioner; and

4.1.5 to make available to the Data Subject upon request a copy of this Agreement and indicate the office which handles complaints.

4.2 Without prejudice to clause 4.1, the Service Providers shall ensure that they only Process the Protected Data for the purposes notified to them by Norwich Union and/or the relevant Data Subjects and that they maintain appropriate technical and organisational measures (including but not limited to, appropriate policies communicated to their employees, management of ongoing compliance and effective security measures) in respect of the Protected Data to prevent unauthorised or unlawful Processing of the Protected Data and against accidental loss or destruction of, or damage to, the Protected Data.

4.3 The Service Providers will take all steps required and communicated in writing to them by Norwich Union that the Client, NUI or NU Life reasonably considers are necessary in order to comply with their respective obligations under the Data Protection Act 1998.

4.4 The Service Providers, for the purposes of facilitating Norwich Union's compliance with the Data Protection Laws, shall furnish to the Client, NUI or NU Life copies of such security, audit and control reports generated by the Service Providers' auditors as are directly relevant to such compliance.

4.5 In the event that either Norwich Union or the Service Providers become aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Protected Data, such Party shall notify the other Party thereof.

## **5 DATA PROTECTION LAWS**

Without prejudice to clauses 3 and 4 above, each Party shall comply with any data protection, privacy or similar laws anywhere in the world ("Data Protection Laws"), including but not limited to, the Data Protection Act 1998, that apply in relation to any Protected Data and render such assistance and co-operation as is reasonably necessary or reasonably requested by the other Party, including, but not limited to, the provision of information regarding the existence, applicability and extent of application of Data Protection Laws in particular jurisdictions to Protected Data.

## **6 LIABILITY**

6.1 The Parties agree that a Data Subject who has suffered damage as a result of any violation of the provisions referred to in clause 12 is entitled to receive compensation from the Parties for the damage suffered. The Parties agree that they may be exempted from this liability only if they prove that neither of them is responsible for the violation of those provisions.

6.2 Without prejudice to clause 6.3, Norwich Union and the Service Providers agree that, as between the Parties and a Data Subject, the Parties will be jointly and severally liable to such Data Subject for damage to the Data Subject resulting from any violation referred to in clause 6.1. In the event of such a violation, the Data Subject may bring an action before a court against either the relevant Norwich Union company or the Service Providers or both.

6.3 Each Party (an "Indemnifying Party") shall indemnify any of the other Parties (an "Indemnified Party") and keep the Indemnified Party indemnified against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a full indemnity basis, and whether

arising under clauses 6.1 and 6.2 or otherwise) losses and damages arising from or incurred by reason of any wrongful Processing of any Protected Data by the Indemnifying Party or breach of its obligations or warranties under this Agreement, but not to the extent that such disclosure or breach occurs due to the act or omission of the Indemnified Party.

## **7 MEDIATION AND JURISDICTION**

7.1 The Parties agree that if there is a dispute between a Data Subject and either Party which is not amicably resolved and the Data Subject invokes the Third-Party Beneficiary provision in clause 12, they will accept the decision of the Data Subject:

7.1.1 to refer the dispute to mediation by an independent person or, where applicable, by the Information Commissioner; and

7.1.2 to refer the dispute to the English courts in accordance with clause 10.

7.2 The Parties agree that by agreement between a Data Subject and the relevant Party a dispute can be referred to an arbitration body, if that Party is established in a country which has ratified the New York convention on enforcement of arbitration awards.

7.3 The Parties agree that clauses 7.1 and 7.2 apply without prejudice to the Data Subject's substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## **8 CO-OPERATION WITH SUPERVISORY AUTHORITIES**

The Parties agree to deposit a copy of this Agreement with the Information Commissioner if it so requests.

## **9 TERMINATION**

The Parties agree that the termination of this Agreement at any time, in any circumstances and for whatever reason does not exempt them from the obligations and/or conditions under this Agreement as regards the Processing of any Protected Data transferred.

## **10 LAW AND JURISDICTION**

This Agreement shall be considered as a contract made in England and according to English law and shall be subject to the exclusive jurisdiction of the English courts, to which jurisdiction the Parties hereby irrevocably submit.

## **11 VARIATION OF THE CONTRACT**

The Parties undertake not to vary or modify the terms of this Agreement.

## **12 THIRD-PARTY BENEFICIARY CLAUSE**

The Data Subjects can enforce this clause, clause 3.1.2 and 3.1.3, clause 4.1.1, 4.1.2, 4.1.3 and 4.1.5, clause 6.1 and 6.2, and clauses 7, 9 and 11 of this Agreement as Third-Party Beneficiaries. The Parties do not object to the Data Subjects being represented by an association or other bodies if they so wish and if permitted by law.

Signed for and on behalf of **Client**

By /s/ Paul Robert Faulkner  
Name Paul Robert Faulkner  
Title Director

Signed for and on behalf of **NUI**

By /s/ George Roy Barlow and  
Name George Roy Barlow  
Title Authorised Signatory

By /s/ Fay Corinne Gammer  
Name Fay Corinne Gammer  
Title Authorised Signatory

Signed for and on behalf of **NU Life**

By /s/ Michael Ulmsen  
Name Michael Ulmsen  
Title

Signed for and on behalf of **NU Life**

By /s/ Peter Robert Hayes  
Name Peter Robert Hayes  
Title

Signed for and on behalf of **EXL Holdings (US)**

By /s/ Rohit Kapoor  
Name Rohit Kapoor  
Title President & CFO

Signed for and on behalf of **EXL India**

By /s/ Vikram Talwar  
Name Vikram Talwar  
Title Director

Signed for and on behalf of **SPV**

By /s/ Vikram Talwar  
Name Vikram Talwar  
Title Director

DATED 26 August 2004

- (1) NORWICH UNION CUSTOMER SERVICES (SINGAPORE) PTE LTD
- (2) EXLSERVICE HOLDINGS, INC
- (3) EXL SERVICE.COM (INDIA) PRIVATE LIMITED
- (4) NOIDA CUSTOMER OPERATIONS PRIVATE LIMITED

VIRTUAL SHAREHOLDERS' AGREEMENT  
(RELATING TO NOIDA CUSTOMER OPERATIONS PRIVATE LIMITED)

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# VIRTUAL SHAREHOLDERS' AGREEMENT

Dated: 26 August 2004

## BETWEEN:

- (1) **Norwich Union Customer Services (Singapore) Pte Ltd**, a company registered in Singapore with registered number **200303457R** and whose registered office is at 4 Shenton Way, #27-02 SGX Centre 2, Singapore 068807 (the "Client");
- (2) **Exlservice Holdings, Inc.**, a company registered in the State of Delaware and whose principal office is at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022 ("EXL Holdings (US)");
- (3) **exl Service.com (India) Private Limited**, a company registered in India with registration number 55-99888, whose registered office is at 103A, Ashoka Estate, Barakhamba Road, New Delhi 110 001 and having its principal office at A48, Sector 58, Noida, Uttar Pradesh, 201 301, India ("EXL (India)");
- (3) **Noida Customer Operations Private Limited**, a company registered in India with registered number U72900DL2003PTC122175 and whose registered office is at 103A, Ashoka Estate, Barakhamba Road, New Delhi 110 001 (the "SPV").

## 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (excluding the appendices), unless inconsistent with the context or otherwise specified the following expressions have the following meanings:

- "Agreed Form" : in relation to any document, the form of that document initialled for the purpose of identification by or on behalf of EXL Holdings (US) and the Client;
- "this Agreement" : this agreement, as varied from time to time in accordance with its terms, and including all schedules and appendices;
- "Agreements" : the Umbrella Agreement, the Insurance Services Framework Agreement (Intra-Group) and the Confidentiality Agreement and the Data Protection Agreement (as those expressions are defined in the Umbrella Agreement);
- "Articles" : the articles of association of SPV as varied from time to time;
- "Associated Company" : has the meaning given to it in clause 1 of the Umbrella Agreement;
- "Auditors" : Ernst & Young or any other firm of auditors appointed by the SPV from time to time with the prior written consent of the Client;

“Aviva Group”	:	Aviva plc, a company registered in England and Wales with registration number 2468686 and having its registered office at St Helen’s, 1 Undershaft, London EC3P 3DQ and any of its subsidiaries from time to time (as the term “subsidiary” is defined in Section 736 Companies Act 1985);
“BPO Services”	:	means the provision of insurance intermediary services including all types of call centre services, the design, building, maintenance and operation of all types of call centres and the provision of all kinds of business processing and administration services;
“Business Day”	:	a day other than a Saturday or Sunday or public holiday in the United Kingdom, the United States of America and India;
“Call Option”	:	the call option exercisable or exercised pursuant to clause 10;
“Data”		all data, information, text, drawings, codes, diagrams, images or sounds which are embodied in any electronic or tangible medium and which are: <ul style="list-style-type: none"> <li>(a) processed by the services under the Insurance Services Framework Agreement;</li> <li>(b) generated by EXL Holdings (US) and/or the SPV under the Umbrella Agreement, the Insurance Services Framework Agreement or the Insurance Services Framework Agreements (Intra-Group);</li> <li>(c) generated by or on behalf of the Client;</li> </ul>
“Director”	:	a director of the SPV;
“Employees”	:	all of the employees of the SPV; and “Employee” means any of them;
“Encumbrance”	:	a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of preemption, third party right or interest, other encumbrance or security interest of any kind, or another type of preferential arrangement, (including, without limitation, a title transfer and retention arrangement) having similar effect but excluding any such encumbrances imposed by the Government of India otherwise than as the result of any act or omission of EXL Holdings (US);
“Government of India”	:	shall mean any government, regulatory authority, governmental department, agency, commission,

	:	board, tribunal or court or other law, rule or regulation-making entity, having or purporting to have jurisdiction on behalf of the Republic of India, or province or state or other subdivision thereof or any municipality, district or other subdivision thereof;
“Insurance Services Framework Agreement”	:	the Insurance Services Framework Agreement entered into on the date hereof pursuant to clause 4 of the Umbrella Agreement, together with all work orders agreed under that framework agreement;
“Insurance Services Framework Agreements (Intra-Group)”	:	the Insurance Services Framework Agreement (Intra Group – India) and the Insurance Services Framework Agreement (Intra Group – SPV);
“Insurance Services Framework Agreement (Intra Group – India)” and “Insurance Services Framework Agreement (Intra Group – SPV)”	:	have the meanings given to them in clause 1 of the Umbrella Agreement;
“Intellectual Property Rights”	:	all intellectual property rights including, but not limited to, inventions, patents, trade secrets, trade marks, service marks, copyrights and other rights in works of authorship (including rights in computer software), moral and artists’ rights, design rights, trade or business names, domain names, know-how, database rights and semiconductor topography rights and whether any of the foregoing are registered or unregistered and including all applications for them and all rights or forms of protection of a similar nature in any country;
“Nominated Director”	:	a Director of the SPV nominated by the Client pursuant to clause 5.1 and any alternate for such director appointed in accordance with the Articles;
“Parties”	:	the parties to this Agreement; and “Party” means any of them;
“Put Option”	:	the put option exercisable or exercised pursuant to clause 11;
“Shares”	:	the entire issued share capital of SPV from time to time;
“SSPA”	:	the share sale and purchase agreement in the form set out in appendix 1;
“STPI”	:	Software Technology Parks of India;
“subsidiary”	:	has the meaning set out in the Companies Act 1985;

- “Trade Marks” : the trade marks set out in schedule 3;
- “Umbrella Agreement” : the umbrella agreement, entered into on the date hereof between (1) the Client, (2) EXL Holdings (US), (3) EXL (India) and (4) the SPV;
- 1.2 references to clauses, schedules and appendices are to clauses of and the schedules and appendices to this Agreement;
- 1.3 the schedules and appendices form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement;
- 1.4 words importing gender include each gender;
- 1.5 references to persons include bodies corporate, firms and unincorporated associations and that person’s legal personal representatives and successors;
- 1.6 the singular includes the plural and vice versa;
- 1.7 clause headings are included for the convenience of the Parties only and do not affect its interpretation;
- 1.8 references to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute (except to the extent that any amendment, consolidation, extension or re-enactment of any statutory provision or the making of any subordinate legislation, in each case after the date of this Agreement, could increase a Party’s liability under this Agreement);
- 1.9 a person shall be deemed to be “connected with” another if that person is either:
- 1.9.1 connected with such other within the meaning of section 839 of the Income and Corporation Taxes Act 1988 or within the meaning of section 249 of the Insolvency Act 1986; or
- 1.9.2 is an associate of such other within the meaning of section 435 of the Insolvency Act 1986;
- 1.10 any reference to an agreement or contract includes an agreement, contract, deed, franchise, concession, licence or undertaking and any waiver or release (in each case whether written, oral, implied or arising by operation of law);
- 1.11 references to any English legal or accounting term for any action, remedy, method of judicial proceeding, legal or accounting document, legal or accounting status, insolvency proceeding, event of incapacity, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept, practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned;
- 1.12 any undertaking by any of the Parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing;

- 1.13 obligations and liabilities assumed by more than one person are assumed jointly and severally unless otherwise specified; and
- 1.14 any reference to books, records or other information means books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

## **2 PRELIMINARY STATEMENTS**

- 2.1 This Agreement is entered into pursuant to the Umbrella Agreement.
- 2.2 The SPV is a private company limited by shares incorporated in India on September 9, 2003 under registered number U72900DL2003PTC122175. The SPV has an authorised share capital of INR1,000,000 (Indian Rupees one million only) divided into 100,000 ordinary (equity) shares of INR10 each, of which 10,000 shares have been issued, fully paid and are held beneficially by EXL (India). 9,999 shares are owned by EXL (India) and one share is held by Rajiv Kishan Luthra (as nominee of EXL (India)).
- 2.3 EXL Holdings (US) confirms that the SPV's current memorandum and articles of association are set out in appendix 2.
- 2.4 The Parties wish to enter into this Agreement for the purpose of regulating certain aspects of their relationship with each other.

## **3 CONSIDERATION**

In consideration of the various agreements and undertakings set out in this Agreement, the Parties have granted the rights and accepted the obligations set out in this Agreement.

## **4 THE BUSINESS**

- 4.1 EXL Holdings (US) shall procure that, except as expressly provided under the Umbrella Agreement, the business of the SPV is confined to the supply of services under the Insurance Services Framework Agreement (Intra-Group - SPV) and ancillary activities to that supply. Accordingly, the SPV shall not enter into any agreement or arrangement (other than the Agreements and any Intra Group agreements with EXL (India) and whether legally binding or not) in relation to the supply by the SPV, either alone or jointly with, through or on behalf of any person, directly or indirectly, of any BPO Services.
- 4.2 EXL Holdings (US) shall ensure that the business of the SPV is conducted in accordance with sound and good business practice and, so far as it is reasonably practical to do so, with the Corporate Social Responsibility Policy set out in schedule 4. EXL Holdings (US) shall not knowingly do any act or thing which is likely to result in the SPV becoming insolvent or unable to pay its debts as and when they fall due provided that EXL Holdings (US) shall not be in breach of this clause if the principal reason for the insolvency of SPV is the refusal by Client to pay sums properly due from it to EXL Holdings (US) pursuant to the Insurance Services Framework Agreement.
- 4.3 EXL Holdings (US) shall use all reasonable endeavours to ensure that, at all relevant times, the SPV owns all assets, is entitled to use the same pursuant to leases or hire purchase agreements and, subject to the following sentence is a party to all contracts reasonably necessary to carry on its business and properly to perform its obligations under the Insurance Services Framework Agreement (Intra-Group- SPV). For the avoidance of doubt, it is acknowledged by the Parties that certain minor services, such as transportation and catering, may be supplied to the SPV by EXL (India) or any other EXL group company, via EXL Holdings (US).

- 4.4 The SPV shall maintain with a well-established and reputable insurer adequate insurance against all risks usually insured against by companies carrying on the same or similar business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature. Without prejudice to the previous sentence, if the Client requires SPV to increase the level of insurance cover maintained by SPV or requires SPV to take out cover in respect of risks not usually insured against by companies carrying on the same or similar business, then the cost of such increased or additional cover shall be passed on at cost to the Client through the Charges paid by the Client pursuant to the Insurance Services Framework Agreement and the Client shall be liable to pay any profit element thereon calculated in accordance with the principles set out in schedule 3 of that agreement. If any of the tangible assets of the SPV is destroyed, lost or damaged, the SPV shall, where applicable, make an appropriate claim under its insurance policies and use any proceeds from such claim to (as the case may be) replace, rebuild or repair the destroyed, lost or damaged asset.
- 4.5 EXL Holdings (US) agrees that it will not bring any claims, demands, actions or proceedings against the SPV (including any arising under the Insurance Services Framework Agreement (Intra Group – SPV) without the prior written consent of Client.
- 4.6 EXL Holdings (US) agrees that it will meet all of the costs and charges of the SPV for all services provided by the SPV under the Insurance Services Framework Agreement (Intra Group – SPV).

## **5 NOMINATED DIRECTOR**

- 5.1 The Client may appoint one Director (“a Nominated Director”) to be appointed to the board of the SPV and may require the removal of any such Director and nominate another Director to be appointed in the place of a Director so removed or who otherwise ceases to be a Director.
- 5.2 The Client shall give notice in writing to EXL Holdings (US) of any nomination or removal of a Director pursuant to clause 5.1. EXL Holdings (US) shall cause such appointment or removal promptly after receipt of such notice by it.
- 5.3 The SPV shall use reasonable endeavours to give not less than 10 Business Days’ notice in writing and shall in any event give a minimum of 5 business days notice to the Nominated Director of every proposed meeting of its Directors which shall be held at least once a quarter during normal business hours and in or within easy reach of Pune. Where it is impractical or inconvenient to hold such meeting in or near Pune, the SPV shall be at liberty to hold the meeting in Noida or at such other location in India as the parties may agree. Every such notice shall set out in reasonable detail the nature of the business to be transacted at such meeting and shall be accompanied by all papers to be presented to or discussed at the meeting. The Parties agree that no business shall be transacted at any such meeting except for that specified in the notice of the meeting unless otherwise agreed by all of the Directors of the SPV. Any of the above requirements in this clause 5.3 may be waived in writing by the Client. The SPV shall send to each of the Directors as soon as practicable after each meeting of the Directors a copy of the minutes of the meeting.
- 5.4 At any time while a Nominated Director is not appointed to the board of directors of the SPV, EXL Holdings (US) shall procure that the Client may appoint a representative to attend and receive notice of all meetings of the Directors of the board of the SPV and the minutes of such meetings together with all relevant papers.
- 5.5 Subject to the applicable laws and at the request of the Nominated Director, the board of Directors may appoint any person nominated by the Client to act as an alternate director for the Nominated Director during the latter’s absence for a period of not less than three months from the state in which meeting of the Board of Directors are ordinarily held and such appointment shall have effect and such appointee, whilst he holds office as an alternate

director, shall be entitled to notice of meeting of the board of Directors and to attend and vote thereat accordingly, but he shall ipso facto vacate office if and when the absent Director returns to the state or vacates office as Director. The alternate Director shall be an individual nominated by the Nominated Director or the Client in whose place such alternate director is being appointed, and EXL Holdings (US) shall cause its nominees on the board to approve the appointment of such individual as an alternate Director.

- 5.6 A Nominated Director (including any alternate Director of the Nominated Director) and any representative under clause 5.4 may provide to the Client any information which he receives by virtue of his being a Director (or a representative).
- 5.7 The costs and expenses of a Nominated Director (including any alternate Director of the Nominated Director and the amount of any severance payment due to such director on the termination of his/her appointment) and any representative under clause 5.4 shall be borne by the Client.
- 5.8 If at any time there is a Nominated Director on the board of the SPV, no meeting of the Directors of the board of the SPV (other than the meeting referred to in schedule 2 of the SSPA) shall be quorate unless such Nominated Director (or his alternate) is present, either in person or telephonically from another location in India, throughout, unless the Client otherwise agrees in writing in respect of such meeting. If, at any duly convened meeting of the Directors, the meeting is not so quorate, or during the meeting such a quorum ceases to be present, in each case due to the absence of the Nominated Director (or his alternate), the meeting shall be adjourned to the same day in the next week at the same time and place (or to such other day, and at such other time and place, as the Directors may agree in writing) and the quorum at such adjourned meeting will be any two Directors. The Directors shall not constitute, or delegate any of their powers or discretions to, any committee without the prior written consent of the Client.
- 5.9 EXL Holdings (US) shall, on any resolution to remove a Nominated Director, vote against such removal unless that Nominated Director is required to be removed under this Agreement or the Articles or pursuant to the Indian Companies Act, 1956.
- 5.10 For the avoidance of doubt, it is hereby agreed by the Parties that a Nominated Director, acting alone, shall have no authority to bind the SPV whether in writing or by any other method.

## **6 RESERVED MATTERS**

- 6.1 Except as expressly contemplated by the Umbrella Agreement or as expressly provided for and contemplated by any budget agreed between the Parties for the SPV, EXL Holdings (US) shall procure that no action is taken or resolution passed by the SPV in respect of the matters or things set out in part 1 of schedule 1 (as varied from time to time in accordance with clause 6.2) (the "SPV Reserved Matters") without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed)
- 6.2 The matters and things referred to in clause 6.1 may be varied at any time by the written agreement of the Parties.
- 6.3 The SPV undertakes with the Client that it will not do any of the SPV Reserved Matters without the approval required by clause 6.1.
- 6.4 For the avoidance of doubt, nothing in this Agreement shall affect the right of the owners for the time being of the Shares to pass any resolutions necessary to declare a dividend to be paid to the shareholders of the SPV, provided that the SPV is legally entitled to declare such dividend and that declaration and the payment of such dividend shall comply in all aspects with the laws of India and with the Articles.



## 7 FINANCIAL AND OTHER INFORMATION

7.1 The SPV undertakes to the Client that:

7.1.1 it will keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its business;

7.1.2 the Client shall be provided, at no additional cost to the Client (other than those to be paid pursuant to the Insurance Services Framework Agreement) and without limiting in any way EXL Holdings (US)'s obligations to provide information under the Insurance Services Framework Agreement,:

- (a) within three Business Days after the end of each calendar month with a flash report for such month containing the key management information, and in the form, set out in part 1 of schedule 8;
- (b) within six Business Days after the end of each calendar month with financial reports of the SPV for such month in a form reasonably satisfactory to the Client and including, but not limited to, a balance sheet, profit and loss statement, cash flow and forward projections;
- (c) within 10 Business Days after the end of each calendar month with a full management information pack for such month containing the detailed management information set out in part 2 of schedule 8;
- (d) with drafts of all returns, computations and correspondence to be sent to any tax authority, such drafts to be provided to the Client as soon as reasonably possible before the date upon which the returns, computations or correspondence should reasonably be sent to the tax authority in question or, if earlier, as soon as reasonably possible before the end of the statutory period allowed for submission of the returns, computations or correspondence. EXL Holdings (US) shall endeavour to ensure that such returns, computations and correspondence shall not be sent to the Indian tax authority in question until the Client has had a reasonable opportunity to review and approve the same but nothing in this clause 7.1.2(d) shall require EXL Holdings (US) or the SPV to be in breach of their respective statutory obligations to the Indian tax authority as regards the time for filing any such returns, computations or correspondence.
- (e) within one month after the end of each financial year or as soon as reasonably practical thereafter with audit clearance by the Auditors for the accounts of the SPV; and
- (f) with such financial and other information relating to the SPV in such form and at such times as the Client may reasonably require.

7.1.3 the Client may at all reasonable times and at its own expense:

- (a) discuss the affairs, finances and accounts of the SPV with its officers and principal executives; and
- (b) inspect and make copies of all books, records, accounts, documents and vouchers relating to the business and the affairs of the SPV.

7.2 The financial year of the SPV shall end on 31 December. The audited accounts prepared for the SPV for each financial year shall be prepared in accordance with US generally accepted accounting principles and represent a true and fair view of the financial position and the results of the operations of the SPV for the financial period to which they relate.

## **8 REVENUE ADVANCES**

- 8.1 This clause 8 sets out certain principles agreed between the parties for the revenue advances by the Client to EXL Holdings (US).
- 8.2 On the date of this Agreement, the Client has paid to EXL Holdings (US) a sum of approximately US\$7million as revenue advances against the future invoices ("Revenue Advances"). EXL Holdings (US) and the Client agree to reduce, by offsetting to the extent required July, August and September invoices, such Revenue Advances to US\$3.2 million by September 30, 2004; and thereafter from October 2004, for the next 32 months, a sum of US\$100,000 from the Revenue Advances is offset against the monthly invoices due from the Client and the Client shall pay the monthly invoices net of US\$100,000.
- 8.3 In case this Agreement is terminated prior to the full offset of the Revenue Advances against the monthly invoices, EXL Holdings (US) shall be liable to make immediate payment of the balance amount to the Client.

## **9 SHARE TRANSFERS**

Except pursuant to this Agreement, EXL Holdings (US) shall not do, or agree to do, any of the following:

- 9.1 create any Encumbrance over any of the Shares;
- 9.2 sell, transfer or otherwise dispose of, or grant any option over, any of the Shares or any interest in the Shares; or
- 9.3 enter into any agreement in respect of the votes attached to any of the Shares

## **10 CALL OPTION**

- 10.1 The Client shall have an option of purchasing all (but not some only) of the Shares from EXL Holdings (US) on the terms of this clause 10 and the SSPA.
- 10.2 The Call Option is exercisable by prior written notice ("Call Notice") of the appropriate period determined in accordance with clause 10.3 ("Call Notice Period") from the Client to EXL Holdings (US) given:
- (a) at any time during the period commencing on the date 30 months after the date of the Insurance Services Framework Agreement and expiring on the date 78 months after the date of the Insurance Services Framework Agreement; or
- (b) at any time after the Client has terminated the Insurance Services Framework Agreement pursuant to clauses 15.1, 15.3, 15.4, 15.6 or 15.7 but only in the circumstances provided for in Part B of Schedule 7 of that Agreement

Upon expiry of the Call Notice Period, EXL Holdings (US) and the Client shall be deemed to have entered into the SSPA. Subject to the terms of the SSPA, the Call Notice shall be irrevocable and unconditional. The Client shall be responsible for any transfer taxes, stamp duty or any other similar Governmental levies and duties taking the place of such transfer taxes or stamp duty (if any) in connection with the transfer of the Shares to it pursuant to the SSPA.

10.3 The Call Notice Period shall mean the period of six months where notice is given under paragraph (a) of clause 10.2 and five Business Days where notice is given under paragraph (b) of clause 10.2.

## 11 PUT OPTION

11.1 EXL Holdings (US) shall have an option of requiring the Client to purchase all (but not some only) of the Shares from EXL Holdings (US) on the terms of this clause 11 and the SSPA.

11.2 The Put Option is exercisable by prior written notice ("Put Notice") of the appropriate period determined in accordance with clause 11.4 ("the Put Notice Period") from EXL Holdings (US) to the Client given

- (a) at any time during the period commencing on the third anniversary of the date of the Insurance Services Framework Agreement and expiring on the date 78 months after the date of the Insurance Services Framework Agreement provided that, at the time the Put Notice is given ("the Put Notice Date"), the volumes of the SPV are less than 90% of the volumes (as defined below) of the SPV on the third anniversary of the date of the Insurance Services Framework Agreement; or
- (b) EXL Holdings (US) has terminated the Insurance Services Framework Agreement pursuant to clauses 15.1, 15.3, 15.8.1 or 15.8.2 but only in the circumstances provided for in Part B of Schedule 7 of that Agreement.

Upon expiry of the Put Notice Period, EXL Holdings (US) and the Client shall be deemed to have entered into the SSPA. Subject to the terms of the SSPA, a Put Notice shall be irrevocable and unconditional. The Client shall be responsible for any transfer taxes or stamp duty (if any) in connection with the transfer of the Shares to it pursuant to the SSPA.

11.3 For the purposes of clause 11.2(a), volumes shall mean the number of full time equivalents used to provide the services under the Insurance Services Framework Agreement (Intra- Group—SPV). The term "full time equivalents" means the figure produced by the calculation:

$$\frac{F+H}{9.5}$$

where:

- F = the number of employees employed by the SPV whose contract of employment requires them to work not less than 9.5 hours in any day; and
- H = the actual number of hours to be worked each day in aggregate by those employees of the SPV whose contract of employment requires them to work less than 9.5 hours in any day.

11.4 The Put Notice Period shall mean the period of six months where notice is given under paragraph (a) of clause 11.2 and five Business Days where notice is given under paragraph (b) of clause 11.2.

## **12 EMPLOYEES**

### **12.1 Recruitment**

In accordance with the HR principles set out in schedule 5, the SPV shall recruit sufficient numbers of suitably qualified staff to enable it properly to perform, at all times, its obligations under the Insurance Services Framework Agreement (Intra-Group - SPV). Such recruitment shall take place in accordance with the work orders agreed under the Insurance Services Framework Agreement. Subject as set out in this clause 12, the SPV shall have full authority to recruit staff without further specific approval from the Client.

### **12.2 Exclusive services**

The Employees will only be permitted to provide BPO Services to the Client unless otherwise agreed in writing by the Client.

### **12.3 Terms and conditions**

The SPV will procure that the terms and conditions of the Employees are consistent with the HR principles set out in schedule 5 and that the standard terms and conditions of employment are in a format previously agreed with the Client. In addition, all recruitment, training policies, procedures, customs and practices in respect of the Employees shall comply with those principles. The Parties intend that the total compensation package for each Employee shall be broadly equivalent, in financial terms, to the package received by comparable employees of EXL (India).

12.4 The SPV shall be the employer of the Employees and shall have responsibility for day to day management of the Employees. The SPV will not make any material changes to the terms and conditions of employment of any of the Employees, or to their rates of remuneration, without prior consultation with the Client. For the purposes of this clause, a material change would be one which increases the total ongoing costs to the SPV associated with or relating to all the Employees whether directly or indirectly by more than 15% or increases the cost of terminating the contracts of employment of all the Employees by more than 15% (excluding any compensation pursuant to statute or other government regulation).

12.5 The Parties will work together continuously to improve and adapt the terms and conditions upon which the Employees are engaged. Not less than annually an HR representative for the Client and an HR representative for the SPV and if appropriate EXL Holdings (US) shall meet to identify appropriate changes to the terms and conditions of employment. The first such meeting shall take place on or around 30 June 2005.

### **12.6 Provision of information**

EXL Holdings (US) will procure that the SPV provides the information set out in schedule 6 on (i) an annual basis, the first such report to be made in June 2005, (ii) within 30 Business Days after exercise of the Call Option or the Put Option and (iii) within five Business Days after the Shares are acquired by the Client under the SSPA. In addition, the SPV shall provide the information within 15 Business Days of a demand from the Client, provided that the Client may not make more than two such demands during this Agreement.

### **12.7 Annual review**

The SPV shall carry out employee reviews to monitor employee morale and commitment to the SPV and the Client covering at least the matters set out in schedule 7 and using questionnaires containing questions similar to those included in reviews carried out by the Aviva Group and provided that the same shall have been provided to the SPV. The first such review shall be carried out not less than six and not more than twelve months after the

commencement of the first work order under the Insurance Services Framework Agreement and subsequent reviews shall be implemented at 12 monthly intervals and upon service of written notice to exercise the Call Option or the Put Option. In all cases EXL Holdings (US) will procure that the SPV delivers a copy of the consolidated responses as soon as reasonably practicable and in any event within 28 days of distributing the questionnaire.

#### **12.8 Finance Manager**

The Client may, at any time and from time to time, second one person to the SPV on a full time basis to work for the person who acts in the capacity of the finance director of the SPV. The Client shall pay the salary, allowances, travelling and accommodation expenses and any other benefits of any such secondee and shall procure that such secondee will comply with all reasonable instructions and policies of EXL Holdings (US) which have been made known to Client. The Client agrees to indemnify the SPV in respect of such salary, allowances, expenses and benefits due to such secondee and in respect of any taxes on the same which should have been deducted at source by the Client and paid to the relevant tax authorities.

#### **12.9 Managers**

It is acknowledged by the Parties that certain senior management functions will be provided by the secondment by EXL (India) of certain employees to the SPV under the Insurance Services Framework Agreement (Intra-Group) and it is expressly acknowledged that such seconded individuals will continue to be employees of EXL (India). However, EXL Holdings (US) shall procure that permanent staff, at management level, will be employed by the SPV to provide those management functions, as soon as commercially reasonable taking into account the development of the SPV's business and, in any event, by the expiry of the three year period beginning on the date of the Insurance Services Framework Agreement.

### **13 RESTRICTIVE COVENANTS**

- 13.1 Subject to the provisions of clause 13.2, unless it has obtained the Client's prior written consent, such consent not to be unreasonably withheld or delayed, EXL Holdings (US) undertakes to the Client that it will not, and will procure that none of its subsidiaries will, either alone or jointly with, through or on behalf of any person, directly or indirectly provide in India any BPO Services to any person listed in schedule 2.
- 13.2 The restrictions set out in clause 13.1 shall apply for so long as the average number of full time equivalents (determined using the formula set out in clause 11.3) used to provide the services in Pune under the Insurance Services Framework Agreement and in Noida pursuant to any other services agreement between the Client and EXL Holdings (US) or EXL India is not less than 600 Full time Equivalents during the 12 months ending on 30 June in each year that this Agreement continues.
- 13.3 EXL Holdings (US) undertakes to the Client that, except as provided for in Schedule 7 of the Insurance Services Framework Agreement unless it has obtained the Client's prior written consent, such consent not to be unreasonably withheld or delayed, it will not, and will procure that none of its subsidiaries will, either alone or jointly with, through or on behalf of any person, directly or indirectly:-
- 13.3.1 solicit or contact with a view to the engagement or employment by any person, any employee, officer or manager of the SPV or any person who has been an employee, officer or manager of the SPV within the previous two year period;
- 13.3.2 employ or engage, or attempt to employ or engage, any employee, officer or manager of the SPV or any person who has been an employee, officer or manager during that period.

- 13.4 If the Call Option or Put Option is exercised, the restrictions set out in clause 13.3 shall continue to apply for a period of two years from the date of Completion (as that expression is defined in the SSPA). The restrictions contained in those clauses shall be construed during this period by reference to the employees, officers or managers of the SPV as at that date or during the two year period prior to that date. If the Call Option or Put Option is not exercised, the restrictions set out in clause 13.3 shall cease to apply on termination of this Agreement.
- 13.5 Unless it has obtained EXL Holdings (US)'s prior written consent, such consent not to be unreasonably withheld or delayed, the Client undertakes to EXL Holdings (US) that it will not, and will procure that no Associated Company nor any person connected with it, either alone or jointly with, through or on behalf of any person, directly or indirectly:
- 13.5.1 provide in India any BPO Services to any person other than an Associated Company (as that term is defined in the Umbrella Agreement);
- 13.5.2 establish or be engaged, concerned or interested in the establishment of any business to provide BPO Services in India to persons other than Associated Companies;
- 13.5.3 solicit or contact with a view to the engagement or employment by any person, any employee, officer or manager of EXL Holdings (US) or any of its subsidiaries or any person who has been an employee, officer or manager of any of those companies within the previous two year period; and
- 13.5.4 employ or engage, or attempt to employ or engage, any employee, officer or manager of EXL Holdings (US) or any of its subsidiaries or any person who has been an employee, officer or manager of any of those companies during that period.
- 13.6 Each of clauses 13.1, 13.3.1 and 13.3.2 (inclusive) and clauses 13.5.1 to 13.5.4 (inclusive) shall be treated as a separate obligation and shall be severally enforceable as such.
- 13.7 EXL Holdings (US) and the Client consider the restrictions comprised in this clause 13 to be reasonable. However, EXL Holdings (US) agrees to accept and observe such substituted restriction(s) in place of any of those comprised in clause 13.1 and 13.2 as the Client may from time to time specify and the Client agrees to accept and observe such substituted restriction(s) in place of any of those comprised in clause 13.5 as EXL Holdings (US) may from time to time specify, on the condition in each case that such substituted restriction(s) are in all respects less restrictive in extent than those provided for in this clause 13 which they replace.
- 13.8 The restrictions set out in clauses 13.5.1 to 13.5.4 (inclusive) shall cease to apply on the second anniversary of the termination of this Agreement. The restrictions contained in these clauses shall be construed during this period by reference to the employees, officers or managers of EXL Holdings (US) or any of its subsidiaries (as the case may be) as at that date or during the two year period prior to that date. Nothing in clauses 13.5.3 and 13.5.4 shall prevent the Client or any Associated Company from entering into a contract of employment with any person referred to in clauses 13.5.3 or 13.5.4 where such person has responded to a bona fide general recruiting campaign of the Client or such Associated Company which has not been directed specifically at employees of EXL Holdings (US) or its subsidiaries.
- 13.9 For the avoidance of doubt, nothing in the Umbrella Agreement or any agreement entered into pursuant to it shall be construed as restricting the right of the Client to procure goods and services from third parties as it determines in its absolute discretion. In particular, but without limitation, the Client shall have the right, exercisable in its sole discretion, to procure services of the same or similar type to those supplied under the Insurance Services Framework Agreement from any third party.

## 14 TRADE MARK LICENCE

- 14.1 Subject to the restrictions set out in this clause 14, the Client grants to the SPV a royalty free non-transferable, non-exclusive licence to use the Trade Marks solely for the purposes of branding the physical interior (but not the exterior) of any property during any period during which the SPV is providing services under the Insurance Services Framework Agreement (Intra Group-SPV) from such property and for no other purpose (the "Trade Mark Licence").
- 14.2 The Trade Mark Licence is personal to the SPV and may not be sub-licensed, assigned or otherwise transferred to any third party, including, but not limited to, EXL Holdings (US) or any of its subsidiaries (other than the SPV) and any sub-contractors. Without prejudice to the previous sentence, no other person, including but not limited to, EXL Holdings (US) or any of its subsidiaries (other than the SPV), may use the Trade Marks pursuant to the Trade Mark Licence.
- 14.3 The Trade Mark Licence may be terminated at any time immediately by notice from the Client to the SPV in the event that:
- 14.3.1 SPV is in material breach of that licence;
- 14.3.2 the Insurance Services Framework Agreement has been terminated by either Party pursuant to its terms (provided that such licence may continue after termination of the Insurance Services Framework Agreement for so long as SPV continues to provide Services under any Insurance Services Work Order pursuant to clauses 14.5 and 15.5 of that Agreement),
- following which the SPV shall forthwith remove all materials bearing or containing the Trade Marks from the relevant property and, at the Client's option, promptly destroy such materials or return them to the Client.
- 14.4 **Trade Mark Licence restrictions and undertakings**
- The SPV shall, at the Client's request and expense, execute and take all steps reasonably required for the registration or recordal of the Trade Mark Licence in respect of the Trade Marks. The SPV agrees that any such registration or recordal may be cancelled by the Client on the termination of the Trade Mark Licence and that the SPV will assist the Client so far as is necessary to achieve such cancellation by executing any necessary documents or doing any necessary acts in connection with it.
- 14.5 The SPV undertakes with the Client that:
- 14.5.1 it will use the Trade Marks only in compliance with such quality standards as the Client may from time to time reasonably require by written notice to the SPV;
- 14.5.2 it will only use the Trade Marks in such form as may from time to time be reasonably approved by the Client having regard to the shaping, printing style, colour and quality of materials used to display the Trade Marks;
- 14.5.3 it will not use or seek to register any other trade or service marks which are similar to or substantially similar to or so nearly resemble the Trade Marks as to be likely to cause deception or confusion;
- 14.5.4 it will where reasonably required by the Client in writing include on documentation and material referred to in clause 14.5.2 a statement that the relevant Trade Mark is the registered trade mark of the Client or, where the Client is itself a licensee of that Trade Mark, that the relevant Trade Mark is licensed by the Client. (For the avoidance

of doubt, the SPV shall not be required to display the Trade Marks on the exterior of any buildings within which the SPV carries on its operations); and

14.5.5 it will use reasonable endeavours not to use the Trade Marks in a manner which is likely to cause material harm to the goodwill attached to the Trade Marks.

#### **14.6 Infringements of Trade Marks**

The SPV shall as soon as reasonably practicable give written notice to the Client of any of the following matters which may at any time during the continuance of the Trade Mark Licence come to its knowledge, giving full particulars of them:

14.6.1 any infringement or suspected or threatened infringement of the Trade Marks, whether by reason of imitation of get-up or otherwise;

14.6.2 any allegation or complaint made by any person that the use by the SPV of the Trade Marks in accordance with this Agreement may be liable to cause deception or confusion to the public; or

14.6.3 any other form of attack, charge or claim in respect of the Trade Marks.

14.7 The SPV shall not make any admissions in respect of the matters referred to in clause 14.6 other than to the Client. The SPV shall in every case furnish the Client with all information in its possession relating to such matters which may be reasonably required by the Client.

14.8 The Client shall have the right to assume the conduct of all actions and proceedings (whether in its own name or that of the SPV) relating to the Trade Marks and shall bear the costs and expenses of any such actions and proceedings. Any costs or damages recovered in connection with any such actions or proceedings shall be for the account of the Client.

#### **15 DURATION**

15.1 This Agreement shall continue in full force and effect without limit in point of time until the earliest to occur of the following:

15.1.1 the Parties agree in writing to terminate this Agreement;

15.1.2 the Shares are acquired by the Client under the SSPA;

15.1.3 (except where the Call Option or the Put Option has, by then, been exercised) the date one month after termination of the Insurance Services Framework Agreement (as extended, if relevant, under clause 5 of that agreement) and all work orders agreed under that agreement;

15.1.4 termination of the Umbrella Agreement under clauses 3.5 or 4.3 of that agreement;

subject to (a) the relevant provisions of this Agreement and (b) the performance of any obligations or exercise of any rights respectively remaining to be performed or exercised after the event and to any rights of the Parties in respect of any antecedent breaches or non-observance of the Agreement.

15.2 For the avoidance of doubt, the provisions of clauses 13, 15 and 17 shall survive termination of this Agreement.

15.3 For the avoidance of doubt, completion of the sale and purchase of the Shares under the SSPA shall not adversely affect, limit or prejudice or constitute a waiver of any right or remedy



of a Party in relation to any claim which it may have against any other Party in respect of any breach of the provisions of this Agreement.

## **16 ANCILLARY PROVISIONS**

### **16.1 Parties bound**

16.1.1 The SPV undertakes with EXL Holdings (US) and the Client to be bound by and comply with the terms and conditions of this Agreement insofar as they relate to the SPV and to act in all respects as contemplated by this Agreement.

16.1.2 EXL Holdings (US) undertakes with the Client to exercise its powers in relation to the SPV so as to ensure that the SPV fully and promptly observes, performs and complies with its respective obligations under this Agreement.

### **16.2 Consents**

Where this Agreement provides that any particular transaction, matter or thing requires the consent, approval or agreement of the Client:

16.2.1 such consent, approval or agreement may be given subject to such terms as the Client may impose and any breach of such terms by any person subject to them shall be treated as a breach of the terms of this Agreement; and

16.2.2 the consent, approval or agreement of the Nominated Director (including any alternate Director of the Nominated Director) to that transaction, matter or thing (either in writing or given orally at a duly convened meeting of the board of Directors of the SPV (provided it is accurately minuted)) shall be deemed to be the consent, approval or agreement of the Client for the purposes of this Agreement.

### **16.3 Time of essence**

Time is of the essence of this Agreement in respect of any date or period mentioned in this Agreement and any date or period substituted by written agreement between the Parties or otherwise.

### **16.4 Umbrella Agreement**

To the extent relevant the provisions of clause 9 of the Umbrella Agreement shall apply to this Agreement as they apply to the Umbrella Agreement.

### **16.5 Assignment**

The Client shall be entitled to assign, novate or otherwise dispose of its rights under this Agreement or any part thereof to any Associated Company by giving EXL Holdings (US) prior written notice of such assignment, novation or other disposal.

This Agreement has been signed on the date first stated on page 1.

Signed for and on behalf of  
**Norwich Union Customer Services (Singapore) Pte Ltd** by

/s/ Paul Robert Faulkner name  
**Paul Robert Faulkner**

Signed for and on behalf of  
**ExlService Holdings, Inc** by

/s/ Rohit Kapoor name  
**Rohit Kapoor**

/s/ Vikram Talwar name  
**Vikram Talwar**

Signed for and on behalf of  
**ExlService.com (India) Private Limited** by

/s/ Vikram Talwar name  
**Vikram Talwar**

Signed for and on behalf of  
**Noida Customer Operations Private Limited** by

/s/ Vikram Talwar name  
**Vikram Talwar**

**APPENDIX 1**

**DATED \_\_\_\_\_ 2004**

- (1) EXLSERVICE HOLDINGS, INC**
- (2) NORWICH UNION CUSTOMER SERVICES (SINGAPORE) PTE LTD**

**SHARE SALE AND PURCHASE AGREEMENT  
(RELATING TO NOIDA CUSTOMER OPERATIONS PRIVATE LIMITED)**

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# SHARE SALE AND PURCHASE AGREEMENT

Dated: 2003

## BETWEEN:

- (1) **Exlservice Holdings, Inc**, a company registered in the State of Delaware and having its principal office at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022 (“EXL Holdings (US)”); and
- (2) **Norwich Union Customer Services (Singapore) Pte Ltd**, a company registered in Singapore with registered number 200303457R and whose registered office is at 4 Shenton Way, #27-02 SGX Centre 2, Singapore 068807 (the “Client”).

## 1 DEFINITIONS AND INTERPRETATION

In this Agreement, unless inconsistent with the context or otherwise specified:

1.1 the following expressions have the following meanings:

“Accounts”	:	the most recent audited consolidated balance sheet and audited consolidated profit and loss account of SPV, and the directors’ report and other documents annexed to them;
“this Agreement”	:	this agreement, as varied from time to time in accordance with its terms, and including all schedules and appendices;
“Auditors”	:	Ernst & Young or any other firm of auditors appointed by SPV from time to time with prior written consent of the Client;
“Business Day”	:	a day other than a Saturday or Sunday or public holiday in the United Kingdom, United States of America and in India;
“Completion”	:	completion of the sale and purchase of the Shares in accordance with clause 6;
“Encumbrance”	:	a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, or another type of preferential arrangement (including, without limitation, a title transfer and retention arrangement) having similar effect but excluding any such encumbrance imposed by the Government of India otherwise than as a result of any act or omission of EXL Holdings (US);
“Government of India”	:	shall mean any government, regulatory authority, governmental department, agency, commission, board, tribunal or court or other law, rule or regulation-making entity, having or purporting to have jurisdiction on behalf of the Republic of India, or province or state or other subdivision thereof or any municipality, district or other subdivision thereof;

“Independent Accountants”	:	Deloitte & Touche or such other firm of accountants as may be nominated by agreement of all the Parties;
“Insurance Services Framework Agreement”	:	means an agreement dated [            ] 2004 and made between the Client and EXL Holdings (US);
“Insurance Services Work Order”	:	has the meaning given to it in schedule 1 of the Insurance Services Framework Agreement;
“Last Accounting Date”	:	the date to which the Accounts were made up;
“Net Asset Value” or “NAV”	:	the aggregate value of the assets less the aggregate value of the liabilities, in each case of the SPV as at the close of business on the date of Completion, as determined by the Auditors pursuant to clause 4. For the avoidance of doubt, any items of capital expenditure by or on behalf of the SPV which have not previously been approved in accordance with the Budget Process set out in Part B of Schedule 3 of the Insurance Services Framework Agreement shall be disregarded for the purposes of determining the NAV. Further, for the purposes of determining the NAV, all the capital assets of NCOP shall be depreciated over a period of 3 years
“Parties”	:	The parties to this Agreement; and “Party” means either one of them;
“Properties”	:	the property or properties owned, used or occupied by the SPV as at the date of this Agreement;
“Shares”	:	all of the issued shares in the capital of SPV;
“SPV”	:	Noida Customer Operations Private Limited a private company limited by shares incorporated in India under registered number U72900DL2003PTC122175 and whose registered office is at 103A Ashoka Estate, Barakhamba Road, New Delhi 110 001;
“Tax Authority”	:	Any local, municipal, governmental, state, federal or other fiscal or revenue authority, body or official anywhere in the world (which shall include reference to customs and excise authorities) competent to impose Taxation;
“Tax or Taxation”	:	Includes any form of taxation, levy, duty, charge, contribution or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by a Tax Authority;

“Umbrella Agreement” : the umbrella agreement, dated 28 May 2003, between (1) the Client, (2) EXL Holdings (US),(3) EXL (India) and (4) the SPV;

“Virtual Shareholders’ Agreement” : The virtual shareholders’ agreement, dated [ • ]2004, between (1) the Client, (2) EXL Holdings (US), EXL India and (4) the SPV;

“Warranties” : the warranties set out in clause 7 and schedule 1; and

1.2 the provisions of clauses 1.2 to 1.14 of the Virtual Shareholders’ Agreement shall apply to this Agreement as they apply to the Virtual Shareholders’ Agreement.

## **2 PRELIMINARY STATEMENTS**

2.1 This Agreement is entered into pursuant to the Virtual Shareholders’ Agreement.

2.2 EXL Holdings (US) warrants to the Client that 9,999 ordinary shares of SPV are owned by EXL (India) and one share is held by Rajiv Kishan Luthra (as nominee of EXL (India)) and that it can procure the sale of those shares to the Client.

2.3 EXL Holdings (US) wishes EXL (India) to sell and the Client wishes to buy the Shares on the terms and subject to the conditions of this Agreement.

## **3 SALE AND PURCHASE**

3.1 EXL Holdings (US) shall procure the sale by EXL (India) of the Shares as beneficial owner and the Client shall buy the Shares free from any Encumbrance, and together with all rights now and hereafter attaching or accruing to them and all dividends and distributions declared, made or paid on or after the date of Completion.

3.2 The Client shall not be obliged to complete the purchase of any of the Shares unless the purchase of all of the Shares is completed simultaneously. However, completion of the purchase of some of the Shares will not affect the rights of the Client with respect to the others.

3.3 For so long after Completion as EXL (India) remains the registered holder of any of the Shares, EXL Holdings (US) shall procure that EXL (India) holds them and any distributions, property and rights deriving from them in trust for the Client and shall deal with the Shares and any distributions, property and rights deriving from them as the Client directs.

## **4 CONSIDERATION**

4.1 The consideration for the Shares (“the Consideration”) shall comprise the aggregate of

4.1.1 the Net Asset Value; and

4.1.2 The Final Foregone Profit Element, being an amount equal to the aggregate amount of the management fees, profit element and cost efficiency savings specified in paragraph 8 of each Insurance Services Work Order (which is in effect at the date of Completion), as derived from Rights Upon Transfer section of Schedule 3, Charging Principles, contained in the Insurance Services Framework Agreement for the unexpired period of each such Insurance Services Work Order (being the period from the date of Completion up to the date 3 years after the Commencement Date specified in the relevant Insurance Services Work Order). The calculation of Final Foregone Profit Element for any Insurance Services Work Order will be based on the monthly average of the actual performance related profit percentage achieved by EXL

Holdings (US) in the 12 months up to Completion (“Final Year’s Profit”). For the avoidance of doubt, this means that Client shall pay a Final Foregone Profit Element equal to 1/12<sup>th</sup> (one twelfth) of Final Year’s Profit for each month of the unexpired period of such work order.

- 4.2 Not less than 15 Business Days prior to Completion, EXL Holdings (US) shall deliver to the Client a bona fide written estimate of the likely Net Asset Value and Final Foregone Profit Element as at Completion (“the Provisional Consideration”), whereupon the Parties shall negotiate in good faith to determine the amount of Provisional Consideration to be paid at Completion by the Client pursuant to clause 6.2. If the parties are unable to agree upon the amount of Provisional Consideration within five Business Days of the receipt by the Client of the aforementioned estimate, then the issue shall be referred to the Independent Accountants for determination in accordance with the terms of this Agreement and, in particular, clauses 4.7 and 4.8 below.
- 4.3 The Client shall procure that the Auditors shall determine the Net Asset Value and shall procure the calculation of the Final Foregone Profit Element and deliver to EXL Holdings (US) a draft statement of the Net Asset Value and the Final Foregone Profit Element as soon as practicable after Completion and, in any event, within 30 Business Days after the date of Completion. Insofar as it relates to NAV, the statement shall be drawn up from the accounting records of the SPV on a going concern basis in accordance with:
  - 4.3.1 the accounting policies set out in clause 4.4;
  - 4.3.2 (to the extent not inconsistent with clause 4.3.1) the accounting policies, estimation techniques and measurement bases used for the preparation of the Accounts; and
  - 4.3.3 (to the extent not inconsistent with clauses 4.3.1 and 4.3.2) US generally accepted accounting principles as at the date of Completion.
- 4.4 The policies mentioned in clause 4.3.1 are as follows:
  - 4.4.1 no value shall be attributed to intangible assets;
  - 4.4.2 the value attributed to any asset which was acquired by the SPV to replace a destroyed or lost asset shall be the value which would have been attributed to the destroyed or lost asset had it not been destroyed or lost.
- 4.5 EXL Holdings (US) shall be entitled (but not obliged), at its own cost, to undertake (or procure its accountants to undertake) a review of the statement delivered to it under clause 4.3 and the Client shall provide to EXL Holdings (US) and its accountants all reasonable assistance reasonably required by EXL Holdings (US) and/or (as the case may be) its accountants in order to enable EXL Holdings (US) to exercise its rights under this clause 4. EXL Holdings (US) shall be entitled to notify the Client that it disagrees with the draft statement of NAV and/or the Final Foregone Profit Element, any such notification to give reasons in detail for such disagreement and, if such review is undertaken by EXL Holdings (US)’s accountants, to be accompanied by a letter from those accountants supporting such disagreement and such reasons. EXL Holdings (US) shall not be entitled to give such notification to the Client at any time after the date 20 Business Days after delivery to it of the draft statement and following such date EXL Holdings (US) shall in the absence of any prior notification be deemed to have agreed such draft statement in the form delivered to it.
- 4.6 In the event that a notification of disagreement is given to the Client in accordance with clause 4.5, the Parties shall (in conjunction with the Auditors and (if relevant) EXL Holdings (US)’s accountants) meet and discuss EXL Holdings (US)’s objections to the draft statement referred to in the notification (and any other matters which are raised by the Client) in order to seek to reach agreement upon such adjustments (if any) to the draft statement of the NAV and/or the Final Foregone Profit Element as are acceptable to the Parties so as to enable such draft to be finalised.



- 4.7 If the Parties are unable to resolve any differences of views within 15 Business Days following the receipt by the Client of the notification of disagreement pursuant to clause 4.5, the matters in dispute shall be referred to the Independent Accountants for determination. The Independent Accountants shall act as experts and not as arbitrators and their decision (in the absence of manifest error) shall be final and binding on the Parties. The fees of the Independent Accountants shall be payable by the Parties in such proportions as the Independent Accountants determine.
- 4.8 The Independent Accountants shall decide the procedures to be followed in the determination, but the following provisions shall apply in any event:
- 4.8.1 the outstanding matters in dispute shall be notified to the Independent Accountants in writing by the Client and/or EXL Holdings (US) within five Business Days of the Independent Accountants' appointment;
- 4.8.2 the Independent Accountants' terms of reference shall be to determine the outstanding matters in dispute, including the finalisation of the form and content of the statement of the NAV and/or the Final Foregone Profit Element, taking into account the provisions of this Agreement, within 15 Business Days of receipt of each Party's submissions referred to in clause 4.8.5, or as soon as practicable afterwards;
- 4.8.3 EXL Holdings (US) and/or EXL Holdings (US)'s accountants and the Client and/or the Auditors shall each promptly prepare a written statement setting out their respective positions on the matters in dispute ("Opening Submissions") and shall, within 10 Business Days of the appointment of the Independent Accountants, deliver to them two copies of their respective Opening Submissions (together with any necessary and relevant supporting documentation);
- 4.8.4 the Parties shall procure that, upon receipt of both Parties' Opening Submissions, the Independent Accountants shall arrange for a copy of EXL Holdings (US)'s Opening Submissions to be delivered to the Client, and a copy of the Client's Opening Submissions to be delivered to EXL Holdings (US);
- 4.8.5 within 10 Business Days of such delivery, the Parties shall each comment in writing on the Opening Submissions and documentation submitted by the other Party ("Submissions in Reply"), and two copies of such Submissions in Reply shall be addressed and delivered to the Independent Accountants; and
- 4.8.6 the Parties shall procure that, upon receipt of both Parties' Submissions in Reply, the Independent Accountants shall arrange for a copy of EXL Holdings (US)'s Submissions in Reply to be delivered to the Client, and a copy of the Client's Submissions in Reply to be delivered to EXL Holdings (US);
- 4.8.7 the Parties shall require the Independent Accountants to deliver their decision in writing to each of the Parties as soon as possible after each of the Parties has complied with its obligations under this clause 4.8 and, in any event, within 15 business days of both Parties complying with 4.8.5 and any request made by the Independent Accountants pursuant to clause 4.9 below.
- 4.9 The Parties shall co-operate with the Independent Accountants and comply with any reasonable requests made in connection with the carrying out of their duties under this Agreement.
- 4.10 Nothing in this clause 4 shall entitle a Party or the Independent Accountants access to any information or document which is protected by legal professional privilege, or which has been prepared by the other Party or its accountants and other professional advisers with a view to assessing the merits of any claim or argument.
- 4.11 The determination pursuant to 4.7 of the Net Asset Value or the amount of the Final Foregone Profit Element (as the case may be) shall not adversely affect, limit or prejudice or constitute a

waiver of any right or remedy of the Client in relation to any claim which it may have against EXL Holdings (US) in respect of any breach of any of the Warranties or under any of the other provisions of this Agreement.

4.12 If the aggregate amount and Final Foregone Profit Element, as agreed by the Parties pursuant to clause 4.5 above or determined pursuant to clause 4.7 above is:-

4.12.1 greater than the amount of the Provisional Consideration paid pursuant to clause 6.2 below, the Client shall, within seven business days of such agreement or determination, pay the amount of the difference by telegraphic transfer for same day value to the bank account nominated by EXL Holdings (US) for this purpose; or

4.12.2 less than the amount of the Provisional Consideration paid pursuant to clause 6.2 below, EXL Holdings (US) shall, within seven business days of such agreement or determination, pay to the Client the amount of the difference by telegraphic transfer for same day value to the bank account nominated by the Client for this purpose.

## **5 CONDITION PRECEDENT**

5.1 Completion is conditional upon the obtaining of any regulatory consent to the completion of the matters contemplated by this Agreement on or before the date 120 Business Days after the date of this Agreement (or such later date as the Parties may agree in writing):

5.2 Each of the Parties shall use its reasonable endeavours to ensure that the condition specified in clause 5.1 is satisfied as soon as possible and, in any event, not later than the date specified in that clause.

5.3 If the condition set out in clause 5.1 shall not have been fully satisfied by the date specified in that clause, or if such condition shall cease to be capable of being satisfied by that date, then this Agreement shall immediately lapse and cease to have effect and neither Party shall have any claim against the other in respect of this Agreement except in relation to any prior breach of this Agreement.

5.4 Despite clause 5.1, each of the Parties shall perform and observe its obligations under this Agreement which, expressly or by implication, are required to be performed or observed at any time prior to the earlier of (a) the time when this Agreement lapses in accordance with clause 5.3 and (b) the fulfilment of the condition set out in clause 5.1.

## **6 COMPLETION**

6.1 Completion shall take place at the Client's registered office at 10.00 am on the next month end after the date 20 Business Days after the date of this Agreement or at such other place, time or day as shall be mutually agreed between the Parties.

6.2 On Completion, the Parties will comply with their respective obligations in schedule 2 and the Client shall pay the Provisional Consideration by telegraphic transfer for same day value to the bank account nominated by EXL Holdings (US) for this purpose.

6.3 If any of the requirements of schedule 2 (to the extent not previously waived in terms of this Agreement) are not complied with on the date fixed for Completion, the Client may (without prejudice to its other rights and remedies, including the right to claim damages for the breach):

6.3.1 defer Completion to a date not more than 30 days after such date (and so that the provisions of this clause 6.3 shall apply to Completion as so deferred); or

6.3.2 proceed to Completion so far as practicable (without prejudice to its rights under this Agreement); or

6.3.3 rescind this Agreement without liability on its part; or

6.3.4 waive all or any of the obligations in question.

## **7 WARRANTIES**

- 7.1 EXL Holdings (US) warrants to the Client in the terms set out in schedule 1 subject as provided in this clause 7 and clause 8 and further that the Warranties shall be true and accurate in all material respects and fulfilled down to Completion in all material respects as if they had been made or given at Completion (on the basis that references in the Warranties to any fact, matter or thing existing, occurring or having occurred at or on and/or before or after (and similar terms) the date of this Agreement shall be construed as references to it having so done at or on and/or before or after (and similar terms) the date of Completion).
- 7.2 EXL Holdings (US) is aware and acknowledges that the Client has entered into this Agreement in reliance on the Warranties.
- 7.3 The Warranties are given subject to any matters fully and fairly disclosed in the disclosure letter which EXL Holdings (US) may deliver to the Client not later than 10 Business Days after the date of this Agreement, provided that (a) such matters have arisen in the ordinary course of the business of the SPV carried on in all material respects in compliance with the terms of the Virtual Shareholders' Agreement and the Agreements (as that expression is defined in the Virtual Shareholders' Agreement); and (b) the reduction in the value of the assets of the Group, the liabilities or increased liabilities of the Group or the reduction in the value of the Shares (as the case may be) arising, directly or indirectly, from such matters is less than £100,000. The letter shall be in the form set out in schedule 3. If any matter is disclosed in the letter which, if not disclosed, would have constituted a material breach of any of the Warranties, the Client may at any time before Completion, by written notice to EXL Holdings (US), rescind this Agreement and none of the Parties shall have any claim against the other in respect of this Agreement except in relation to any prior breach of this Agreement.
- 7.4 The rights and remedies of the Client in respect of any breach of the Warranties shall not be affected by Completion.
- 7.5 Each of the Warranties set out in each paragraph of schedule 1 is separate and independent and unless otherwise expressly provided shall not be limited by reference to any other Warranty or anything in this Agreement.
- 7.6 EXL Holdings (US) undertakes (except only as may be necessary to give effect to this Agreement or except with the written consent of the Client) that it will not and will procure that the SPV will not do, allow or procure any act or omission before Completion which would constitute a material breach of or would be inconsistent in any material respect with any of the Warranties if given at any time prior to Completion. In addition, EXL Holdings (US) will and will procure that the SPV will provide all reasonable co-operation to the Client to ensure the efficient continuation of operation and management of the SPV and, if necessary, to prepare for the introduction of new operating and management procedures in readiness for Completion.
- 7.7 If in respect of or in connection with any breach of any of the Warranties any sum payable to the Client by EXL Holdings (US) by way of compensation is subject to Taxation, then such further amount shall be paid to the Client by EXL Holdings (US) so as to secure that the net amount received by the Client is equal to the amount of compensation due to it in respect of such breach.

## **8 LIMITATIONS ON LIABILITY OF EXL HOLDINGS (US)**

- 8.1 EXL Holdings (US) shall not be liable in respect of a claim for breach of the Warranties:-
- 8.1.1 unless and until the amount that would otherwise be recoverable from it (but for this clause 8.1) in respect of that claim, when aggregated with any other amount or amounts recoverable in respect of other claims against it, exceeds £100,000; and

- 8.1.2 unless the amount of such claim exceeds £10,000.
- 8.2 The total aggregate liability of EXL Holdings (US) in respect of all claims for breach of the Warranties is limited to the lesser of:-
- (a) £5,000,000 (five million pounds sterling); or
  - (b) an amount equal to the aggregate of all amounts paid by Client to EXL Holdings (US) by way of Profit Levels as defined in the Service Payments section of Schedule 3 of the Insurance Services Framework Agreement (but not otherwise) pursuant to the Insurance Services Framework Agreement in the period of three years preceding Completion.
- 8.3 EXL Holdings (US) shall not be liable for a claim for breach of the Warranties unless the Client has given EXL Holdings (US) notice of the claim, stating in reasonable detail the nature of the claim, and if practicable, the amount claimed:
- 8.3.1 in respect of a claim for breach of a Warranty relating to Taxation on or before the date which is seven years and one month from the Last Accounting Date; or
  - 8.3.2 in respect of any other claim, on or before the date two months after signature of the Auditors' report on the accounts of the SPV for the financial year during which Completion takes place.
- 8.4 EXL Holdings (US) shall not have any liability under the Warranties in paragraph 2 of schedule 1 in respect of any Tax levied by a Tax Authority which arises after Completion and which the Client is reasonably satisfied has not arisen because of a failure by EXL Holdings (US) or the SPV to manage its affairs in the manner of a normally competent business person mindful of the need to mitigate its Tax liabilities both before and after Completion.
- 8.5 EXL Holdings (US) shall not have any liability under the Warranties in respect of any employee litigation which arises after Completion and which the Client is reasonably satisfied has not arisen because of a failure by EXL Holdings (US) or the SPV to manage its affairs in the manner of a normally competent business person mindful of the need to mitigate the risks of such litigation both before and after Completion.
- 8.6 EXL Holdings (US) shall not have any liability under the Warranties to the extent that any claim for breach thereunder arises in respect of a matter which was previously drawn to the Client's attention by EXL Holdings (US) and the Client has disregarded any advice given by EXL Holdings (US) in respect thereof, by either refusing to sanction an item of reasonable expenditure (including, but not limited to, the carrying on of additional services pursuant to the Insurance Services Framework Agreement) for which Client would be liable to reimburse EXL Holdings (US) or else giving instructions to EXL Holdings (US) or the SPV which are contrary to that advice and, where, had that expenditure been incurred or that advice been followed (as the case may be), either:
- 8.6.1 the claim for breach of warranty would not have arisen; or
  - 8.6.2 the amount of any loss sustained by the Client as a result of any such breach would have been reduced (in which case EXL Holdings (US) shall only be liable to the Client in respect of such reduced amount).
- 8.7 EXL Holdings (US) shall not have any liability under the Warranties to the extent that any claim for breach thereunder arises solely by reason of a change in legislation applicable to the SPV and which the Client is reasonably satisfied has not arisen because of a failure by EXL Holdings (US) or the SPV to manage its affairs in the manner of a normally competent business person mindful of the need to mitigate the risks of any such legislative change.

---

**9.3 Umbrella Agreement**

To the extent relevant, the provisions of clause 9 of the Umbrella Agreement shall apply to this Agreement as they apply to the Umbrella Agreement.

This Agreement has been signed on the date first stated on page 1.

Signed for and on behalf of  
**ExlService Holdings, Inc** by

/s/ \_\_\_\_\_ name

Signed for and on behalf of  
**Norwich Union Customer Services (Singapore)  
Pte Ltd** by

/s/ \_\_\_\_\_ name

DATED August 26<sup>th</sup> 2004

- (1) **NORWICH UNION CUSTOMER SERVICES (SINGAPORE) PTE LTD**
- (2) **NORWICH UNION INSURANCE LIMITED**
- (3) **NORWICH UNION LIFE SERVICES LIMITED**
- (4) **EXLSERVICE HOLDINGS, INC**
- (5) **EXLSERVICE.COM (INDIA) PRIVATE LIMITED**
- (6) **NOIDA CUSTOMER OPERATIONS PRIVATE LIMITED**

**CONFIDENTIALITY AGREEMENT**

## CONFIDENTIALITY AGREEMENT

Dated: 2004

### BETWEEN:

- (1) **Norwich Union Customer Services (Singapore) Pte Ltd**, a company registered in Singapore with registration number 200303457R and whose registered office is at 4 Shenton Way #27-02 SGX Centre 2, Singapore 068807 (the “Client”);
- (2) **Norwich Union Insurance Limited**, a company registered in England and Wales with registration number 99122 and whose registered office is at Surrey Street, Norwich NR1 3NG (“NUI”);
- (3) **Norwich Union Life Services Limited**, a company registered in England and Wales with registration number 02403746 and whose registered office is at 2 Rougier Street, York YO90 1UU (“NU Life”);
- (4) **Exlservice Holdings, Inc**, a company registered in the State of Delaware, whose principal office is at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022 (“EXL Holdings (US)”);
- (5) **Exlservice.com (India) Private Limited**, a company incorporated in India with registered number 55-99888 and whose registered office is at 103A, Ashoka Estate, Barakhamba Road, New Delhi, India (“EXL India”); and
- (6) **Noida Customer Operations Private Limited**, a company incorporated in India with registered number U72900DL2003PTC122175 and whose registered office is at 103A Ashoka Estate, Barakhamba Road, New Delhi, India (“SPV”).

In consideration of any one Party disclosing to another the Confidential Information described below, they now agree as follows.

1 In this Agreement, unless inconsistent with the context or otherwise specified, the following expressions shall have the following meanings:

- “Associated Company” : any holding company from time to time of the Client and any subsidiary from time to time of the Client or of any such holding company and the terms “holding company” and “subsidiary” shall have the meaning given to them by Section 736 of the Companies Act 1985;
- “Confidential Information” : all information which is contained in or discernible from any form whatsoever (including but not limited to electronic data or databases, drawings, films, documents and computer readable media) and whether or not marked or designated as confidential, and which is disclosed by one of the Parties, or, where the disclosing Party is the Client, by the Client or its Associated Companies (the “**Disclosing Party**”), to the other (the “**Recipient**”) or is otherwise obtained by the Recipient in respect of the Disclosing Party’s business and operations, provided that if such information is disclosed orally, the information must be identified as confidential at the time of disclosure and the Disclosing Party shall provide the Recipient with a written summary of such information within seven (7) days of such disclosure. The Confidential Information includes, but is not limited to, commercial, financial, technical information and data and



information and data, which concerns the Parties' and/or, where the Disclosing Party is the Client, its Associated Companies' current and future products and services, their customers, suppliers, licensors and marketing plans;

“External Communications” : communications by any means and designed for any media, including but not limited to oral communications, press releases, marketing brochures, CDs or other marketing media, advertisements, announcements or statements for radio, film, television, cable or satellite transmission, advertisements, announcements or statements for internet, web-site or like availability and any other item for distribution by general or trade magazine, journal and newspaper articles; and

“Parties” : the Parties to this agreement, and a “Party” means any one of them.

2 The Recipient undertakes:

- 2.1 to treat all the Confidential Information as confidential, regardless of when it is disclosed or obtained and regardless of the form in which it is disclosed or obtained;
- 2.2 not, without the Disclosing Party's prior written consent in each case, to communicate or disclose any part of the Confidential Information to any person except:
  - 2.2.1 for the purposes of carrying out contractual services to the Disclosing Party, on a need-to-know basis, to those employees, consultants and professional advisers of the Recipient, and also, where the Recipient is the Client, to those employees of the Recipient's Associated Companies who are so concerned;
  - 2.2.2 to any other persons or bodies having a legal right or duty to know the Confidential Information in connection with the functions of the Recipient; and
  - 2.2.3 where the Recipient is ordered by a court of competent jurisdiction to do so or there is a statutory or other legal obligation to do so, provided that the Recipient shall first inform the Disclosing Party in writing before such communication or any disclosure is made;
- 2.3 to ensure that all persons and bodies mentioned in clauses 2.2.1 and 2.2.2 above are made aware, prior to the disclosure of the Confidential Information, of the confidential nature thereof and that they owe a duty of confidence to the Disclosing Party and to ensure that all such persons and bodies agree to hold the Confidential Information in confidence in accordance with the terms of this Agreement;
- 2.4 not to use the Confidential Information in any way which would be harmful to the Disclosing Party;
- 2.5 to effect and maintain the same adequate security measures to safeguard the Confidential Information from unauthorised access, use and misappropriation as it maintains with its own similar information that it does not wish publicly to disclose, publish or disseminate;
- 2.6 to notify the Disclosing Party promptly of any unauthorised use, copying or disclosure of the Confidential Information of which the Recipient becomes aware and to provide all reasonable assistance to the Disclosing Party to terminate such unauthorised use or disclosure (or both); and

- 2.7 to procure at the request of the Disclosing Party for any of those persons and bodies referred to in clauses 2.2.1 and 2.2.2 above to sign a separate confidentiality undertaking in such form as the Disclosing Party may reasonably require prior to disclosure of the Confidential Information.
- 3 The obligation of confidentiality in clause 2 above shall not apply to any part of the Confidential Information in relation to which the Recipient can satisfactorily document and demonstrate to the Disclosing Party that the Confidential Information or part concerned:
  - 3.1 is or has become publicly known through no fault of the Recipient, its employees, consultants or advisers;
  - 3.2 has been lawfully received from an independent third party without any restriction and without any obligation of confidentiality; or
  - 3.3 has been independently developed by the Recipient without access to or knowledge or use of the Confidential Information.
- 4 All material containing the Confidential Information, including but not limited to, magnetic tapes, documents, manuals, specifications, flowcharts, program listings and data file printouts (the "Proprietary Materials"), shall be and shall remain the property of the Disclosing Party and shall not be reproduced in whole or in part without the Disclosing Party's express written consent. Any copies of the Proprietary Materials shall become the property of the Disclosing Party and shall include a notice stating that copyright and all other intellectual property rights of whatever nature in the Proprietary Materials belong to the Disclosing Party.
- 5 Nothing contained in this Agreement shall be construed as granting to or conferring on the Recipient expressly or impliedly, or by licence or otherwise, any rights, expressly or impliedly, for any invention, discovery or improvement made, conceived or acquired prior to or after the date of this Agreement, relating to the Confidential Information.
- 6 Upon the first to occur of (i) material breach of any of the terms of this Agreement, or (ii) the written demand of the Disclosing Party, the Recipient shall promptly deliver up to the Disclosing Party all Proprietary Materials incorporating any Confidential Information and all copies thereof and destroy or erase any Confidential Information contained in any Proprietary Materials prepared by or on behalf of the Recipient or recorded in any electronic memory or data storage device. Within fourteen (14) days of a written request from the Disclosing Party, the Recipient shall certify in writing to the Disclosing Party that it has fully complied with its obligations under this clause 6.
- 7 Save as permitted under clause 8, no Party may refer to the relationship between them under this Agreement or any other relationship, agreement or arrangement relating to that relationship or this Agreement (in each case, including the activities to be undertaken pursuant to that relationship between the Parties, this Agreement and those other relationships, agreements or arrangements) in External Communications between that Party and a third party without the prior consent of the other Parties.
- 8 A Party shall not, without the prior written consent of the other Party (which may be withheld at that other Party's absolute discretion), use, or allow the use of, any trade marks, logos, devices, symbols or other similar items (whether registered or otherwise) owned or used by, or licensed to, that other Party, or any other items misleadingly, confusingly or materially similar to the foregoing, including, without prejudice to the generality of the foregoing, the names and any logo used by another Party from time to time in respect of its correspondence or notices.
- 9 A Party shall not acquire any proprietary right, licence or interest in any of the items of the other Party referred to in clause 8.
- 10 Each party recognises that the unauthorised use or disclosure of Confidential Information may give rise to irreparable injury and acknowledges that remedies other than injunctive relief may not be adequate. Accordingly, each party has the right to equitable and injunctive relief to prevent the unauthorised use or disclosure of its Confidential Information, as well as such damages or other relief as is occasioned by such unauthorised use or disclosure.

This Agreement has been signed on the date first stated on page 1, above.

Signed for and on behalf of **the Client**

By /s/ Paul Robert Faulkner  
Name Paul Robert Faulkner  
Title Director

Signed for and on behalf of **NUI**

By /s/ George Roy Barlow and  
Name George Roy Barlow  
Title Authorised Signatory

By /s/ Fay Corinne Gammer  
Name Fay Corinne Gammer  
Title Authorised Signatory

Signed for and on behalf of **NU Life**

By /s/ Michael Ulmsen  
Name Michael Ulmsen  
Title

Signed for and on behalf of **NU Life**

By /s/ Peter Robert Hayes  
Name Peter Robert Hayes  
Title

Signed for and on behalf of **EXL Holdings (US)**

By /s/ Rohit Kapoor  
Name Rohit Kapoor  
Title President & CFO

Signed for and on behalf of **EXL India**

By /s/ Vikram Talwar  
Name Vikram Talwar  
Title Director

Signed for and on behalf of **SPV**

By /s/ Vikram Talwar  
Name Vikram Talwar  
Title Director

DATED 26 August 2004

- (1) NORWICH UNION INSURANCE LIMITED
- (2) EXLSERVICE HOLDINGS, INC

**GUARANTEE AND INDEMNITY**

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## GUARANTEE AND INDEMNITY

**Dated: 26 August 2004**

### **BETWEEN:**

- (1) Norwich Union Insurance Limited, a company registered in England with registered number 99122 and whose registered office is at Surrey Street, Norwich NR1 3NG (the "Guarantor"); and
- (2) Exlservice Holdings, Inc, a company registered in the State of Delaware and whose principal office is at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY10022 ("EXL Holdings (US)").

### **1 DEFINITIONS AND INTERPRETATION**

In this Deed, unless inconsistent with the context or otherwise specified:

1.1 the following expressions shall have the following meanings:

"Client"	: Norwich Union Customer Services (Singapore) Pte Ltd, a company registered in Singapore with registered number 20030345R whose registered office is at 4 Shenton Way, #27-02 SGX Centre 2, Singapore 068807;
"this Deed"	: this Guarantee and Indemnity, as varied from time to time in accordance with its terms;
"Guaranteed Obligations"	: the due and punctual discharge by the Client of all its payment obligations under or in connection with the Relevant ISWO or the ISFA (insofar as those obligations relate to a Relevant ISWO) including, for the avoidance of doubt, any obligations of the Client to pay damages or compensation to EXL Holdings (US) pursuant to the ISFA;
"ISFA"	: the Insurance Services Framework Agreement dated the same day as this Deed between the Client and EXL Holdings (US);
"Relevant ISWO"	: any Insurance Services Work Order entered into between the Client and EXL Holdings (US) pursuant to the ISFA and whether entered into prior to, or on or about the date of this Deed or subsequently and which identifies the Guarantor as the "Client UK" for the purposes of that Work Order;
"Umbrella Agreement"	: an agreement between the Client, EXL Holdings (US), EXL India and SPV dated the same day as this Deed.

1.2 references to clauses are to clauses of this Deed;

1.3 words importing gender include each gender;

1.4 references to persons include bodies corporate, firms and unincorporated associations and that person's legal personal representatives and successors;

1.5 the singular includes the plural and vice versa;

- 1.6 clause headings are included for the convenience of the Parties only and do not affect its interpretation;
- 1.7 references to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- 1.8 references to any English legal or accounting term for any action, remedy, method or judicial proceeding, legal or accounting document, legal or accounting status, insolvency proceeding, event of incapacity, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept, practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned; and
- 1.9 any undertaking by either of the parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing.

## **2 GUARANTEE AND INDEMNITY**

- 2.1 In consideration of EXL Holdings (US) agreeing to enter into each Relevant ISWO the Guarantor unconditionally and guarantees to EXL Holdings (US) the Guaranteed Obligations and promises to pay on demand each sum which the Client is liable to pay in respect of the Guaranteed Obligations in the event that the Client does not so pay PROVIDED THAT the total amounts recoverable by EXL Holdings (US) from the Guarantor in respect of the Guaranteed Obligations shall not exceed £18,000,000 (eighteen million pounds sterling).
- 2.2 Without prejudice to the rights of EXL Holdings (US) against the Client as primary obligor, the Guarantor shall be deemed a principal debtor in respect of its obligations under this Deed and not merely a surety and, accordingly, the Guarantor shall not be discharged nor shall its liability hereunder be affected by any act or thing or means whatsoever by which its said liability would not have been discharged if it had been a principal debtor.
- 2.3 Save as provided in clause 2.1 above and clauses 2.6, 2.7 and 2.8 below, this Deed shall be a continuing guarantee. EXL Holdings (US) may make claims and demands under this Deed without limit of number.
- 2.4 The Guarantor's liability to EXL Holdings (US) under this Deed shall not be discharged, impaired or affected by reason of:
  - 2.4.1 Any amendment to or variation of the terms of any Relevant ISWO or the ISFA unless such amendment or variation expressly provides for the discharge, waiver or reduction of the Client's liability in respect of a Guaranteed Obligation;
  - 2.4.2 any intermediate payment or discharge of the Client's obligations to EXL Holdings (US) under the Relevant ISWO or of any of the Guaranteed Obligations hereunder;
  - 2.4.3 any time, waiver or indulgence which EXL Holdings (US) may grant to or composition EXL Holdings (US) may enter into with the Client or any other person;
  - 2.4.4 any legal limitation, disability or incapacity or other circumstances relating to the Client, or any amendment to or variation of any of the terms of the Relevant ISWO or the ISFA or of any Guaranteed Obligation;
  - 2.4.5 any defect in the obligations of the Client;
  - 2.4.6 the liquidations, dissolution, amalgamation, reconstruction or reorganization of the Client or the appointment of a receiver, administrative receiver or administrator or any of the Client's assets (or the equivalent of any of such matters occurring in any other jurisdiction) or the

occurrence of any circumstance affecting the liability of the Client to discharge any Guaranteed Obligation;

2.4.7 any compromise or arrangement sanctioned under the Insolvency Act 1986 or Section 425 of the Companies Act 1985 (whether EXL Holdings (US) has agreed to such compromise or arrangement or not) and where by virtue of any such compromise or arrangement the liability of the Client to EXL Holdings (US) or any part of such liability is transferred to any other person this Deed shall take effect as if the expression the "Client" included such other person;

2.4.8 any agreement with the Client and EXL Holdings (US) whereby any person assumes all or any part of the liability of the Client to EXL Holdings (US) in substitution for the Client in which case this Deed shall take effect as if the expression the "Client" included such person; or

2.4.9 any other act, omission, matter or circumstance whereby, but for this provision, the Guarantor would or might be discharged (in whole or in part) from liability under this Deed notwithstanding that the same may have been known to or discoverable by EXL Holdings (US).

2.5 The Guarantor hereby agrees to indemnify EXL Holdings (US) upon demand against all losses, claims, costs, charges, and expenses (and any taxes thereon) to which it may be subject or which it may incur whilst acting in good faith under or pursuant to the Relevant ISWO or this Deed as a result of any default by the Client in performing any Guaranteed Obligation or by the Guarantor in performing this Deed.

2.6 Notwithstanding anything to the contrary, this Deed shall terminate:

2.6.1 in the event that the ISFA is terminated for whatever reason and all the Guaranteed Obligations have been paid to EXL Holdings (US); or

2.6.2 in accordance with clause 3.5 of the Umbrella Agreement on the termination of that Agreement.

2.7 At any time after the termination of the ISFA for any reason, the Guarantor shall be entitled to serve written notice on EXL Holdings (US) stating that it reasonably believes that all of the Guaranteed Obligations to have been discharged. Within 30 days of receipt of such notice EXL Holdings (US) shall serve a reply on the Guarantor, specifying in as much detail as it is reasonably able to give, which of the Guaranteed Obligations is still outstanding, failing which this Deed, and all of the Guarantor's obligations hereunder, shall forthwith terminate.

2.8 The Guarantor shall not be liable for any claim for payment due under this Deed unless EXL Holdings (US) has given written notice of such claim to the Guarantor within 12 months of the termination for whatever reason, of the Relevant, ISWO to which such claim relates or within 12 months of the termination for whatever reason of the ISFA.

### **3 PAYMENTS**

3.1 All payments made by or on behalf of the Guarantor hereunder shall be made:

3.1.1 without set-off or counterclaim or any condition or restriction; and

3.1.2 free and clear of any withholding or deduction on account of any taxes

If the Guarantor is compelled by law to make such withholding or deduction, the amounts payable by it shall be increased to such extent that the net amounts received by EXL Holdings (US) after such withholding or deductions shall equal the full amount provided for in this Deed. The Guarantor shall account to the appropriate authority for any taxes withheld or deducted and shall not later than 30 days after each deduction and/or withholding provide EXL Holdings (US) with such evidence that it has done so as may be required by EXL Holdings (US). If payment of any amount by the Guarantor under this Deed is initially made on the basis that it is not subject to taxes in the hands of EXL Holdings (US) and it is subsequently determined that it is, or vice versa, such adjustment shall be



made between EXL Holdings (US) and the Guarantor as EXL Holdings (US) shall determine to be appropriate in order to restore its after-tax position to that which it would have been had the adjustment not been necessary.

- 3.2 All payments due under this Deed to EXL Holdings (US) shall be calculated and made in immediately available funds in the currency and the manner provided for in the ISFA.

#### **4. REPRESENTATIONS AND WARRANTIES**

The Guarantor represents and warrants to EXL Holding (US) that it has full power, authority and right to enter into and carry out its obligations hereunder and that this Deed constitutes the valid, legally binding and enforceable obligations of the Guarantor.

#### **5. COVENANTS**

The Guarantor agrees, acknowledges and declares that:

- 5.1 if any payment received by EXL Holdings (US) in respect of monies due or owing to EXL Holdings (US) from the Client shall, on the subsequent insolvency or liquidation of the Client be avoided under any laws relating to bankruptcy, insolvency or liquidation and the amount thereof repaid by EXL Holdings (US), such payment shall not be considered as discharging or diminishing the liability of the Guarantor and this Deed shall continue to apply as if such payment has at all times remained owing by the Client to EXL Holding (US) and the Guarantor shall indemnify EXL Holdings (US) in respect thereof; and
- 5.2 after demand has been made by EXL Holdings (US) hereunder and until the amount so demanded has been paid in full EXL Holdings (US) may take such actions as it (in its own discretion) considers appropriate against the Client or otherwise to recover all sums due and payable to it under the Guaranteed Agreements, the Guarantor however remaining liable under this Deed for performance of the Guaranteed Obligations.

#### **6. GENERAL PROVISIONS**

- 6.1 A certificate or determination of EXL Holdings (US) as to the money and liabilities for the time being due to or incurred by EXL Holding (US) and payable by the Guarantor under this Deed shall be conclusive (save in the case of manifest error) of the liability of and binding upon the Guarantor.
- 6.2 This Deed shall be binding upon the Guarantor and its successors. However, the Guarantor shall not be able to assign its obligations hereunder to any other person without the prior consent of EXL Holdings (US), such consent not to be unreasonably withheld or delayed in the case of assignment to any Associated Company (as that term is defined in the Umbrella Agreement) having a net asset value which is not more than 20% less than the net asset value of the Guarantor at the relevant time.
- 6.3 EXL Holdings (US) may not without the prior specific written approval of the Guarantor (which in its absolute discretion the Guarantor shall be entitled to withhold), assign or transfer any of its rights or obligations under this Deed to any of the companies listed in Schedule 8 of the ISFA or any holding company, subsidiary or other subsidiary of a holding company of company listed therein:-
- 6.4 No delay or failure by the Guarantor to exercise any of its powers, rights or remedies under this Deed shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other of further exercise of them. The remedies provided in this Deed are cumulative and not exclusive of any remedies provided by law. No waiver by the parties of any provision of this Deed shall be deemed to be a waiver of any subsequent breach of that of any other provision of this Deed.
- 6.5 Save as provided in clause 2.7, no failure by EXL Holdings (US) to give any notice which it is otherwise required to give under this Deed of in respect of any of the Guaranteed Obligations shall affect or impair the liability of the Guarantor to EXL Holdings (US) under this Deed.

- 6.6 If any term or provision hereof shall be determined to be or become invalid, illegal or unenforceable, all other terms and provisions hereof shall nevertheless remain valid and effective and shall be enforceable to the fullest extent permitted by law.
- 6.7 Any notice or other communication to be given under this Deed shall either be delivered by hand or sent by first class post pre-paid recorded delivery (or by air mail if overseas) or by a generally recognised international courier service (with relevant fees prepaid) or by facsimile transmission (proved that, in the case of facsimile transmission, the notice is confirmed by being delivered by hand or sent by first class post or by a recognised international courier service within two Business Days after transmission) as follows:

6.7.1 for the Guarantor to:

Title : Finance Director  
Address: Norwich Union Insurance Limited  
Surrey Street  
Norwich NR1 3NG  
Fax Number: 01603 685631

6.7.2 for EXL Holdings (US) to:

Name: Rohit Kapoor, President and CFD  
Address: 350 Park Avenue  
10<sup>th</sup> Floor  
New York  
NY 10022

A Party may change the address or facsimile number or the name of the person for whose attention notices are to be addressed by serving a notice on the other.

- 6.8 In the absence of evidence of earlier receipt, all notices shall be deemed to have been served:
- 6.8.1 If delivered by hand, at the time of delivery;
- 6.8.2 If sent by post within the UK, two Business Days after the envelope containing it was posted;
- 6.8.3 If sent by international post, seven Business Days after the envelope containing it was posted;
- 6.8.4 If sent (with relevant fees prepaid) by a generally recognised international courier service, three Business Days after the envelope containing it was delivered to the relevant international courier; and
- 6.8.5 If sent by facsimile, on completion of transmission;
- provided that where such delivery if transmission occurs after 5.00 pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9.00 am on the next following Business Day.
- 6.9 Any waiver by EXL Holdings (US) of any of the terms of this Deed or any consent given by EXL Holdings (US) under this Deed shall only be effective if given in writing and then only for the purpose for which and upon the terms under which it is given.
- 6.10 The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers and remedies provided by law and may be exercised from time to time as often as EXL Holdings (US) may (in its absolute discretion) consider expedient.

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**7 LAW, JURISDICTION AND SERVICE**

7.1 This Agreement is governed by and shall be construed in accordance with English law.

7.2 Any dispute or difference arising out of or in connection with this Deed shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days, after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President, Vice President or Registrar of the London Court of International Arbitration ("LCIA") and such arbitration shall be conducted in accordance with the order of the LCIA.

IN WITNESS whereof this Deed has been executed and delivered on the day and year first above written

EXECUTED AS A DEED on behalf of  
Guarantor )

**[ILLEGIBLE]**  
Authorised Signatory

)  
)  
)

**[ILLEGIBLE]**  
Authorised Signatory  
**[ILLEGIBLE]**

EXECUTED AS A DEED on behalf of  
EXL Holdings (US) )

Director

)  
)  
)

Director/Secretary

DATED 26 August 2004

- (1) NORWICH UNION LIFE HOLDINGS LIMITED
- (2) EXLSERVICE HOLDINGS, INC

GUARANTEE AND INDEMNITY

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## GUARANTEE AND INDEMNITY

Dated: 26 August 2004

### BETWEEN:

- (1) **Norwich Union Life Holdings Limited**, a company registered in England with registered number 2403518 and whose registered office is at 2 Rougier Street, York YO90 1UU (the “**Guarantor**”); and
- (2) **Exlservice Holdings, Inc.** a company registered in the State of Delaware and whose principal office is at 350 Park Avenue, 10th Floor, New York, NY10022 (“**EXL Holdings (US)**”).

### 1 DEFINITIONS AND INTERPRETATION

In this Deed, unless inconsistent with the context or otherwise specified:

1.1 the following expressions shall have the following meanings:

- “Client” : Norwich Union Customer Services (Singapore) Pte Ltd, a company registered in Singapore with registered number 20030345R whose registered office is at 4 Shenton Way, #27-02 SGX Centre 2, Singapore 068807;
- “this Deed” : this Guarantee and Indemnity, as varied from time to time in accordance with its terms;
- “Guaranteed Obligations” : the due and punctual discharge by the Client of all its payment obligations under or in connection with the Relevant ISWO or the ISFA (insofar as those obligations relate to a Relevant ISWO) including, for the avoidance of doubt, any obligations of the Client to pay damages or compensation to EXL Holdings (US) pursuant to the ISFA;
- “ISFA” : the Insurance Services Framework Agreement dated the same day as this Deed between the Client and EXL Holdings (US);
- “Relevant ISWO” : any Insurance Services Work Order entered into between the Client and EXL Holdings (US) pursuant to the ISFA and whether entered into prior to, or on or about the date of this Deed or subsequently and which identifies Norwich Union Life Services Limited as the “Client UK” for the purposes of that Work Order;
- “Umbrella Agreement” : an agreement between the Client, EXL Holdings (US), EXL India and SPV dated the same day as this Deed.
- 1.2 references to clauses are to clauses of this Deed;
- 1.3 words importing gender include each gender;
- 1.4 references to persons include bodies corporate, firms and unincorporated associations and that person’s legal personal representatives and successors;
- 1.5 the singular includes the plural and vice versa;

- 1.6 clause headings are included for the convenience of the Parties only and do not affect its interpretation;
- 1.7 references to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- 1.8 references to any English legal or accounting term for any action, remedy, method of judicial proceeding, legal or accounting document, legal or accounting status, insolvency proceeding, event of incapacity, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept, practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned; and
- 1.9 any undertaking by either of the parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing.

## **2 GUARANTEE AND INDEMNITY**

- 2.1 In consideration of EXL Holdings (US) agreeing to enter into each Relevant ISWO the Guarantor unconditionally and guarantees to EXL Holdings (US) the Guaranteed Obligations and promises to pay on demand each sum which the Client is liable to pay in respect of the Guaranteed Obligations in the event that the Client does not so pay PROVIDED THAT the total amounts recoverable by EXL Holdings (US) from the Guarantor in respect of the Guaranteed Obligations shall not exceed £8,000,000 (eight million pounds sterling).
- 2.2 Without prejudice to the rights of EXL Holdings (US) against the Client as primary obligor, the Guarantor shall be deemed a principal debtor in respect of its obligations under this Deed and not merely a surety and, accordingly, the Guarantor shall not be discharged nor shall its liability hereunder be affected by any act or thing or means whatsoever by which its said liability would not have been discharged if it had been a principal debtor.
- 2.3 Save as provided in clause 2.1 above and clauses 2.6, 2.7 and 2.8 below, this Deed shall be a continuing guarantee. EXL Holdings (US) may make claims and demands under this Deed without limit of number.
- 2.4 The Guarantor's liability to EXL Holdings (US) under this Deed shall not be discharged, impaired or affected by reason of:
  - 2.4.1 Any amendment to or variation of the terms of any Relevant ISWO or the ISFA unless such amendment or variation expressly provides for the discharge, waiver or reduction of the Client's liability in respect of a Guaranteed Obligation;
  - 2.4.2 any intermediate payment or discharge of the Client's obligations to EXL Holdings (US) under the Relevant ISWO or of any of the Guaranteed Obligations hereunder;
  - 2.4.3 any time, waiver or indulgence which EXL Holdings (US) may grant to or composition EXL Holdings (US) may enter into with the Client or any other person;
  - 2.4.4 any legal limitation, disability or incapacity or other circumstances relating to the Client, or any amendment to or variation of any of the terms of the Relevant ISWO or the ISFA or of any Guaranteed Obligation;
  - 2.4.5 any defect in the obligations of the Client;
  - 2.4.6 the liquidation, dissolution, amalgamation, reconstruction or reorganisation of the Client or the appointment of a receiver, administrative receiver or administrator of any of the Client's assets (or the equivalent of any of such matters occurring in any other jurisdiction) or the



occurrence of any circumstance affecting the liability of the Client to discharge any Guaranteed Obligation;

- 2.4.7 any compromise or arrangement sanctioned under the Insolvency Act 1986 or Section 425 of the Companies Act 1985 (whether EXL Holdings (US) has agreed to such compromise or arrangement or not) and where by virtue of any such compromise or arrangement the liability of the Client to EXL Holdings (US) or any part of such liability is transferred to any other person this Deed shall take effect as if the expression the "Client" included such other person;
- 2.4.8 any agreement with the Client and EXL Holdings (US) whereby any person assumes all or any part of the liability of the Client to EXL Holdings (US) in substitution for the Client in which case this Deed shall take effect as if the expression the "Client" included such person; or
- 2.4.9 any other act, omission, matter or circumstance whereby, but for this provision, the Guarantor would or might be discharged (in whole or in part) from liability under this Deed

notwithstanding that the same may have been known to or discoverable by EXL Holdings (US).

- 2.5 The Guarantor hereby agrees to indemnify EXL Holdings (US) upon demand against all losses, claims, costs, charges and expenses (and any taxes thereon) to which it may be subject or which it may incur whilst acting in good faith under or pursuant to the Relevant ISWO or this Deed as a result of any default by the Client in performing any Guaranteed Obligation or by the Guarantor in performing this Deed.
- 2.6 Notwithstanding anything to the contrary, this Deed shall terminate:
  - 2.6.1 in the event that the ISFA is terminated for whatever reason and all the Guaranteed Obligations have been paid to EXL Holdings (US); or
  - 2.6.2 in accordance with clause 3.5 of the Umbrella Agreement on the termination of that Agreement.
- 2.7 At any time after the termination of the ISFA for any reason, the Guarantor shall be entitled to serve written notice on EXL Holdings (US) stating that it reasonably believes that all of the Guaranteed Obligations to have been discharged. Within 30 days of receipt of such notice EXL Holdings (US) shall serve a reply on the Guarantor, specifying in as much detail as it is reasonably able to give, which of the Guaranteed Obligations is still outstanding, failing which this Deed, and all of the Guarantor's obligations hereunder, shall forthwith terminate.
- 2.8 The Guarantor shall not be liable for any claim for payment due under this Deed unless EXL Holdings (US) has given written notice of such claim to the Guarantor within 12 months of the termination for whatever reason, of the Relevant ISWO to which such claim relates or within 12 months of the termination for whatever reason of the ISFA.

### **3 PAYMENTS**

- 3.1 All payments made by or on behalf of the Guarantor hereunder shall be made:
  - 3.1.1 without set-off or counterclaim or any condition or restriction; and
  - 3.1.2 free and clear of any withholding or deduction on account of any taxes

If the Guarantor is compelled by law to make such withholding or deduction, the amounts payable by it shall be increased to such extent that the net amounts received by EXL Holdings (US) after such withholdings or deductions shall equal the full amount provided for in this Deed. The Guarantor shall account to the appropriate authority for any taxes withheld or deducted and shall not later than 30 days after each deduction and/or withholding provide EXL Holdings (US) with such evidence that it has done so as may be required by EXL Holdings (US). If payment of any amount by the Guarantor under this Deed is initially made on the basis that it is not subject to taxes in the hands of EXL Holdings (US) and it is subsequently determined that it is, or vice versa, such adjustment shall be

made between EXL Holdings (US) and the Guarantor as EXL Holdings (US) shall determine to be appropriate in order to restore its after-tax position to that which it would have been had the adjustment not been necessary.

- 3.2 All payments due under this Deed to EXL Holdings (US) shall be calculated and made in immediately available funds in the currency and the manner provided for in the ISFA.

#### **4 REPRESENTATIONS AND WARRANTIES**

The Guarantor represents and warrants to EXL Holdings (US) that it has full power, authority and right to enter into and carry out its obligations hereunder and that this Deed constitutes the valid, legally binding and enforceable obligations of the Guarantor.

#### **5 COVENANTS**

The Guarantor agrees, acknowledges and declares that:

- 5.1 if any payment received by EXL Holdings (US) in respect of monies due or owing to EXL Holdings (US) from the Client shall, on the subsequent insolvency or liquidation of the Client be avoided under any laws relating to bankruptcy, insolvency or liquidation and the amount thereof repaid by EXL Holdings (US), such payment shall not be considered as discharging or diminishing the liability of the Guarantor and this Deed shall continue to apply as if such payment had at all times remained owing by the Client to EXL Holdings (US) and the Guarantor shall indemnify EXL Holdings (US) in respect thereof; and
- 5.2 after demand has been made by EXL Holdings (US) hereunder and until the amount so demanded has been paid in full EXL Holdings (US) may take such action as it (in its own discretion) considers appropriate against the Client or otherwise to recover all sums due and payable to it under the Guaranteed Agreements, the Guarantor however remaining liable under this Deed for performance of the Guaranteed Obligations.

#### **6 GENERAL PROVISIONS**

- 6.1 A certificate or determination of EXL Holdings (US) as to the money and liabilities for the time being due to or incurred by EXL Holdings (US) and payable by the Guarantor under this Deed shall be conclusive (save in the case of manifest error) of the liability of and binding upon the Guarantor.
- 6.2 This Deed shall be binding upon the Guarantor and its successors. However, the Guarantor shall not be able to assign its obligations hereunder to any other person without the prior consent of EXL Holdings (US), such consent not to be unreasonably withheld or delayed in the case of assignment to any Associated Company (as that term is defined in the Umbrella Agreement) having a net asset value which is not more than 20% less than the net asset value of the Guarantor at the relevant time.
- 6.3 EXL Holdings (US) may not without the prior specific written approval of the Guarantor (which in its absolute discretion the Guarantor shall be entitled to withhold), assign or transfer any of its rights or obligations under this Deed to any of the companies listed in Schedule 8 of the ISFA or any holding company, subsidiary or other subsidiary of a holding company of a company listed therein.:-
- 6.4 No delay or failure by the Guarantor to exercise any of its powers, rights or remedies under this Deed shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. The remedies provided in this Deed are cumulative and not exclusive of any remedies provided by law. No waiver by the parties of any provision of this Deed shall be deemed to be a waiver of any subsequent breach of that or any other provision of this Deed.
- 6.5 Save as provided in clause 2.7, no failure by EXL Holdings (US) to give any notice which it is otherwise required to give under this Deed or in respect of any of the Guaranteed Obligations shall affect or impair the liability of the Guarantor to EXL Holdings (US) under this Deed.

- 6.6 If any term or provision hereof shall be determined to be or become invalid, illegal or unenforceable, all other terms and provisions hereof shall nevertheless remain valid and effective and shall be enforceable to the fullest extent permitted by law.
- 6.7 Any notice or other communication to be given under this Deed shall either be delivered by hand or sent by first class post pre-paid recorded delivery (or by air mail if overseas) or by a generally recognised international courier service (with relevant fees prepaid) or by facsimile transmission (provided that, in the case of facsimile transmission, the notice is confirmed by being delivered by hand or sent by first class post or by a recognised international courier service within two Business Days after transmission) as follows:
- 6.7.1 for the Guarantor to:

Title: Director of Legal Services  
Address: Norwich Union  
Wellington Row 4  
York  
YO90 1WR  
Fax Number: 01904 452856

- 6.7.2 for EXL Holdings (US) to:

Name: Rohit Kapoor, President and CFD  
Address: 350 Park Avenue  
10<sup>th</sup> Floor  
New York  
NY 10022

A Party may change the address or facsimile number or the name of the person for whose attention notices are to be addressed by serving a notice on the other.

- 6.8 In the absence of evidence of earlier receipt, all notices shall be deemed to have been served:
- 6.8.1 if delivered by hand, at the time of delivery;
- 6.8.2 if sent by post within the UK, two Business Days after the envelope containing it was posted;
- 6.8.3 if sent by international post, seven Business Days after the envelope containing it was posted;
- 6.8.4 if sent (with relevant fees prepaid) by a generally recognised international courier service, three Business Days after the envelope containing it was delivered to the relevant international courier; and
- 6.8.5 if sent by facsimile, on completion of transmission;
- provided that where such delivery or transmission occurs after 5.00 pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9.00 am on the next following Business Day.
- 6.9 Any waiver by EXL Holdings (US) of any of the terms of this Deed or any consent given by EXL Holdings (US) under this Deed shall only be effective if given in writing and then only for the purpose for which and upon the terms under which it is given.

6.10 The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers and remedies provided by law and may be exercised from time to time as often as EXL Holdings (US) may (in its absolute discretion) consider expedient.

## **7 LAW, JURISDICTION AND SERVICE**

7.1 This Agreement is governed by and shall be construed in accordance with English law.

7.2 Any dispute or difference arising out of or in connection with this Deed shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days, after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President, Vice President or Registrar of the London Court of International Arbitration ("LCIA") and such arbitration shall be conducted in accordance with the order of the LCIA.



## MASTER AGREEMENT

This Master Agreement by and between ExIService Holdings, Inc. (“Provider”), a corporation registered in Delaware and located at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022, and Dell Products L.P., a Texas limited partnership, located at One Dell Way, Round Rock, Texas 78682 is effective as of November 1, 2002, (“Effective Date”). This Master Agreement and any Schedules, Addenda, Exhibits, and Attachments, as so identified and agreed, shall be hereinafter collectively referred to as the “Agreement.”

### 1. INTRODUCTION

This Agreement sets forth the terms and conditions under which Dell Products L.P. and Dell Computer Corporation’s (“DCC”) subsidiaries and affiliates (hereinafter collectively referred to as “Dell”) shall purchase products and/or services from Provider (the “Products”). For the purpose of this Agreement, Products include any software and/or documentation accompanying the sale of the Product, or any necessary deliverables provided in performance of the services. The terms and conditions of this Agreement shall apply to all purchase orders (Dell PO(s)) issued by Dell for the purchase of Products.

### 2. TERM

The initial term of this Agreement shall be three (3) years beginning on the Effective Date. This Agreement will automatically renew for additional successive one-year terms unless one party informs the other of its intent to let the Agreement expire one hundred and eighty (180) days before the end of the then-current term.

### 3. PAYMENT

3.1 Unless otherwise agreed in writing, all payments shall be stated (and payments made) in United States dollars and are exclusive of applicable sales, use or similar taxes for which Dell shall be obligated to pay Provider. Dell will have no liability for any taxes based on Provider’s net assets or income or for which Dell has an appropriate resale or other exemption. All invoices for Products provided to Dell will be accumulated, upon receipt, for a period from the 16<sup>th</sup> day of a month to the 15<sup>th</sup> day of the following month (the “Accumulation Period”). [\*]

3.2 Provider acknowledges and agrees that Dell has the right to withhold any applicable taxes from any royalties or other payments due under this Agreement if required by any government authority.

3.3 Provider represents and warrants that the prices for Products shall be not be less favorable than prices applicable to sales by Provider to any other customer purchasing like quantities of materially comparable products. If at any time during the term of this Agreement, Provider accords to any other such customer more favorable prices, Provider shall immediately offer to sell the Products to Dell at equivalent prices accorded to such other customer.

### 4. WARRANTY

Provider represents and warrants on an ongoing basis that:

- (a) Dell will acquire good and marketable title to the Products, and that all Products will be free and clear of all liens, claims, encumbrances and other restrictions;
- (b) If applicable, all Products will be new and unused and shall not contain used or repaired parts unless requested by Dell in writing, in which case, such Products shall be clearly labeled as refurbished;
- (c) All Products will: (i) if applicable, be free from defects in design, materials and workmanship, including but not limited to, cosmetic defects, and (ii) will conform to Provider’s Product specifications and specifications provided by Dell; for thirty six (36) months from the date of delivery to Dell or, if applicable, performance of service.
- (d) Services provided will be performed in good and workmanlike manner by a skilled and qualified staff in accordance with highest industry standards;
- (e) It has all the rights and licenses in the Products necessary to allow Dell to use the Products without restriction or additional charge;
- (f) This Agreement (including without limitation the delivery of Products) does not violate any applicable law (including without limitation all applicable import or export regulations and all licensing or permitting requirements) or breach any other Agreement to which Provider is a party or bound.

### 5. INDEMNITY

5.1 Provider agrees to defend, indemnify, and hold harmless Dell and any of its subsidiaries or affiliates, and their respective directors, officers, employees, representatives, and agents (the “Indemnitees”) from and against any and all claims, actions, demands, legal proceedings, liabilities, damages, losses, judgments, authorized settlements, costs or expenses, including without limitation

\* Indicates redacted information.

reasonable attorneys' fees, (the "Damages") arising out of or in connection with any alleged or actual:

- (i) infringement by Provider and/or a Product(s) of a copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any third party;
- (ii) claim that Provider and/or Product provided under this Agreement has caused bodily injury (including death) or has damaged real or tangible personal property;
- (iii) violation by Provider of any governmental laws, rules, ordinances, or regulations; and/or,
- (iv) claim by or on behalf of Provider's subcontractors, suppliers, or employees for salary, wages, benefits or other compensation.

5.2 Notwithstanding anything else to the contrary in this Agreement and subject to section 5.3 below, Provider shall assume full responsibility for any and all damages related to its indemnification obligation under this section 5 with respect to third parties.

5.3 Provider will provide the above indemnity even if losses are due, or alleged to be due, in part to any Indemnitee's concurrent negligence or other fault, breach of contract or warranty, or strict liability without regard to fault; provided, however, that Provider's contractual obligation of indemnification shall not extend to the percentage of the third party claimant's damages or injuries or the settlement amount attributable to the Indemnitee's negligence or other fault, breach of contract or warranty, or to strict liability imposed upon Indemnitee as a matter of law.

5.4 In the event of any such claims, Dell shall: (1) promptly notify Provider, (2) at Provider's expense, reasonably cooperate with Provider in the defense thereof, and (3) not settle any such claims without Provider's consent which Provider agrees not to unreasonably withhold. Provider shall keep Dell informed at all times as to the status of Provider's efforts and consult with Dell (or Dell's counsel) concerning Provider's efforts; and, Provider shall not settle the claim without Dell's prior written consent, which shall not be unreasonably withheld.

5.5 In addition to Provider's obligations and liabilities above, if an infringement claim is made or appears likely to be made about a Product, Provider shall, at Dell's option, either: procure for Dell the right to continue to use the Product; modify the Product so that it is no longer infringing; or replace it with a non-infringing Product. If none of these alternatives is commercially reasonable, Dell shall return or destroy, at Provider's option, any Products possessed by Dell for a full refund of the purchase price for the Product.

## **6. LIMITATION OF LIABILITY**

EXCEPT FOR BREACH OF THE TERMS SET FORTH IN SECTION 8.3 ("CONFIDENTIALITY"), NEITHER DELL NOR PROVIDER WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS, OR LOST DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, EVEN IF A PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF THE DAMAGE AND EVEN IF A PARTY ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT.

## **7. TERMINATION**

7.1 Unless expressly set forth in an applicable Addendum or Schedule, Dell may terminate for convenience this Agreement, any Addendum or portion of Addendum, any Schedule or portion of Schedule, Order or Services performed under an Order at any time for any reason upon thirty (30) days advance written notice to Provider

7.2 Provider may terminate this Agreement in the event Dell defaults in the performance of any of its duties and obligations and the default is not cured within thirty (30) days after written notice is given to the Dell.

7.3 Either party may immediately terminate this Agreement by giving written notice to the other party if the other party is insolvent or has a petition brought by or against it under the insolvency laws of any jurisdiction; if the other party makes an assignment for the benefit of creditors; if a receiver, trustee or similar agent is appointed with respect to any property or business of either party.

## **8. GENERAL**

8.1 Disputes: Before initiating a lawsuit against the other relating to a dispute or claim herein, Dell and Provider agree to first work in good faith to resolve between themselves such dispute or claim arising out of or relating to this Agreement. To this end, either party may request that each party designate an officer or other management employee with authority to bind the party to meet to resolve the dispute or claim. If, after meeting, the parties are still unable to resolve the dispute or claim, then the parties agree to submit the matter to mandatory mediation. During this resolution process, each party will honor the other's reasonable requests for non-privileged and relevant information. This paragraph will not apply if: (i) the expiration of

the statute of limitations for a cause of action is imminent; or (ii) injunctive or other equitable relief is necessary to mitigate damages.

8.2 Survival of Terms: Regardless of the circumstances of termination or expiration of this Agreement or any Addendum or Schedule or portion thereof, the provisions of Sections 4 (“Warranty”), 5 (“Indemnity”), 6 (“Limitation of Liability”), and 8 (“General”) will survive the termination or expiration and continue according to their terms.

8.3 Confidentiality: Any confidential information that will be disclosed by either party related to this Agreement shall be disclosed pursuant to the terms and conditions of the Standard, Evergreen Non-disclosure Agreement (#02101605) between Dell and EXL Service, Inc. Notwithstanding anything contrary in the terms of the applicable Non-disclosure Agreement, any trade secrets or other proprietary information of Dell, whether oral, visual or written, shall constitute confidential information of Dell even if not marked as such. Further, Provider’s obligation to preserve the confidentiality of such trade secrets or proprietary information shall continue in perpetuity. The terms and conditions of this Agreement shall be deemed to be confidential information. Provider will not use the name of Dell nor any Dell trademarks, trade names, service marks, or quote the opinion of any Dell employee in any advertising, presentations or otherwise without first obtaining the prior written consent of an officer of Dell.

8.4 Insurance: Provider will obtain and at all times during the term of this Agreement maintain at its own expense, with insurance companies acceptable to Dell, the minimum insurance coverages stated in Exhibit A to this Agreement. Furthermore, Provider shall, within ten (10) days of the Effective Date of this Agreement, provide Dell with Certificates of Insurance evidencing compliance with this paragraph.

8.5 Compliance: (A) Dell is an Affirmative Action/Equal Opportunity Employer. Since Dell transacts business with the United States Government, the Equal Opportunity Clauses at 41 CFR sections 60-1.4(a), 60-250.5(a) and 60-741.5(a) are hereby incorporated and, if applicable, Provider shall comply with FAR 52.212-3, Offer or Representations and Certifications-Commercial Items, and FAR 52-219-8, Utilization of Small Business Concerns; and (B) if subcontractors are engaged to provide any Products pursuant to this Agreement, Provider will use commercially reasonable efforts to engage businesses that are, (i) certified as minority or women owned by a third party certification agency acceptable by Dell, or

(ii) small business concerns that are fifty-one (51%) percent owned, controlled, operated and managed by women or members of a minority group including African Americans, Hispanic Americans, Native Americans, Asian Indian Americans, Asian-Pacific Americans.

8.7 Records: Provider will maintain accurate and legible records for a period of three (3) years and will grant to Dell reasonable access to and copies of, any information reasonably requested by Dell with respect to Provider’s performance under this Agreement, including without limitation information regarding Provider’s efforts to comply with Section 8.5(b).

8.8 Remedies: Except as may be otherwise provided in this Agreement, the rights or remedies of the parties hereunder are not exclusive, and either party shall be entitled alternatively or cumulatively, subject to the other provisions of this Agreement, to damages for breach, to an order requiring specific performance, or to any other remedy available at law or in equity.

8.9 Independent Contractors: The parties are independent contractors and neither party is an employee, agent, servant, representative, partner, or joint venturer of the other or has any authority to assume or create any obligation or liability of any kind on behalf of the other.

8.10 Amendments; Waivers: No waiver of any term or condition is valid unless in writing and signed by authorized representatives of both parties, and will be limited to the specific situation for which it is given. No amendment or modification to this Agreement shall be valid unless set forth in writing and signed by authorized representatives of both parties.

**8.11 GOVERNING LAW: THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF ANY PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS AND WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. PROVIDER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS OF THE STATE OF TEXAS, U.S.A. AND HEREBY AGREES THAT ANY SUCH COURT SHALL BE**



**A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING HEREUNDER.**

8.12 Notices: Any notice required or permitted by this Agreement shall be in writing in English and delivered by certified or registered mail, return receipt requested, postage prepaid and addressed as follows or to such other addresses as may be designated by notice from one party to the other, all such notices being effective on the date received or, if mailed as set forth above, three (3) days after the date of mailing:

If to Dell:

Dell Products, L.P.  
One Dell Way  
Round Rock, Texas 78682  
Attn: VP, General Procurement  
cc: General Counsel

If to Provider:

8.13 Severance: Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is found to violate a law, it will be severed from the rest of the Agreement and ignored and a new provision deemed added to this Agreement to accomplish to the extent possible, the intent of the parties as evidenced by the provision so severed. The headings used in this Agreement have no legal effect.

8.14 Non-Exclusive: Nothing in this Agreement shall require Dell to purchase from Provider any or all of its requirements for products or services that are the same or similar to the Products provided hereunder. Furthermore, Provider agrees to cooperate and work with Dell and any other providers that Dell may engage in connection with the provision of the Products.

8.15 Assignment: This Agreement may not be assigned by Provider in whole or in part, even by operation of law, in a merger or stock or asset sale, without the express written permission of Dell. Such consent shall not be unreasonably withheld. Any attempt to do so will be null and void.

8.16 Offset Obligations: Orders issued by Dell pursuant to this Agreement are placed with the expectation of potential acquisition of credit for current and/or anticipated future offset obligations of Dell or Dell Computer Corporation, or their designated assignees to various governments around the world. Supplier agrees to reasonably assist Dell or Dell Computer Corporation, or their designated assignees in their efforts to secure offset credit from these governments in an amount equal to the value of the applicable in-country content of the orders placed under this Agreement.

8.17 Entire Agreement: This Agreement any related Addenda, Exhibits, Attachments, and Schedules, as so designated, set forth the entire agreement and understanding of the parties relating to the subject matter contained herein, and merges all prior discussions and agreements, both oral and written, between the parties. Each party agrees that use of pre-printed forms, including, but not limited to email, purchase orders, acknowledgements or invoices, is for convenience only and all pre-printed terms and conditions stated thereon, except as specifically set forth in this Agreement, are void and of no effect. Unless expressly amended in an Addendum, Exhibit, Attachment or Schedule, as so designated, in the event of conflict between this Master Agreement and any Addendum, Exhibit, Attachment or Schedule, the terms of this Master Agreement shall prevail.

**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written herein.**

**DELL PRODUCTS L.P.**

**ExlService Holdings, Inc.**

By: /s/ Dagoberto Quintana  
Printed Name: Dagoberto Quintana  
Title: VP Consumer Solutions Center  
Date: November 1, 2002

By: /s/ Rohit Kapoor  
Printed Name: ROHIT KAPOOR  
Title: CFO & PRESIDENT  
Date: \_\_\_\_\_

**Statement of Work – Dell Home Sales**

**This Schedule is subject to the terms and conditions of the Master Services Agreement (the “Agreement”) between EXL Services Inc. (“Provider”), and Dell Products L.P. (“Dell”). The SOW is effective as of 8/2/2003 and is specific to E-mail Technical Support.**

**1) Definitions:**

- a) Email: A customer communications in the form of written text, available via Dell’s Web-based Email management system.
- b) Post: A single incident of an email response sent to a customer for technical support or customer service for any Supported Product.
- c) Customer: A customer contacting Dell via email for technical support or customer service.
- d) Customer Support Representative (CSR): A Provider employee that performs the Services from the technical support queue or customer service queue.
- e) FTE (full time equivalent): person who works an 8-hour shift with 85% applied time.
- f) Handle Time: The total time spent on an email including consultation, CSR hold time, and wrap up of email. Queue time is not included.
- g) Average Cycle Time: The average time an email spends in queue before a reply is sent to the customer.
- h) Expected Number of emails: The expected number of emails Dell will have available for Provider during any period. This number will be provided by Dell on a monthly basis as outlined in Section 3 below.
- i) Supported Products: Dell products for which Provider has been trained to provide support on Dell’s behalf.
- j) Months: Dell’s fiscal months will be used for all calculations and invoicing in this contract.
- k) [\*]
- l) [\*]
- m) Dispatch: Calls or emails handled by Provider resulting in part(s) and/or Field Service Technician being sent to the Customer.
- n) [\*]
- o) In Writing/Written Form: all references in this document to material needed “in writing” or in “written form” can be delivered as either a hard copy or in electronic format.”
- p) DPS: Dell Product Support, the proprietary interface for Dell product service and support
- q) KMR Report: Productivity and effectiveness report generated from Dell databases and shared with provider for management of process.
- r) CeM and Kana: Dell’s e-mail Web-based infrastructure
- s) Reassign Report: Productivity and effectiveness report generated from Dell databases and shared with provider for management of process.
- t) DellServe: Dell’s customer support Web-based infrastructure; proprietary Web-based interface for service records to be logged
- u) E-Survey: Customer experience report generated from Dell databases on shared with provider for management of process.
- v) Tech Detail Report: Productivity and effectiveness report generated from Dell databases and shared with provider for management of process.
- w) DSN: Proprietary Web-based interface for decision \_\_\_\_\_ support to assist agents in managing technical support issues.
- x) ACL Tool: Agent Closed Loop Tool

\* Indicates redacted information.

- y) [\*]
- z) VPN: Virtual Private Network
- aa) SSI: Secure Socket Layer

**2) Scope of Services**

- a) Provider will be responsible for providing email technical support to Dell Customers. Dell emails will be available via Dell’s Web-based Email management system. The hours of service shall be twenty-four hours a day, seven days a week, unless otherwise mutually agreed upon. The Email Services will be provided in a manner as similar as is reasonably possible to the way in which Dell provides its own email technical support and customer service and in conjunction with the requirements of Exhibits A and C. Provider is responsible for ensuring its compliance with all security procedures as outlined in Exhibit D, Security Details.

**3) Email Volumes**

- a) Forecasting: Dell will give best efforts to provide a rolling ninety-day written forecast of the Expected Number of Emails (herein “Rolling Forecast”) for Provider with adjustments every thirty days. The first thirty days of the Rolling Forecast are the “Locked Forecast” which shall be the volume commitment (hereafter “Locked Forecast”) for Emails Dell will provide during that period. [\*]

[\*]

[\*]

[\*]

- b) Forecast: Change requests must be provided to Provider in written form. If additional capacity is needed on shorter notice, Provider will make commercially reasonable efforts (at

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\* Indicates redacted information.

## Statement of Work – Dell Home Sales

mutually agreed additional cost and changes to the agreed service levels) to accommodate Dell's request. Unless otherwise notified in writing, the forecast process described in paragraph (a) of this section will remain in effect.

### 4) Support Requirements

- (a) E-Mail Tracking System: Provider will log all answered E-mails into Dell's customer tracking system (Dellserv). Dell will provide the necessary network permissions and authority required to login and use the system for remote users.
- (b) Reporting: Provider will provide the reports listed in Exhibits A and B.
- (c) Equipment and Software: Dell will provide a limited number of computers with associated application software along with upgrade hardware, software and maintenance parts required in Provider's lab for the sole purpose of training CSR's supporting Dell customers. Provider will be responsible for all costs associated with the installation of upgrades. Provider is responsible for the maintenance and security of these systems. These systems will be returned to Dell at the termination of the agreement in like condition, excluding normal wear and tear from their daily use. Dell may at any time require that these systems undergo service including the replacement of all or part of a system. Dell will endeavor to give appropriate notice to Provider of any such service and schedule with Provider at a mutually agreeable time. Provider is responsible for providing all equipment required by its employees to perform services and to meet Dell's system requirements. These requirements may change as systems are enhanced.
- (d) Knowledge Base and Tech Support Tools: Provider will access Dell support Tools and Support Documentation within, via an agreed upon method. Ownership and responsibility for content of these and all other requisite Dell tools will remain with Dell. Dell will provide login access to this data if needed. Whether marked as such or not, for purposes of the Agreement and this Schedule, all such Tools and Support Documentation within are proprietary and confidential to Dell and Provider may disclose this information only to Customers and only in the provision of the Services. Any other disclosure of such Support Documentation without authority of Dell is a breach of the Agreement.

[\*]

- (e) Submission of new cases not current and accurate in the Dell Knowledge Base: Will be provided by Provider as identified. Dell will provide submission rights to Provider for all content. Submission of new cases will be measured as noted in Exhibit A section 14.

Provider will provide workspace for up to four (4) Dell staff members at Provider's contact center site. Dell shall provide reasonable notice of any such request.

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\* Indicates redacted information.

**Statement of Work – Dell Home Sales**

During the course of this Agreement, Provider will be required to use Dell systems in the performance of these Services. Dell will sell systems to Provider at a preferred rate.

In order to analyze consistent performance deviations, Dell reserves the right to audit Provider employee records on performance metrics, administrative and human resources records or seek a certificate from Provider's auditors for Dell internal use only. All mutually agreed upon costs for such \_\_\_\_\_/certification will be borne by Dell.

**5) Rates; Fees**

a) Except as set forth otherwise in this Schedule, the fees charged by Provider shall be as follows for e-mail actually handled. E-mails actually handled includes sends only, this does not include external reassigns, internal re-assigns, mandatory re-assigns and any archives.

[\*]

Assumptions:

[\*]

- These costs include international bandwidth minus U.S. long distance per minute rate. In case the total amount of E-mail time and post Email work exceeds the average handle time after the pilot period, Dell and Provider will agree to review the assumptions.

b) Training Expense: Provider will provide trainers for ongoing and new hire training. For new hire training, Provider will absorb up to the first three (3) weeks of Dell specific hardware, product and policy and procedure training. [\*]

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\* Indicates redacted information.

[\*]

**6) Required Performance Metrics, Required Elements and Success Criteria**

- a) Required Performance Metrics are listed in Exhibits A and C. Provider shall implement Exhibits A and C by measuring each Metric as listed in “How to Measure” and supply the list of reports to be provided under agreement. Dell and Provider will regularly review and compare Provider’s performance to the “Goals” and “Minimum Service Level” volume. [\*]
- d) Required Elements are listed in Exhibit B. Dell may, upon one (1) day notice to Provider, audit Provider’s compliance with the elements of Exhibit B. The audit may consist of Dell

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\* Indicates redacted information.

## Statement of Work – Dell Home Sales

and/or its auditors scheduling time with Provider's employees and executives to review the processes in place pertaining to Exhibit B. As such Provider will assist Dell in completing the audit in a timely fashion by making key employees and/or executives available. All mutually agreed upon costs associated with the Audit shall be borne by Dell.

- e) Success Criteria for email is listed in Exhibits A and C. Provider shall meet or exceed the Success Criteria during the pre-production pilot, not to exceed the 90 days. If Provider is unable to meet or exceed the Success Criteria during the pre-production pilot, Dell will reserve the right to terminate this services contract.
- f) Email Logging [\*]—Provider will log all emails in DellServe. The logging goal is 100%. [\*].
- g) System availability—Provider will be excused from penalty in the event Dell systems are unavailable through no fault of provider.

### 7) Payment Terms

Terms of payment are in full accordance set forth in the Master Services Agreement signed by Provider. Any disputed amounts shall not affect payment of non-disputed charges and expenses or the continuation of the provision of services under this agreement.

### 8) Business Review

- a) On a daily, weekly, monthly and quarterly basis, Provider and Dell will review Provider's performance of the Services. Provider will conduct quarterly business reviews by the 3<sup>rd</sup> week of the month following and the end of the quarter.
- b) Dell and Provider may alternate the sites of the event to share travel costs.

### 9) Term and Termination

- a) The effective date of this Schedule shall be as of the date of execution and shall continue for one year. This Schedule will renew for additional one (1) year period unless otherwise terminated by written notice 60 days prior to expiration.
- b) Dell may terminate this Schedule for convenience upon 60 days notice. Dell's Locked Forecast and the associated Minimum Monthly Commitment will be applied during the sixty (60) days following written notice of termination.

\* Indicates redacted information.

**Statement of Work – Dell Home Sales**

**Schedule A**

**Agreed and Accepted:**

**Provider**

By: /s/ Vikram Talwar

Name: Vikram Talwar

Title: Vice Chairman & CEO

Date: May 29, 2004

Dell Computer Corporation

**Schedule A**

**Agreed and Accepted:**

**Dell Products L.P.**

By: /s/

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

13 May, 2004

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FORM OF  
STOCK OPTION AGREEMENT  
FOR EMPLOYEES OF  
EXLSERVICE.COM (INDIA) PRIVATE LIMITED

THIS OPTION AGREEMENT (the “**Option Agreement**”) is made and entered into as of \_\_\_\_\_ (the “**Date of Option Grant**”),  
BY AND BETWEEN

**EXLSERVICE HOLDINGS, INC.**, a Delaware Corporation, having its principal place of business at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022 (hereinafter referred to as ‘**the Company**’ which expression shall, unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the **ONE PART**,

AND

**EXLSERVICE.COM (INDIA) PRIVATE LIMITED**, a private limited company, incorporated under the laws of Republic of India, which is a subsidiary of the Company, (hereinafter referred to as ‘**the Indian Subsidiary**’ which expression shall, unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the **SECOND PART**

AND

\_\_\_\_\_ residing at \_\_\_\_\_ (the “**Optionee**”) of the **THIRD PART**.

WHEREAS

- A. The Company has set-up the ExlService Holdings, Inc. 2003 India Employee Stock Option Plan (the “**Plan**”), which applies to the employees of the Indian Subsidiary subject to its adoption by the Board of Directors of the Indian Subsidiary;
- B. The Board of Directors of the Indian Subsidiary have, pursuant to their resolution dated April 30, 2003 adopted the Plan. Pursuant to the above, the Company, together with the Indian Subsidiary, have granted to the Optionee an option to purchase certain shares of Stock, upon the terms and conditions set forth in this Option Agreement and the Plan (the “**Option**”);

**1. Definitions and Construction.**

- 1.1 Definitions. Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Plan. Whenever used herein, the following terms shall have their respective meanings set forth below:

1.1.1 “**Exercise Price**” means US\$ 0.23 per share of Stock, as adjusted from time to time pursuant to Clause 10 of the Plan.

1.1.2 “**Option Expiration Date**” means the date ten (10) years after the date of grant of Options.

- 1.2 Construction. Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Option Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

**2. Grant of Options.**

- (a) Grant: The Company hereby grants to the Optionee the right to purchase up to · Shares at the Exercise Price of US\$ 0.23 per share, at any time during the Exercise Period and pursuant to the terms and conditions set forth in the Plan and as per the vesting schedule provided in the Plan.
- (b) Incorporation by Reference, Etc. The provisions of the Plan are hereby incorporated herein by reference. Except as otherwise expressly set forth herein, this Agreement shall be construed in accordance with the provisions of the Plan and any capitalized terms not otherwise defined in this Agreement shall have the definitions set forth in the Plan. The Committee shall have final authority to interpret and construe the Plan and this Agreement and to make any and all determinations under them, and its decision shall be binding and conclusive upon the Optionee and his legal representative in respect of any questions arising under the Plan or this Agreement.
- (c) The employee undertakes not to pledge or hypothecate or charge or mortgage or assign or in any other manner alienate or dispose of the Option or any Shares without the prior written consent of the Company.
- (d) Both the parties to the agreement will comply with all the obligations and enjoy all the rights and privileges as per the terms and conditions of the Plan and this Option Agreement shall be in conformity in toto with the Plan.

**3. Notices.**

Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Option Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, by registered or certified mail, with postage and fees prepaid, addressed to the other party at the address shown below that party's signature or at such other address as such party may designate in writing from time to time to the other party, or upon confirmed facsimile transmission.

**4. Integrated Agreement.**

This Option Agreement, Stock Purchase Agreement and the Plan constitute the entire understanding and agreement of the Optionee and the Indian Subsidiary with respect to the subject matter contained herein or therein, and there are no agreements, understandings, restrictions, representations, or warranties among the Optionee and the Indian Subsidiary with respect to such subject matter other than those as set forth or provided for herein or therein. To the extent contemplated herein or therein, the provisions of this Option Agreement shall survive any exercise of the Option and shall remain in full force and effect.

**5. Applicable Law.**

This Option Agreement shall be governed by the laws of the Republic of India.

*[Remainder of page intentionally left blank; signature page to follow]*

EXLSERVICE HOLDINGS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

EXLSERVICE.COM (INDIA) PRIVATE LIMITED

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

The Optionee represents that the Optionee is familiar with the terms and provisions of this Option Agreement, and hereby accepts the Option subject to all of the terms and provisions thereof. The Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board upon any questions arising under this Option Agreement. The undersigned acknowledges receipt of a copy of the Plan.

OPTIONEE: \_\_\_\_\_  
Date: \_\_\_\_\_  
Optionee Address: \_\_\_\_\_

## STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (the "Agreement") is made and entered into as of July 22, 2004, by and between ExlService Holdings, Inc., a Delaware corporation ("ExlService Holdings"), and NUI Investments Limited, a private limited company incorporated under the laws of England and Wales ("NUI").

### RECITALS

WHEREAS, ExlService Holdings wishes to sell to NUI and NUI desires to purchase from the ExlService Holdings 526,316 shares of ExlService Holdings' Series A Common Stock, par value, \$0.001 per share (the "Purchased Common Shares"), according to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises and agreements contained herein, the parties hereto intending to be legally bound, hereby agree as follows:

1. Purchase and Sale of Stock. Subject to the terms and conditions of the Agreement, ExlService Holdings hereby agrees to sell to NUI and NUI agrees to purchase from ExlService Holdings on the Closing Date (as herein defined), the Purchased Common Shares, at a price of \$23.75 per share, for an aggregate purchase price of \$12,500,000 (the "Purchase Price").

2. Closing. The closing of the sale and purchase of the Purchased Common Shares (the "Closing") shall take place at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP at 10:00 a.m., local time, on the date hereof or at such other time, place and date that ExlService Holdings and NUI may agree upon in writing (the "Closing Date"). At the Closing:

(a) NUI and ExlService Holdings shall execute the Joinder Agreement, dated the date hereof, pursuant to which NUI shall become a party to the Stockholders' Agreement of ExlService Holdings, dated as of November 14, 2002 (the "Stockholders' Agreement"), in the form attached hereto as Exhibit A (the "Joinder Agreement");

(b) ExlService Holdings shall deliver to NUI or its designee a certificate evidencing the Purchased Common Shares and any other necessary documentation executed by ExlService Holdings, indicating that NUI owns the Purchased Common Shares; and

(c) NUI shall deliver to ExlService Holdings the Purchase Price for the Purchased Common Shares by wire transfer of immediately available funds to the account or accounts set forth on Schedule 2 hereto.

3. Representations and Warranties of ExlService Holdings. ExlService Holdings represents and warrants to NUI that:

(a) *Organization and Standing*. ExlService Holdings is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each subsidiary of ExlService Holdings is a company duly organized, validly existing and in good standing under its jurisdiction of organization. Each of ExlService Holdings and its subsidiaries has all requisite corporate power and authority to own and operate its properties and assets and to carry on its business as it is currently conducted and as it is currently planned to be conducted. ExlService Holdings and its subsidiaries are duly qualified to transact business and are in good standing in each jurisdiction in which the nature of the business conducted by them, or their ownership or leasing of property, or their employment of employees or consultants therein, makes such qualification necessary and where any statutory fines or penalties, or any corporate disability imposed for this failure to qualify, would have a material and adverse effect (i) on the business, properties, assets or financial condition of ExlService Holdings on a consolidated basis or (ii) in the good faith judgment of senior management of ExlService Holdings, on the business operation prospects of ExlService Holdings on a consolidated basis during the 12 month period beginning on the date hereof (collectively, a “Material Adverse Effect”). True and accurate copies of ExlService Holdings’ Amended and Restated Certificate of Incorporation (the “Charter”) and By-laws, each as amended and in effect at the Closing, have been made available to NUI.

(b) *Authorization*. The execution, delivery and performance by ExlService Holdings of the Agreement and compliance with all the provisions of the Agreement: (i) are within the corporate power and authority of ExlService Holdings; (ii) do not require any further consent or approval of any shareholders of ExlService Holdings; and (iii) have been duly authorized by all required corporate action on the part of ExlService Holdings.

(c) *Execution, Etc*. The Agreement has been duly and validly executed and delivered by ExlService Holdings, and, assuming the due authorization, execution and delivery hereof by NUI, constitutes the valid and binding obligation of ExlService Holdings, enforceable against ExlService Holdings in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally, and except that the availability of equitable remedies, including specific performance, may be subject to the discretion of any court before which any proceeding therefor may be brought.

(d) *Issuance*. ExlService Holdings has taken all necessary corporate action to authorize and to permit it to issue the Purchased Common Shares. The Purchased Common Shares, upon their issuance, sale and delivery will be duly authorized, validly issued, fully paid and nonassessable, and will be delivered free and clear of all restrictions on transfer, claims, charges, pledges, hypothecations, security interests or any other encumbrance (collectively, “Liens”) (other than those set forth herein or in the Stockholders’ Agreement or the Charter) the issuance and sale of the

Purchased Common Shares by ExlService Holdings are not subject to any pre-emptive rights or rights of first offer that have not been properly complied with or waived.

(e) *Governmental Consents.* Assuming the representations and warranties of NUI contained in Sections 4 (d), (e), (f), (h) and (i) are true and correct, no consent, approval, order or authorization or registration, qualification, designation, declaration or filing with, any federal, state, or local governmental authority on the part of ExlService Holdings is required in connection with the offer, sale, or issuance of the Purchased Common Shares or the consummation of any other transaction contemplated hereby, except for the compliance with any applicable state securities laws, which compliance will have occurred within the appropriate time periods therefor.

(f) *Compliance with Securities Laws.* None of ExlService Holdings nor any of its Affiliates, as defined below, or anyone acting on its or their behalf has issued, sold or offered any security of ExlService Holdings to any person under circumstances that would cause the issuance and sale of the Purchased Common Shares hereunder to be subject to the registration requirements of the U.S. Securities Act of 1933, as amended (the "Securities Act") as in effect on the date hereof, and, assuming the representations and warranties of NUI contained in Section 4 are true and correct, the issuance, sale and delivery of the Purchased Common Shares hereunder would be exempt from the registration and prospectus delivery requirements of the Securities Act, as in effect on the date hereof, and ExlService Holdings shall not take and shall ensure that none of its Affiliates (as defined below) shall take any action which would cause the issuance, sale, and delivery of the Purchased Common Shares hereunder not to be exempt from such requirements. For the purposes of the Agreement, (i) "Person" means and includes any individual, corporation, limited liability company, partnership, joint venture, business association, joint-stock company, trust or unincorporated organization and (ii) "Affiliate" with respect to any Person, means and includes any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(g) *Non-Contravention.* The execution, delivery and performance by ExlService Holdings of the Agreement and the transactions contemplated hereby: (i) does not contravene the terms of ExlService Holdings' organizational documents, or any amendment thereof, or any provision of the Stockholders' Agreement, (ii) does not materially violate, conflict with or result in any breach or contravention of, or the creation of any lien under, any contractual obligation of ExlService Holdings or any of its subsidiaries or any requirement of law applicable to ExlService Holdings or any of its subsidiaries and (iii) does not materially violate any judgment or orders of any governmental authority against, or binding upon, ExlService Holdings or any of its subsidiaries.

(h) *Broker's, Finder's or Similar Fees.* There are no brokerage commissions, finder's fees or similar fees or commissions payable by ExlService Holdings or any of its subsidiaries in connection with the transactions contemplated hereby based on any agreement, arrangement or understanding with ExlService Holdings or any of its subsidiaries or any action taken by ExlService Holdings or any of its subsidiaries.

(i) *Capitalization.* ExlService Holdings is authorized to issue 12,055,000.36 shares, consisting of (A) 12,000,000 shares of common stock, \$.001 par value per share, of which 9,555,462 issued and outstanding shares are designated Series A Common Stock and 521,739 issued and outstanding shares are designated Series B Non-Voting Common Stock (collectively, with the Series A Common Stock, the "Common Stock"), and (B) 55,000 shares of preferred stock, \$.001 par value per share (the "Preferred Stock"), of which 45,833.36 issued and outstanding shares are designated Series A Preferred Stock. The remaining shares of Common Stock may be issued in one or more series. The remaining shares of Preferred Stock may be issued in one or more series. All of the outstanding shares of Common Stock and Preferred Stock are duly authorized and validly issued, fully paid and nonassessable. Other than the 526,316 shares of Common Stock reserved for options to purchase Common Stock, ExlService Holdings does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of Common Stock or any other equity security of ExlService Holdings or any securities representing the right to purchase or otherwise receive any shares of Common Stock or any other equity security of ExlService Holdings. Except as provided in the Charter or as set forth on Schedule 3(i) hereto, there are no outstanding rights or obligations of ExlService Holdings to repurchase, repay or redeem, and no Person has any right to currently call for the repurchase, repayment or redemption prior to the stated maturity of, any of its securities. All outstanding securities of ExlService Holdings have been issued in compliance with state and federal securities laws.

(j) *Financial Statements.* ExlService Holdings has previously made available to NUI copies of the following (collectively, the "Company Financial Statements"): (i) audited consolidated balance sheets of ExlService Holdings and its subsidiaries as of December 31, 2002 and audited consolidated statements of income, stockholders' equity and cash flows, for the fiscal year ended December 31, 2002, together with all related notes and schedules thereto, accompanied by the audit report of Ernst & Young LLP, independent auditors of ExlService Holdings and (ii) the unaudited consolidated balance sheet of ExlService Holdings and its subsidiaries as of December 31, 2003 and the unaudited consolidated statements of income, stockholders' equity and cash flows for the year ended December 31, 2003 (the "Unaudited Financial Statements"). The Company Financial Statements fairly present in all material respects the consolidated financial position of ExlService Holdings and its subsidiaries as of the respective dates thereof, and the consolidated results of the operations of ExlService Holdings and its subsidiaries for the respective fiscal periods covered thereby, in each case in accordance with United States generally accepted accounting principles ("U.S. GAAP") consistently applied during the periods involved, except as indicated in any

notes thereto (and except in the case of the Unaudited Financial Statements, for the absence of footnotes and subject to year-end audit adjustments). Except as disclosed in the Company Financial Statements, ExlService Holdings has not incurred any indebtedness for money borrowed and is not a guarantor or indemnitor of any indebtedness of any other Person other than its subsidiaries. ExlService Holdings maintains and will continue to maintain a standard system of accounting established and administered in accordance with U.S. GAAP.

(k) *No Material Adverse Change*. Since December 31, 2003, there has not been any change in the assets, liabilities, operating results or financial condition of ExlService Holdings from that reflected in the Company Financial Statements, except changes in the ordinary course of business that would not have, individually or in the aggregate, a Material Adverse Effect.

(l) *Material Property and Assets*. ExlService Holdings has good title to all of its material properties and assets that it purports to own free and clear of all Liens (as defined in Section 3(d)) other than Permitted Liens (as defined below). With respect to the material property and assets it leases, ExlService Holdings is in compliance in all material respects with such leases and holds a valid leasehold interest free of all Liens. For purposes of this Agreement, "Permitted Liens" means (i) Liens incurred in the ordinary course of business, (ii) Liens relating to purchase money security interests entered into in the ordinary course of business, (iii) mechanics', materialmen's, workmen's, repairmen's, warehousemen's, carrier's and other similar Liens (including Liens created by operation of law), (iv) Liens and defects or irregularities in title that do not materially affect the current use of the underlying asset and (v) restrictions on transfer or assignment of any assets of ExlService Holdings or any of its subsidiaries imposed by any current or future lender to ExlService Holdings or any of its subsidiaries.

4. Representations and Warranties of NUI. NUI represents and warrants to ExlService Holdings that:

(a) *Organization and Standing; Ownership*. NUI is a private limited company duly organized, validly existing and in good standing under the laws of England and Wales. NUI is a wholly-owned indirect subsidiary of Aviva plc, a public limited company organized under the laws of England and Wales ("Aviva"). For purposes of this Agreement, a person shall be deemed to be wholly-owned by another person (the "Parent") if 100% of the voting equity securities of such person are beneficially owned by the Parent.

(b) *Authorization*. The execution, delivery and performance by NUI of the Agreement and compliance with all the provisions of the Agreement: (i) are within the corporate power and authority of NUI; (ii) do not require any further consent or approval of any stockholders of NUI; and (iii) have been authorized by all required corporate proceedings on the part of NUI.

(c) *Execution, Etc*. The Agreement has been duly and validly executed and delivered by NUI, and, assuming the due authorization, execution and



delivery hereof by ExlService Holdings and the receipt of all required governmental approvals, if any, constitutes the valid and binding obligation of NUI, enforceable against NUI in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and except that the availability of equitable remedies, including specific performance, may be subject to the discretion of any court before which any proceeding therefor may be brought.

(d) *Non-Contravention.* The execution, delivery and performance by NUI of the Agreement and the transactions contemplated hereby: (i) does not contravene the terms of NUI's organizational documents, or any amendment thereof, (ii) does not materially violate, conflict with or result in any material breach or contravention of, or the creation of any lien under, any contractual obligation of NUI or any requirement of law applicable to NUI and (iii) does not materially violate any judgment or orders of any governmental authority against, or binding upon, NUI to the knowledge of NUI.

(e) *Purchase for Own Account.* The Purchased Common Shares, will be acquired for NUI's own account and not with a view to the distribution or resale of the Purchased Common Shares or any part thereof. If NUI should in the future decide to dispose of any of the Purchased Common Shares, it understands and agrees that it may do so only in compliance with the Securities Act and applicable state securities laws, as then in effect. NUI agrees to the imprinting, so long as required by law, of a legend on certificates representing all of its Purchased Common Shares to the following effect:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR APPLICABLE STATE SECURITIES LAWS. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED (EACH A "TRANSFER") WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS, UNLESS EXLSERVICE HOLDINGS, INC. HAS RECEIVED AN OPINION OF COUNSEL, WHICH OPINION IS SATISFACTORY TO IT, TO THE EFFECT THAT SUCH REGISTRATIONS ARE NOT REQUIRED.

THE TRANSFER AND VOTING OF ANY OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE RESTRICTED BY THE TERMS OF A CERTAIN STOCKHOLDERS' AGREEMENT, DATED AS OF NOVEMBER 14, 2002, AND THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF EXLSERVICE HOLDINGS, INC., COPIES OF WHICH MAY BE INSPECTED AT EXLSERVICE HOLDINGS, INC.'S PRINCIPAL OFFICE. EXLSERVICE HOLDINGS, INC. WILL NOT REGISTER THE TRANSFER OF SUCH SECURITIES ON ITS BOOKS UNLESS AND UNTIL THE TRANSFER HAS BEEN MADE IN COMPLIANCE WITH THE TERMS OF A CERTAIN

STOCKHOLDERS' AGREEMENT, DATED AS OF NOVEMBER 14, 2002, AND THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF EXLSERVICE HOLDINGS, INC.

(f) *Restricted Securities.* NUI understands that the Purchased Common Shares may not be registered at the time of their issuance under the Securities Act for the reason that the issuance of the Purchased Common Shares provided for in the Agreement is exempt pursuant to Section 4(2) of the Securities Act and that the reliance of ExlService Holdings on such exemption is predicated in part on NUI's representations set forth herein.

(g) *Broker's, Finder's or Similar Fees.* There are no brokerage commissions, finder's fees or similar fees or commissions payable by NUI in connection with the transactions contemplated hereby based on any agreement, arrangement or understanding with NUI or any action taken by NUI.

(h) *Accredited Investor.* NUI is an "Accredited Investor" within the meaning of Rule 501 of Regulation D under the Securities Act, as presently in effect. NUI has read and reviewed the Agreement, is knowledgeable about the business and financial condition of ExlService Holdings, has such knowledge and experience in financial and business matters as to be capable to evaluate the merits and risks of acquiring the Purchased Common Shares and is able to bear the economic risk making such investment.

(i) *Economic Risk.* NUI realizes that the purchase of the Purchased Common Shares will be a highly speculative investment and involves a high degree of risk, and NUI is able, without impairing financial condition, to hold the Purchased Common Shares for an indefinite period of time and to suffer a complete loss on NUI's investment.

(j) *Independent Investigation.* NUI hereby acknowledges and affirms that it has made all reviews and inspections of the financial condition, business, results of operations, properties, assets and prospects of ExlService Holdings and its subsidiaries and the business of ExlService Holdings and its subsidiaries as it has deemed necessary or appropriate, that it has had the opportunity to request and receive all information it has deemed relevant to the foregoing from ExlService Holdings and its subsidiaries and that in making its decision to enter into the Agreement and to consummate the transactions contemplated hereby it has relied solely on (i) its own investigation, analysis and evaluation of ExlService Holdings and its subsidiaries and (ii) the representations, warranties and covenants of ExlService Holdings contained in the Agreement.

(k) *Exclusivity of Representations or Warranties.* In connection with NUI's investigation of ExlService Holdings and its subsidiaries, NUI may have received certain projections, including projected statements of operating revenues and income from operations of the business of ExlService Holdings and its subsidiaries and certain information regarding a potential Public Offering (as defined in Section 5(a) hereof). NUI acknowledges that there are uncertainties inherent in making any such projections or

other estimates or forecasts. Accordingly, ExlService Holdings and its subsidiaries make no representation or warranty with respect to such estimates, projections and other forecasts (including the reasonableness of the assumptions underlying such estimates, projections and other forecasts), including, without limitation, any estimate, projection or other forecast regarding a potential Public Offering.

The foregoing Sections 4(i)-(k), however, do not limit or modify the representations or warranties of ExlService Holdings in Section 3 of this Agreement or the right of NUT to rely thereon.

#### 5. Covenants.

(a) *Approval Rights.* Prior to (but not concurrently with) a Liquidity Event (as defined below), for so long as NUI or any Permissible Transferee (as defined in Section 7(h)) beneficially owns all of the Purchased Common Shares, the following actions shall require the prior written consent of NUI (such consent not to be unreasonably withheld, conditioned or delayed):

(i) any redemption of ExlService Holdings' Series A Preferred Stock (other than a redemption pursuant to Section 4.2.4(b) or 4.2.4(c) of the Charter);

(ii) any pre-payment of ExlService Holdings' senior promissory notes due 2007 (the "Senior Debt") (other than a payment pursuant to Section 6(b) of the Senior Debt);

(iii) the payment of any cash dividend upon ExlService Holdings' Series A Preferred Stock or Series A Common Stock (other than any cash dividend paid pursuant to Section 4.2.3 of the Charter); and

(iv) the entry by ExlService Holdings into any transaction involving ExlService Holdings or any of its subsidiaries, on the one hand, and (A) Oak Hill Capital Partners, L.P., Oak Hill Capital Management Partners, L.P. (collectively, "Oak Hill"), Financial Technology Ventures (Q), L.P., Financial Technology Ventures. L.P., Financial Technology Ventures II, L.P., Financial Technology Ventures II (Q), L.P. (collectively, "FT Ventures"), or their respective Affiliates (including, without limitation, any action taken by the Board of Directors of ExlService Holdings (the "Board") to increase the amount of the Liquidation Preference (as defined in Section 4.2.3(a) of the Charter)), or (B) any Affiliate of Vikram Talwar or Rohit Kapoor, on the other hand, unless such transaction is on terms no less favorable to ExlService Holdings or any of its subsidiaries than those that could reasonably be expected to be obtained in a comparable arm's-length transaction with an unaffiliated third-party. For the avoidance of doubt, (x) any transaction involving ExlService Holdings or any of its subsidiaries, on the one hand, and Vikram Talwar or Rohit Kapoor, directly and not through an Affiliate

of either of them, on the other hand, and (y) any registration rights granted by ExlService Holdings to Oak Hill, FT Ventures, Vikram Talwar and Rohit Kapoor in connection with a contemplated Public Offering (as defined below) shall not be subject to this clause (iv).

For purposes of this Agreement, each of the following events shall constitute a “Liquidity Event”: (1) the sale or other transfer as a result of which, immediately following such sale or transfer, fifty percent (50%) or more of the capital stock of ExlService Holdings is held by a Person (other than Oak Hill, FT Ventures or any of their Affiliates) that did not hold more than 20% of any class of capital stock of ExlService Holdings prior to such sale or transfer (other than transfers made pursuant to Sections 3.2(b), 3.2(d) or 3.2(f) of the Stockholders’ Agreement) or the sale, lease, or other transfer or disposition of all or substantially all of the assets of ExlService Holdings, in either case whether (x) directly or indirectly, by merger, combination or other similar transaction or (y) in a single transaction or series of related transactions; or (2) an underwritten public offering and sale of equity securities of ExlService Holdings or any subsidiary thereof pursuant to an effective registration statement under the Securities Act of 1933 (the “Public Offering”).

(b) *Stockholders’ Agreement; Charter*: NUI covenants and agrees that any Purchased Common Shares purchased by NUI hereunder will be subject to the terms and conditions of the Charter and, upon execution of the Joinder Agreement, the Stockholders’ Agreement including, without limitation, any and all alienability restrictions set forth herein or therein.

(c) *Information/Inspection Rights*. ExlService Holdings shall provide to NUI (i) copies of all such financial statements that are provided to any stockholder of ExlService Holdings or holder of Senior Notes promptly upon providing such financial statements to such stockholder or such noteholder, and in any event shall provide to NUI copies of audited consolidated financial statements of ExlService Holdings, no later than 120 days after the end of each fiscal year of ExlService Holdings, and (ii) such financial or other information (other than any information that relates to any customer, supplier or client of ExlService Holdings or any of its subsidiaries or other information that the Board, exercising its good faith business judgment, determines to be competitively sensitive information) relating to ExlService Holdings and its subsidiaries as NUI may reasonably request from time to time. ExlService Holdings shall permit NUI, at NUI’s expense, to visit and inspect, during normal business hours and upon reasonable prior written notice, ExlService Holdings’ properties, to examine its books of account and records and to discuss ExlService Holdings’ affairs, finances and accounts with ExlService Holdings’ senior officers and directors. The rights of NUI or any Permissible Transferee (as defined in Section 7(h)) set forth in this Section 5(c) shall terminate upon the earlier of (A) a Public Offering and (B) the date upon which NUI and its Permissible Transferees, if any, collectively cease to own greater than 50% of the Purchased Common Shares. Notwithstanding the foregoing sentence, after a Public Offering shall have occurred, ExlService Holdings shall cooperate with any reasonable request by NUI for information with respect to ExlService Holdings and its subsidiaries that is in the public domain.

(d) *Confidentiality*. NUI covenants and agrees that it shall not use, and shall cause its Affiliates not to use, or disclose to any third party (except to its employees and advisors on a need to know basis, and except to any governmental agency, public authority or other regulatory body to which it is legally obligated to disclose such information), any Confidential Information (as defined below) without the prior written consent of ExlService Holdings. For purposes of this Agreement, “Confidential Information” means all information, knowledge, systems or data relating to the business, operations, finances, policies, strategies, intentions or inventions of ExlService Holdings or any of its subsidiaries (including, without limitation, any of the terms of this Agreement) from whatever source obtained, whether provided pursuant to Section 5(c) of this Agreement or otherwise, except for any such information, knowledge, systems or data which at the time of disclosure was in the public domain.

(e) *NUI Acknowledgement*. NUI acknowledges and agrees that ExlService Holdings has not made and does not make, and NUI has not relied upon, any representation or warranty, whether express or implied, of any kind or character except as expressly set forth in Section 3 hereof. Nothing in this Section 5(e) shall exclude or affect any right or remedy available to NUI in respect of fraud or any fraudulent misrepresentation or warranty by ExlService Holdings or its officers or employees.

(f) *Subsequent Customer-Related Transactions*. ExlService Holdings agrees that:

(i) until the earlier of (x) the later of (A) the second anniversary of this Agreement and (B) the last day of any twelve (12) month period during which Aviva and its consolidated subsidiaries did not account for 20% or more of the gross revenues of ExlService Holdings on a consolidated basis, as determined in good faith by ExlService Holdings and (y) a Liquidity Event, it will not issue or sell to any of its customers or clients, or any of the competitors of Aviva listed on Schedule 5(f) hereto (each an “Offeree”), any equity securities (including Common Stock and Preferred Stock) of ExlService Holdings other than shares of Series A Common Stock of ExlService Holdings.

(ii) until a Liquidity Event, if ExlService Holdings grants to any Offeree “demand” registration rights in connection with a sale or issuance contemplated by Section 5(f)(i) hereof, ExlService Holdings shall provide substantially identical “demand” registration rights to NUI, subject to the same terms and conditions as those granted to such Offeree. NUI and such Offeree shall be subject to pro rata “cut backs” on public sales of such equity securities of ExlService Holdings.

(g) *Rights Regarding Additional Equity Financing*. ExlService Holdings agrees that until a Liquidity Event, NUI shall have the right to purchase its Pro- Rata Share (as defined below) of (x) any issuance of Common Stock and (y) any issuance of Preferred Stock based on an equity valuation of ExlService Holdings below \$237.5 million, in each case only if any such issuance is a Financial Investor Issuance (as defined

below). For purposes of this Section 5(g), (i) a “Financial Investor Issuance” shall mean an issuance of Common Stock or Preferred Stock to a financial investor that is a corporation, partnership, limited liability company or other entity that, as of the date of such issuance, is not and has not within the prior twenty-four months been a client, customer, competitor or Affiliate of ExlService Holdings, the principal purpose of which is to supply capital to ExlService Holdings and which is not entered into with the principal purpose of providing ExlService Holdings with any strategic business advantage and (ii) “Pro Rata Share” shall mean at any time, a fraction, the numerator of which is the number of shares of Common Stock then held by NUI or its Permissible Transferee (as defined in Section 7(h)) and the denominator of which is the aggregate number of shares of Common Stock held by all of the stockholders and optionholders of ExlService Holdings on a fully-diluted basis. The mechanics for NUI’s exercise of its rights under this Section 5(g), including the provision of notice to NUI by ExlService Holdings of any Financial Investor Issuance, the period of time that NUI has to elect to exercise any such rights and the waiver of any such rights by NUI, shall be consistent with the mechanics set forth in Section 3.10 of the Stockholders’ Agreement with respect to an exercise of Pre-Emptive Rights (as defined in the Stockholders’ Agreement).

6. Binding Effect; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing contained in the Agreement, express or implied, is intended to confer upon any person other than the parties hereto and their respective permitted assigns any rights or remedies of any nature whatsoever.

7. Registration Rights.

(a) If ExlService Holdings or any successor thereto becomes a company with equity securities listed on a national securities exchange or traded on the Nasdaq National Market pursuant to a Public Offering or otherwise, ExlService Holdings or such successor shall give NUI at least 20 days prior written notice of the filing of any registration statement with respect to a Public Offering or otherwise (other than a registration relating to (i) the initial public offering of ExlService Holdings, (ii) a registration of an employee compensation plan or arrangement adopted in the ordinary course of business on Form S-8 (or any successor form) or any dividend reinvestment plan, (iii) a registration of securities on Form S-4 (or any successor form) including, in connection with a proposed issuance in exchange for securities or assets of, or in connection with a merger or consolidation with, another corporation or (iv) a registration of securities in connection with a rights offering) of equity securities of the class or classes issued to NUI, and, subject to Section 7(c), if requested by NUI within 10 days of the giving of such notice, cause to be included in such registration statement all or such portion requested by NUI of such equity securities so issued to and owned by, NUI for public sale by NUI. Such registration rights shall be subject to NUI entering into underwriting (if applicable), indemnification, and other customary agreements, and to ExlService Holdings’ (or such successor’s) right to defer (or require NUI to suspend sales pursuant to) any such registration if it determines in good faith that such registration (or continued sales) would be adverse to ExlService Holdings’ (or such successor’s) interests (any such deferral or suspension period, a “Suspension Period”); provided, however, that

such Suspension Period shall only be applicable to NUI to the extent that substantially identical limitations are imposed and maintained on other participants in such registration (other than ExlService Holdings). ExlService Holdings or any successor thereto shall keep any registration statement filed under this Section 7 effective until the earlier of the date all securities have been sold under such registration statement or 90 days (increased by the number of days, if any, that sales under any such registration statement are suspended as provided above). ExlService Holdings or any successor thereto shall bear all costs and expenses relating to such registration incurred by ExlService Holdings in connection with such registration, exclusive of any costs and expenses of NUI relating to underwriters' commissions or discounts, brokerage fees, transfer taxes or fees or expenses of any counsel, accountants or other representatives retained by NUI in connection with any such registration.

(b) In order to participate in a registration effected under this Section 7, to the extent not inconsistent with applicable law, NUI agrees not to effect any public sale or distribution of any equity securities being registered or of any securities convertible into or exchangeable or exercisable for such equity securities, including a sale pursuant to Rule 144 under the Securities Act, during the ten (10) business days prior to, and during the one hundred and eighty (180) day period beginning on, the effective date of such registration statement (except as part of such registration) if and to the extent requested by an underwriter in the case of an underwritten public offering; provided, however, such limitation on sale shall only be applicable to NUI to the extent that substantially identical limitations are imposed and maintained on other participants in such public offering (other than ExlService Holdings).

(c) If a registration pursuant to Section 7 hereof involves an underwritten offering and the managing underwriter shall advise ExlService Holdings that, in its opinion, the total amount or kind of securities which they, ExlService Holdings and any other persons or entities intend to include in such offering is sufficiently large so as to have an adverse effect on the distribution or sales price of such securities, then ExlService Holdings shall include in such registration, (i) first, the number of securities proposed to be included in such registration for the account of ExlService Holdings and/or any equity security holders of ExlService Holdings that have exercised either (x) demand registration rights or (y) a right to participate in such demand rights registration exercised, in the case of this clause (y), by any equity security holder referred to in Section 5(a)(iv)(y) hereof or any Affiliate of any such equity security holder, in accordance with the priorities, if any, then existing among ExlService Holdings and/or such equity security holders of ExlService Holdings with registration rights, and (ii) second, the securities requested to be included in such registration by all other equity security holders of ExlService Holdings (including, without limitation, NUI) who have pre-existing piggy-back registration rights, pro rata among such other holders (including, without limitation, NUI) on the basis of the number of securities that each of them requested to be included in such registration.

(d) ExlService Holdings agrees to indemnify and hold harmless NUI, its partners, directors, officers, affiliates, legal counsel and each Person who controls (within the meaning of Section 15 of the Securities Act) NUI from and against any and

all losses, claims, damages, liabilities and expenses (including reasonable costs of investigating, preparing, settling or defending such loss, claim, damage, liability or action) (each, a “Liability” and collectively, “Liabilities”), arising out of or based upon any untrue, or allegedly untrue, statement of a material fact contained in any registration statement, prospectus, preliminary prospectus or other document (including any related registration statement) used to effect any registration pursuant to this Section 7 (in each case, as amended or supplemented if ExlService Holdings shall have furnished any amendments or supplements thereto) or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading under the circumstances such statements were made, or any violation by ExlService Holdings of the Securities Act or any rule or regulation promulgated under the Securities Act applicable to ExlService Holdings in connection with any such registration except insofar as (i) such Liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission contained in such registration statement, preliminary prospectus or final prospectus in reliance and in conformity with information concerning NUI furnished in writing to ExlService Holdings by NUI expressly for use therein, including, without limitation, the information furnished to ExlService Holdings pursuant to Section 7(e), (ii) such untrue statement or alleged untrue statement or omission or alleged omission was made in any registration statement, preliminary prospectus or final prospectus used after such time as ExlService Holdings advised NUI that the filing of a post-effective amendment or supplement thereto was required, except the registration statement, preliminary prospectus or final prospectus as so amended or supplemented or (iii) such untrue statement or alleged untrue statement or omission or alleged omission was made in any registration statement, preliminary prospectus or final prospectus used after such time as the obligation of ExlService Holdings hereunder to keep the registration statement effective and current has expired. It is agreed that the indemnity obligation set forth in this Section 7(d) shall not apply to amounts paid in settlement of any such Liability if such settlement is effected without the consent of ExlService Holdings.

(e) In connection with any registration statement in which NUI is participating pursuant to this Section 7, (i) NUI shall promptly furnish to ExlService Holdings in writing such information with respect to NUI as ExlService Holdings may reasonably request or as may be required by law for use in connection with any such registration statement or prospectus and all information required to be disclosed in order to make the information previously furnished to ExlService Holdings by NUI not materially misleading or necessary to cause such registration statement not to omit a material fact with respect to NUI necessary in order to make such statements therein not misleading, (ii) NUI agrees to indemnify and hold harmless ExlService Holdings, its legal counsel, any underwriter of the securities of ExlService Holdings covered by such registration statement retained by ExlService Holdings and each Person who controls ExlService Holdings or such underwriter (within the meaning of Section 15 of the Securities Act) from and against any Liability arising out of or based upon any untrue, or allegedly untrue, statement of a material fact contained in any registration statement, prospectus, preliminary prospectus or other document (including any related registration statement) used to effect any registration pursuant to this Section 7 (in each case, as amended or supplemented if ExlService Holdings shall have furnished any amendments



or supplements thereto) or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading under the circumstances such statements were made, but only if such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with information with respect to NUI furnished in writing to ExlService Holdings by NUI expressly for use in such registration statement or prospectus, including, without limitation, the information furnished to ExlService Holdings pursuant to this Section 7(e); provided, however, that the total amount to be indemnified by NUI pursuant to this Section 7(e) shall be limited to the net proceeds (after deducting the underwriters' discounts and commissions) received by NUI in the offering to which any such registration statement or prospectus relates. It is agreed that the indemnity obligation set forth in this Section 7(e) shall not apply to amounts paid in settlement of any such Liability if such settlement is effected without the consent of NUI.

(f) If the indemnification provided for in Sections 7(d) and (e) is held by a court of competent jurisdiction to be unavailable to a party entitled to indemnification (the "Indemnified Party") under such section with respect to any claim, loss, damage, liability or expense referred to therein, then the party required to provide indemnification (the "Indemnifying Party"), in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such claim, loss, damage, liability or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the statements or omissions that resulted in such claim, loss, damage, liability or expense, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact related to information is supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission. ExlService Holding and NUI agree that it would not be just and equitable if contribution pursuant to this Section 7(f) were based upon any method of allocation which does not take account of the equitable considerations referred to above. In no event shall any contribution by NUI under this Section 7(f) exceed the gross proceeds received by NUI in such offering.

(g) With a view to making available the benefits of certain rules and regulations of the Securities and Exchange Commission (the "Commission") which may at any time permit the sale of the Purchased Common Shares to the public without registration after such time, if any, when a public market exists for the Common Stock of ExlService Holdings, ExlService Holdings agrees to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act ("Rule 144"), at all times that ExlService Holdings is subject to the reporting requirements of the Securities Act or the Exchange Act;

(ii) file with the Commission in a timely manner all reports and other documents required of ExlService Holdings under the Securities Act and the Exchange Act (at any time it is subject to such reporting requirements); and

(iii) so long as NUI owns any Purchased Common Shares that may not lawfully be disposed of without registration, qualification or legend, to furnish to NUI forthwith upon request a written statement by ExlService Holdings as to its compliance with the reporting requirements of Rule 144 and of any other reporting requirements of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of ExlService Holdings, and such other reports and documents of ExlService Holdings and any other information in the possession of or reasonably obtainable by ExlService Holdings as NUI may reasonably request in availing itself of any rule or regulation of the Commission allowing it to sell any such securities without registration.

(h) The rights and obligations of NUI under this Section 7 may be assigned by NUI only to (i) a transferee or assignee of not less than all of the Purchased Common Shares (as appropriately adjusted for stock splits and the like), provided that such transfer is permitted under and is consummated in compliance with the terms of the Stockholders' Agreement; (ii) any Affiliate that is wholly-owned by Aviva; or (iii) any transferee of any portion of the Purchased Common Shares that received such shares in a transaction approved in writing by ExlService Holdings (in each case, a "Permissible Transferee").

(i) The rights and obligations of ExlService Holdings and NUI under this Section 7 shall terminate when (i) a registration statement with respect to the sale of the Purchased Common Shares shall have become effective under the Securities Act and the Purchased Common Shares shall have been disposed of in accordance with such registration statement, except that the obligations of ExlService Holding and NUI under Sections 7(d) through (f) shall survive the completion of any offering of the Purchased Common Shares in a registration statement, (ii) the Purchased Common Shares may be sold in a single sale, in the opinion of counsel satisfactory to ExlService Holdings and NUI, each in their reasonable judgment, without any limitation as to volume pursuant to Rule 144 (or any successor provision then in effect) under the Securities Act, (iii) the Purchased Common Shares shall have been otherwise transferred, new certificates for the Purchased Common Shares not bearing a legend restricting further transfer shall have been delivered by ExlService Holdings and subsequent public distribution of the Purchased Common Shares shall not require registration of such distribution under the Securities Act or (iv) the Purchased Common Shares shall have ceased to be outstanding.

(j) In order to ensure an orderly disposition by NUI of its Purchased Common Shares following any lock-up period applicable to ExlService Holdings' shareholders in connection with a Public Offering, NUI hereby acknowledges and agrees that if it desires to sell all or any portion of its Purchased Common Shares publicly (other

than in a registered offering) or to distribute such Purchased Common Shares in a manner that is likely to result in sales into the public market: (i) it shall be required to give five days' prior written notice of such intention to ExlService Holdings; (ii) after the expiration of such five day period it shall be permitted to effect such sales only through a single broker or market maker mutually agreed upon by NUI and ExlService Holdings, and (iii) it shall be permitted to sell no more than twenty-five percent (25%) of its Purchased Common Shares during each successive calendar quarter period following such lock-up period.

(k) **Submission to Jurisdiction, Selection of Forum.** Each party hereto irrevocably and unconditionally consents and submits to the jurisdiction of the state courts of the State of New York, New York county and of the United States District Court located in the State of New York, New York county for any actions, suits or proceedings arising out of or relating to the Agreement and the transactions contemplated hereby, and further agrees that service of any process, summons, notice or document by U.S. registered or certified mail to ExlService Holdings, Inc. at 350 Park Avenue, 10<sup>th</sup> Floor, New York, NY 10022, Attention: Rohit Kapoor, or to NUI at 8 Surrey Street, Norwich NR1 3NG, United Kingdom, Attention: Patrick Snowball, shall be effective service of process for any action, suit or proceeding brought against such party in any such court. Each party hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit, or proceeding arising out of the Agreement or the transactions contemplated hereby, in the courts of the State of New York located in New York county or of the United States of America located in the State of New York located in New York county, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

8. **Governing Law.** The Agreement shall be construed and interpreted in accordance with the laws of the State of New York without regard to principles of conflicts of law thereof, or principles of conflicts of laws of any other jurisdiction which could cause the application of the laws of any jurisdiction other than the State of New York.

9. **Survival.** The representations, warranties, covenants and agreements made herein shall survive the closing of the transactions contemplated hereby.

10. **Successors and Assigns.** Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto; provided, however, that the rights of NUI to purchase the Purchased Common Shares shall not be assignable without the consent of ExlService Holdings. NUI's rights under Section 5 hereunder are not assignable other than to a Permissible Transferee. All rights of NUI (or any Affiliate of NUI that is a Permissible Transferee) shall terminate if it ceases to be wholly-owned by Aviva, unless otherwise approved in writing by ExlService Holdings. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or

liabilities under or by reason of this Agreement, except as expressly provided by this Agreement.

11. Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default of the other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of either party of any breach or default under this Agreement, or any waiver on the part of either party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing or as provided in this Agreement. All remedies, either under this Agreement or by law or otherwise afforded to either party, shall be cumulative and not alternative.

12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if (a) delivered personally, or (b) if sent by overnight courier service (receipt confirmed in writing), or (c) if delivered by facsimile transmission (with receipt confirmed), or (d) five days after being mailed by registered or certified mail (return receipt requested) to the parties in each case to the following addresses (or at such other address for a party as shall be specified by like notice):

If to NUI, to:

NUI Investments Limited  
8 Surrey Street, Norwich NR1 3NG  
United Kingdom  
Facsimile: + 44 1603 682087  
Attention: Mr. Patrick Snowball

with a copy to:

Latham & Watkins  
99 Bishopsgate, Eleventh Floor  
London EC2M 3XF  
United Kingdom  
Facsimile: + 44 20 7374 4460  
Attention: Martin Saywell, Esq.

If to ExlService Holdings, to:

ExlService Holdings, Inc.  
350 Park Avenue, 10th Floor  
New York, NY 10022  
Facsimile: (212) 872-1415  
Attention: Mr. Rohit Kapoor, President

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with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Fax: (212)757-3990  
Attention: Kenneth M. Schneider, Esq.

13. Modifications; Entire Agreement. No change, modification or waiver of any provision of the Agreement shall be valid unless the same be in writing and signed by the parties here. The Agreement and the Joinder Agreement contain the entire agreement between the parties hereto with respect to the subject transactions contemplated hereby and supersede any and all prior oral and written agreements and memoranda and undertakings between the parties hereto with regard to the subject matter hereof.

14. Headings. The headings of the Sections hereof are provided for convenience only and are not to serve as a basis for interpretation or construction, and shall not constitute a part, of the Agreement.

15. Signature in Counterparts. The Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

EXLSERVICE HOLDINGS, INC.

By: /s/  
Name:  
Title:

NUI INVESTMENTS LIMITED

By: /s/ Patrick Snowball  
Name: Patrick Snowball  
Title: Director

Solely with respect to their acknowledgement of Section 5(a):

OAK HILL CAPITAL PARTNERS, L.P.

By: OHCP GenPar, L.P.,  
its general partner

By: OHCP MGP, LLC,  
its general partner

By: /s/  
Name:  
Title:

OAK HILL CAPITAL MANAGEMENT PARTNERS, L.P.

By: OHCP GenPar, L.P.,  
its general partner

By: OHCP MGP, LLC,  
its general partner

By: /s/

\_\_\_\_\_  
Name:

Title:

FINANCIAL TECHNOLOGY VENTURES, L.P.

By: Financial Technology Management, LLC

By: /s/

\_\_\_\_\_  
Name:

Title:

FINANCIAL TECHNOLOGY VENTURES (Q), L.P.

By: Financial Technology Management, LLC

By: /s/

\_\_\_\_\_  
Name:

Title:

FINANCIAL TECHNOLOGY VENTURES II, L.P.

By: Financial Technology Management II, LLC

By: /s/

\_\_\_\_\_  
Name:

Title:

FINANCIAL TECHNOLOGY VENTURES II  
(Q), L.P.

By: Financial Technology Management II, LLC

By: /s/

\_\_\_\_\_  
Name:

Title:

/s/ Vikram Talwar

\_\_\_\_\_  
Vikram Talwar

/s/ Rohit Kapoor

\_\_\_\_\_  
Rohit Kapoor



STOCK PURCHASE AGREEMENT

by and between

OAK HILL CAPITAL PARTNERS, L.P.,  
FINANCIAL TECHNOLOGY VENTURES (Q), L.P.  
OAK HILL CAPITAL MANAGEMENT PARTNERS, L.P.  
EXLSERVICE HOLDINGS, INC.

and  
CONSECO INC.

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for the purchase of  
the outstanding  
capital stock of ExlService.com, Inc.

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November 14, 2002

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Exhibit

- A Documents Delivered in Connection with the Contemplated Transactions
- 1 Trademark Assignment
- 2 Conesco Services License Agreement
- 3 Exl License Agreement
- 4 Conesco Trademark License Agreement

## STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT (this "Agreement"), dated as of November 14, 2002 by and among OAK HILL CAPITAL PARTNERS, L.P., a Delaware limited partnership, OAK HILL CAPITAL MANAGEMENT PARTNERS, L.P., a Delaware limited partnership (together, "Oak Hill"), FINANCIAL TECHNOLOGY VENTURES (Q), L.P., a Delaware limited partnership, and certain of its affiliates which are signatories hereto (collectively, "FT Ventures") (Oak Hill and FT Ventures shall be collectively referred to herein as the "Outside Investors"), EXLSERVICE HOLDINGS, INC., a Delaware corporation ("ExlService Holdings"), and CONSECO INC., an Indiana corporation ("Conseco"), providing for the purchase and sale of all of the outstanding capital stock of ExlService.com, Inc., a Delaware corporation ("Exl").

Conseco is the beneficial and record owner of all of the issued and outstanding shares of capital stock of Exl (the "Shares"). Conseco wishes to sell and ExlService Holdings wishes to purchase from Conseco, all of the Shares upon the terms and subject to the conditions of this Agreement.

Certain terms used in this Agreement are defined in Section 9.1.

Accordingly, the parties agree as follows:

1. Sale, Purchase and Issuance of Shares.

1.1 Sale and Purchase of Shares. At the closing provided for in Article 2 (the "Closing") and upon the terms and subject to the conditions of this Agreement, and in reliance upon the representations, warranties and agreements of Conseco, ExlService Holdings shall purchase all of the Shares for the Purchase Price, payable as provided in Section 1.2.

1.2 Payment of Purchase Price. The purchase price for the Shares shall be \$1.00 (the "Purchase Price"). At the Closing, ExlService Holdings shall deliver the Purchase Price.

1.3 Delivery of Shares. At the Closing, Conseco shall deliver the Shares.

1.4 Documents Delivered in Connection with the Contemplated Transactions. The documents and agreements set forth on Exhibit A shall be executed and/or delivered on or prior to the Closing Date.

2. Closing; Closing Date. The Closing of the sale and purchase of the Shares contemplated hereby shall take place at the offices of Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of Americas, New York, New York 10019-6064, at 10:00 a.m. on November 14, 2002, or such other time or date as the parties may mutually agree in writing. The time and date upon which the Closing occurs is herein called the "Closing Date."

3. Representations and Warranties of Conseco as to Conseco, Exl and Exl (India). Conseco represents and warrants to ExlService Holdings and the Outside Investors as follows:

3.1 Due Incorporation and Authority. Conseco is a corporation duly organized and validly existing under the laws of Indiana. Exl is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and lawful authority to own, lease and operate its properties and to carry on its business as now being and heretofore conducted. ExlService.com (India) Private Limited, an Indian limited company ("Exl (India)") is a limited company duly organized and validly existing under the laws of the Republic of India and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being and heretofore conducted. Conseco has the right, power and authority and approvals required to execute and deliver this Agreement and to perform fully its obligations hereunder. This Agreement has been duly executed and delivered by Conseco and is a valid and binding obligation of Conseco enforceable in accordance with its terms.

3.2 Subsidiaries and Other Affiliates. Neither Exl nor Exl (India) directly or indirectly owns or has the power to vote shares of any capital stock or other ownership interests having voting power to elect a majority of the directors of any corporation or other entity, or other persons performing similar functions for such entity, as the case may be. Neither Exl, nor Exl (India), owns directly or indirectly any interest in any other person and no affiliate of Exl, Exl (India) or Conseco is engaged in the Company Business.

3.3 Qualification. Exl and Exl (India) are duly qualified or otherwise authorized to transact business and are in good standing in each jurisdiction in which the failure to so qualify or be authorized could have a material adverse effect on the properties, business, results of operations or financial condition of Exl and Exl (India) (the "Condition of the Companies"). Exl and Exl (India) do not own or lease real property in any jurisdiction other than their respective jurisdictions of organization and the jurisdictions set forth on *Schedule 3.3*.

3.4 Outstanding Capital Stock; Title. Exl is authorized to issue 100 shares of common stock, \$0.01 par value per share, of which 100 shares are issued and outstanding. No other class of capital stock or other ownership interests of Exl is authorized or outstanding. The Exl Shares have been duly authorized and issued by Exl and are fully paid and are non-assessable. Conseco owns beneficially and of record, free and clear of any Lien, and has full power and authority to convey free and clear of any Lien, all of the Shares, and upon delivery of and payment for the Shares, Conseco will convey to ExlService Holdings good and valid title thereto, free and clear of any Lien. The authorized share capital of Exl (India) is 89,000,000 equity shares of Rupees 10 par value per equity share and of which 88,663,150 equity shares are issued and fully paid up. The Exl (India) Shares have been duly authorized by all necessary corporate actions under Indian law and have been validly issued. The Exl (India) Shares have been duly



authorized and issued by Exl (India) and are fully paid and nonassessable. Except as set forth on *Schedule 3.4*, Exl owns beneficially and of record, free and clear of any Lien, all of such issued and fully paid up equity share capital of Exl (India). No other class of capital stock or other ownership interests of Exl (India) is authorized or issued and fully paid up.

3.5 Options or Other Rights. There is no outstanding right, subscription, warrant, call, unsatisfied preemptive right, option or other agreement of any kind to purchase or otherwise to receive from any of Exl, Exl (India) or Consecoco any of the outstanding, authorized but unissued, unauthorized or treasury shares of the capital stock or any other security of Exl or Exl (India), and there is no outstanding security of any kind of Consecoco, Exl or Exl (India) convertible into any such capital stock.

3.6 Charter Documents and Corporate Records. Consecoco has heretofore delivered to the Outside Investors true and complete copies of the certificate of incorporation (certified by the Secretary of State of Delaware in the case of Exl and in the case of Exl (India) by the secretary or director of Exl (India) so authorized), the by-laws (certified by Exl's secretary or an assistant secretary) and the memorandum and articles of association (certified by Exl (India)'s secretary or director), or comparable instruments, of Exl and Exl (India) as in effect on the date hereof. The minute books, or comparable records, of Exl and Exl (India) heretofore have been made available to the Outside Investors for their inspection and except as set forth on *Schedule 3.6*, contain true and complete records of all meetings and consents in lieu of meeting of the Board of Directors, or equivalent body (and any committee thereof), and stockholders of Exl and Exl (India) since the time of each of Exl's and Exl (India)'s organization and accurately reflect all transactions referred to in such minutes and consents in lieu of meeting. The stock books, or comparable records, of Exl and Exl (India) heretofore have been made available to the Outside Investors for their inspection and are true and complete.

### 3.7 Financial Statements.

(a) The consolidated balance sheet of Exl as of December 31, 2001 and the related statements of income, shareholders' equity and changes in financial position for the years then ended, including the footnotes thereto, audited by Arthur Andersen LLP, independent certified public accountants, fairly present in all material respects the consolidated financial position of Exl as at such dates and the consolidated results of operations of Exl for such respective periods in accordance with United States GAAP applied on a consistent basis for the periods covered thereby. (The financial statements of Exl as of December 31, 2001 and for the year then ended are sometimes herein called the "Financial Statements." The balance sheet included in the Financial Statements are sometimes herein called the "Balance Sheet" and December 31, 2001 is sometimes herein called the "Balance Sheet Date."") The financial statements referred to above are attached hereto as *Schedule 3.7(a)*.

(b) All accounts and notes receivable reflected on the Balance Sheet, and all accounts and notes receivable arising subsequent to the Balance Sheet Date, (i) have arisen in the ordinary course of business of Exl and Exl (India) and

(ii) subject only to a reserve for bad debts computed in a manner consistent with past practice and reasonably estimated to reflect the probable results of collection, have been collected or are, except as set forth on *Schedule 3.7(b)*, collectible in the ordinary course of business of Exl and Exl (India) in the aggregate recorded amounts thereof in accordance with their terms, except for accounts and notes receivable reflected on the Balance Sheet or arising subsequent to the Balance Sheet Date that have been written-off.

(c) The interim financial statements of Exl and Exl (India) for any periods after the Balance Sheet that have been provided to Oak Hill have been prepared on a basis consistent with past practice.

### 3.8 Taxes.

(a) All Federal, state, county, local, foreign and other taxes (including, without limitation, income, profits, branch profits, premium, estimated, excise, sales, use, occupancy, gross receipts, franchise, ad valorem, severance, capital levy, production, transfer, withholding, employment, unemployment compensation, payroll related, value added, inventory, social security, stamp and property taxes, import duties and other governmental charges, assessments, and charges of any kind whatsoever), whether or not measured in whole or in part by net income, and including deficiencies, interest, additions to tax or interest, and penalties with respect thereto, and including expenses associated with contesting any proposed adjustment related to any of the foregoing (collectively, "Taxes") due or claimed to be due on or before the date hereof from or with respect to Exl and Exl (India) have been timely paid. Except for charges, accruals and reserves on the books of Exl (India) with regard to Taxes, there will be no liability for Taxes (including without limitation Taxes imposed by reason of (1) an obligation under a Tax Sharing Agreement, or (2) membership in an affiliated group of corporations under Section 1504(a) of the Code or any comparable provision of state, local or foreign law) with respect to Exl or Exl (India) for any taxable period (or portion thereof) ending on or prior to the Closing Date.

(b) All returns, reports, declarations, statements and other information required to be filed by or with respect to Exl and Exl (India) with respect to any Tax (all such returns and other reports, "Tax Returns") on or before the date hereof have been timely filed and all such Tax Returns are true, correct and complete in all material respects. The charges, accruals and reserves on the books of Exl and Exl (India) in respect of any liability for Taxes based on or measured by net income for any years not finally determined or with respect to which the applicable statute of limitations has not expired are adequate to satisfy any assessment for such Taxes for such years. No taxing authority has asserted any Tax deficiency, lien, or other assessment against either Exl or Exl (India) which has not been paid.

(c) Except as provided on *Schedule 3.8(c)*, there are no outstanding agreements extending or waiving the statutory period of limitations applicable to any claim for, or the period for the collection or assessment or reassessment of, Taxes due from or with respect to Exl or Exl (India) for any taxable period and no request for any such waiver or extension is currently pending.

(d) With respect to all Taxes of Exl and Exl (India) and except as set forth on *Schedule 3.8(d)*, (i) the statute of limitations for the assessment of Taxes has expired with respect to all periods ending on or before December 31, 1998; (ii) no audit or other proceeding by any court, governmental or regulatory authority or similar authority is pending or threatened; and (iii) there is no unassessed deficiency proposed or threatened against the Company.

(e) *Schedule 3.8(e)* sets forth the status of Federal Tax audits of the Taxes of Exl and/or the income tax assessment of Exl (India) for each fiscal year for which the statute of limitations has not expired, including the amounts of any deficiencies and additions to Tax, interest and penalties indicated on any notices of proposed deficiency or statutory notices of deficiency, and the amounts of any payments made by Exl and/or Exl (India), as the case may be, with respect thereto. Each Tax Return filed by or with respect to Exl and Exl (India) for which the Federal Tax audit or the income tax assessment has not been completed accurately reflects the amount of liability for Taxes thereunder and makes all disclosures required by the Internal Revenue Code of 1986, as amended (the "Code") and regulations thereunder, under the Income Tax Act, 1961 and other applicable provisions of Law.

(f) *Schedule 3.8(f)* sets forth the status of state, county, local and foreign Tax audits of the Taxes of Exl and income tax assessment of Exl (India) for each fiscal year for which the statute of limitations has not expired, including the amounts of any deficiencies or additions to Tax, interest and penalties that have been made or proposed, and the amounts of any payments made by Exl and Exl (India) with respect thereto. Each state, county, local and foreign Tax Return filed by or with respect to Exl and Exl (India) for which the state, county, local or foreign Tax audit or income tax assessment has not been completed accurately reflects the amount of its liability for Taxes thereunder and makes all disclosures required by applicable provisions of Law.

(g) Except as set forth on *Schedule 3.8(g)*, neither Exl nor Exl (India) has agreed to or is required to make any adjustments under section 481(a) of the Code by reason of a change in accounting method or otherwise.

(h) Exl has not at any time consented under Section 341(f)(1) of the Code to have the provisions of Section 341(f)(2) of the Code apply to any sale of its capital stock.

(i) The liability for Taxes of Exl and Exl (India) as of the Balance Sheet Date will not exceed the accrual for Taxes on the Balance Sheet except as such liability may change in the ordinary course of business, and the liability of the Company for Taxes has not increased since the Balance Sheet Date, except as such liability may increase in the ordinary course of business and except as a result of those Taxes that have occurred as a result of the transactions contemplated hereby.

(j) Except as set forth on *Schedule 3.8(j)*, neither Exl nor Exl (India) is a party to or is bound by, or has any obligation under any Tax sharing,

indemnification allocation or similar agreement, contract or arrangement (“Tax Sharing Agreement”).

(k) There are no Liens for Taxes on the assets of Exl and/or Exl (India) except for Liens for current Taxes not yet due.

(l) Exl and Exl (India) have each withheld from their respective employees, independent contractors, creditors, stockholders and third parties and timely paid to the appropriate taxing authority proper and accurate amounts in all material respects in compliance with all Tax withholding and remitting provisions of applicable laws and have each complied in all material respects with all Tax information reporting provisions of all applicable laws.

(m) No closing agreement that could affect the Taxes of Exl or Exl (India) has been entered into by or with respect to Exl or Exl (India), as the case may be.

(n) No stamp, transfer, documentary, sales, use, registration and other such Taxes and fees (including, without limitation, any penalties and interest) incurred in connection with this Agreement and the transactions contemplated by this Agreement (the “Contemplated Transactions”) will be due and payable in connection with this Agreement and the Contemplated Transactions.

(o) Neither Exl nor Exl (India) has been a member of an affiliated group of corporations under Section 1504(a) or any comparable provision of state, local or foreign law (except, in the case of Exl, for the affiliated group of which Conesco is the common parent).

(p) Exl has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(q) Exl (India) has never been (i) a “passive foreign investment company,” (ii) a “foreign personal holding company,” (iii) a “foreign sales corporation,” or (iv) a “foreign investment company,” each within the meaning of the Code.

(r) Except as set forth in Schedule 3.8(r), as of the time immediately prior to Closing, Exl (India) is currently enjoying a tax holiday under section 10B of the Indian Income Tax Act, 1961 for the units set up as 100% export oriented units.

**3.9 Compliance with Laws.** Except as set forth on *Schedule 3.9*, neither Exl nor Exl (India) has conducted its business in violation of any applicable order, judgment, injunction, award, decree or writ (collectively, “Orders”), or any applicable law, statute, code, ordinance, regulation or other requirement, including, without limitation, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, of the United States, and the regulations promulgated thereunder, or

the Foreign Exchange Management Act, 1999, the Industrial and Foreign Investment Policies of India, and the regulations issued thereunder, or regulations for Call Centers, issued by the Department of Telecommunications or Indian laws, as may be applicable to either or both of Exl and Exl (India) (collectively, "Laws") of any government or political subdivision thereof, whether Federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any insurance company or fire rating and any other similar board or organization or other non-governmental regulating body (to the extent that the rules, regulations or orders of such body have the force of law) or any court or arbitrator (collectively, "Governmental Bodies"), except for such violations as have not resulted, and would not reasonably be expected to result in, a material penalty, fine or liability and neither Consecro, Exl nor Exl (India) has received written notice that any such violation is being or may be alleged. Neither Exl nor Exl (India) has made any illegal payment to officers or employees of any Governmental Body, or made any illegal payment to customers for the sharing of fees or to customers or suppliers for rebating of charges, or engaged in any other illegal reciprocal practice, or made any illegal payment or given any other illegal consideration to purchasing agents or other representatives of customers in respect of sales made or to be made by Exl or Exl (India).

3.10 Permits. Exl and Exl (India) have all licenses, permits, exemptions, consents, waivers, authorizations, rights, certificates of occupancy, franchises, orders or approvals of, and have made all required registrations with, any Governmental Body relating to the conduct of the business of, or the current use of any properties of, Exl and Exl (India), the failure of which to obtain or make would result in a material penalty, fine or liability (collectively, "Permits"). To the knowledge of Consecro, each Employee has all Permits required for the conduct of the business conducted by such Employee for Exl or Exl (India). All Permits are listed on *Schedule 3.10* and are in full force and effect; no material violations are or have been recorded in respect of any Permit; and no proceeding is pending or threatened to revoke or limit any Permit. Except as listed on *Schedule 3.10* the Permits will remain in full force and effect immediately following the consummation of the Contemplated Transactions.

3.11 No Breach. The execution and delivery by Consecro of this Agreement and each and every other agreement and instrument contemplated hereby, the consummation of the transactions contemplated hereby and thereby and the performance by Consecro, Exl and Exl (India) of this Agreement and each such other agreement and instrument in accordance with their respective terms and conditions will not (a) violate any provision of the certificate of incorporation, by-laws or memorandum and articles of association (or comparable instruments) of Consecro, Exl or Exl (India); (b) require Consecro, Exl or Exl (India) to obtain any consent, approval, authorization or action of, or make any filing with or give any notice to, any Governmental Body or any other person, except as set forth on *Schedule 3.11* (collectively, the "Required Consents"); (c) if the Required Consents are obtained, violate, conflict with or result in the breach of any of the terms and conditions of, result in a material modification of the effect of, otherwise cause the termination of or give any other contracting party the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under, any material contract,

agreement, letter of intent, indenture, note, bond, loan, instrument, lease, conditional sale contract, mortgage, license, franchise, commitment or other binding arrangement (collectively, the “Contracts”) to which any or all of Conseco, Exl or Exl (India) is a party or by or to which Conseco, Exl, Exl (India) or any of their properties is or may be bound or subject, or result in the creation of any Lien upon any of the properties of Conseco, Exl and/or Exl (India) pursuant to the terms of any such Contract; (d) if the Required Consents are obtained, violate any Law of any Governmental Body applicable to the Shares, Conseco, Exl, Exl (India) or to their securities, properties or business; (e) if the Required Consents are obtained, violate any Order of any Governmental Body applicable to Exl, Exl (India) or to their securities, properties or business; or (f) if the Required Consents are obtained, violate or result in the revocation or suspension of any Permit.

3.12 Claims and Proceedings. Except as set forth on *Schedule 3.12*, there are no outstanding Orders of any Governmental Body against or involving Exl or Exl (India). Except as set forth on *Schedule 3.12*, there are no actions, causes of action, suits, claims, complaints, demands, litigations or legal, administrative or arbitral proceedings or investigations (collectively, “Claims”) (whether or not the defense thereof or liabilities in respect thereof are covered by insurance) pending or, to the knowledge of Conseco, threatened, against, involving or related to Exl, Exl (India) or any of their properties, owned or leased. All notices required to have been given to any insurance company listed as insuring against any Claim set forth on *Schedule 3.12* have been timely and duly given and, except as set forth on *Schedule 3.12*, no insurance company has asserted, orally or in writing, that such Claim is not covered by the applicable policy relating to such Claim. There are no Claims pending or, to the knowledge of Conseco, threatened that would give rise to any right of indemnification on the part of any director or officer of Exl or Exl (India) or the heirs, executors or administrators of such director or officer, against Exl or Exl (India) or any successor to the business of Exl or Exl (India).

3.13 Contracts.

(a) *Schedule 3.13(a)* sets forth all of the following Contracts, other than Contracts entered into in the ordinary course of business, which may be terminated upon prior notice of not more than 60 days and which involve annual expenditures of less than \$50,000, to which either Exl or Exl (India) is a party or by or to which it or any of its properties may currently be bound or subject, including without limitation: (i) direct or indirect Contracts with any current or former officer, director, shareholder, employee, consultant, agent or other representative or with an entity in which such person has a direct or indirect interest; (ii) other than in the ordinary course of business, Contracts for the sale of any material assets in one or a series of related transactions or for the grant to any person of any option or preferential rights to purchase any properties or assets; (iii) partnership or joint venture agreements; (iv) Contracts under which either Exl or Exl (India) agrees to indemnify any party or to share tax liability of any party; (v) Contracts which cannot be canceled without liability, premium or penalty and which provide for a current or future obligation of Exl or Exl (India) to make

payments in excess of \$50,000 per year; (vi) Contracts which purport to restrict or prohibit Exl, Exl (India) or any of their respective officers, or employees, directly or indirectly, from engaging in any business involving outsourcing in India of call center, customer service and similar business processes for businesses located outside India; (vii) Contracts containing covenants of Exl or Exl (India) not to compete in any line of business or with any person in any geographical area or, to the knowledge of Consecoco, covenants of any other person not to compete with Exl or Exl (India) in any line of business or in any geographical area; (viii) Contracts relating to the acquisition by Exl or Exl (India) of any operating business or the capital stock of any other person; (ix) Contracts containing obligations or liabilities of any kind to holders of the capital stock of Exl or Exl (India) as such (including, without limitation, an obligation to register any of such securities under any Federal or state securities laws); (x) Contracts relating to the borrowing of money; (xi) management Contracts providing for management of Exl or Exl (India) by a third party and other equivalent agreements with any person, (xii) Contracts between Exl or Exl (India) and Consecoco or any of Consecoco's affiliates and (xiii) Contracts to which either Exl or Exl (India) is a party or by or to which Exl or Exl (India) or any of their properties may be bound or subject which involve annual expenditures of over \$50,000 per year per Contract.

(b) Consecoco, Exl and Exl (India) have made available to the Outside Investors before the date hereof true and complete copies of the Contracts set forth on *Schedule 3.13(b)* or on any other Schedule. To the knowledge of Consecoco, all of the Contracts referred to in the preceding sentence are valid and binding and enforceable upon Exl and/or Exl (India), as the case may be, in accordance with their terms. Neither Exl nor Exl (India) is in breach or default in any material respect under any of such Contracts, nor does any condition exist that with notice or lapse of time or both would constitute such a material default thereunder. To the knowledge of Consecoco, no other party to any such Contract is in default thereunder in any material respect nor does any condition exist that with notice or lapse of time or both would constitute such a material default thereunder.

#### 3.14 Real Estate.

(a) No Ownership of Real Property. Neither Exl nor Exl (India) owns any real property or has owned any real property.

(b) Leased Properties. *Schedule 3.14(b)* is a true, correct and complete schedule of all leases and other agreements (collectively, the "Real Property Leases") under which either or both of Exl and Exl (India) uses or occupies or has the right to use or occupy, now or in the future, any real property (the land, buildings and other improvements covered by the Real Property Leases being herein called the "Leased Real Property"), which Schedule sets forth the date of and parties to each Real Property Lease, the date of and parties to each amendment, modification and supplement thereto, the term and renewal terms (whether or not exercised) thereof, the annual base rent payable thereunder and a brief description of the Leased Real Property covered thereby. Consecoco has heretofore delivered to, or caused Exl or Exl (India) to have heretofore delivered to, the Outside Investors true, correct and complete copies of all

Real Property Leases (including all modifications, amendments and supplements). Each Real Property Lease is valid, binding and in full force and effect, all rent and other sums and charges payable by Exl or Exl (India), as the case may be, as tenant thereunder are current, no written notice of default under any Real Property Lease has been received by Exl or Exl (India), as the case may be, which remains uncured, no written termination notice under any Real Property Lease has been received by Conseco, Exl or Exl (India), and no uncured material default on the part of Exl, Exl (India), Conseco or the landlord, exists under any Real Property Lease. Neither Exl nor Exl (India) occupy or use any land, building, structures or other improvements which are not included in Leased Real Property other than the occupancy or use of customer locations by Exl or Exl (India) personnel in the ordinary course of business.

(c) Space Leases. Except as set forth on *Schedule 3.14(c)*, no person or entity has been granted by Conseco, Exl or Exl (India) pursuant to a written agreement or pursuant to any other agreement, oral or otherwise, any right to the possession, use, occupancy or enjoyment of the Leased Real Property or any portion thereof.

(d) No Options. Except as set forth on *Schedule 3.14(d)*, neither Conseco, Exl nor Exl (India) owns or holds, or is obligated under or a party to, any option, right of first refusal or other contractual right to purchase, acquire, sell, dispose of or lease the Leased Real Property or any portion thereof or interest therein.

(e) Condemnation. Neither Conseco, Exl nor Exl (India) has received written notice, or, to the knowledge of Conseco, any other notice, oral or otherwise, of any sale or other disposition of the Leased Real Property or any part thereof.

3.15 Tangible Property. Except as set forth on *Schedule 3.15*, the facilities, machinery, equipment, furniture, buildings and other improvements, fixtures, vehicles, structures, any related capitalized items and other tangible property used and/or operated by Exl, Exl (India) or Conseco and used by Exl or Exl (India) and material to the business of Exl and Exl (India) (collectively, the "Tangible Property") are in all material respects in adequate operating condition, normal wear and tear excepted and subject to continued repair and replacement in accordance with past practice, and are suitable for their intended use in accordance with past practice. During the past three years, there has not been any material interruption of the operations of Exl and/or Exl (India) due to inadequate maintenance of the Tangible Property.

3.16 Intellectual Property.

(a) "Company Intellectual Property" shall mean all Intellectual Property (as defined below) owned by, licensed to, or otherwise used by Exl and Exl (India) in connection with the Company Business as presently conducted. "Intellectual Property" is hereinafter defined as all of the following as they exist in all jurisdictions throughout the world: (i) trademarks, service marks, trade dress, trade



names, brand names, designs, logos, or corporate names, whether registered or unregistered, and all registrations and applications for registration thereof (“Trademarks”); (ii) copyrights and mask works, including all renewals and extensions thereof, copyright registrations and applications for registration thereof, and non-registered copyrights (“Copyrights”); (iii) patents, patent applications and inventions, designs and improvements described and claimed therein, patentable inventions and any other patent rights (“Patents”); (iv) Trade Secrets and Confidential Information; (v) computer software programs, including, without limitation, all source code, object code, and documentation related thereto (“Software”); (vi) Internet addresses, domain names, web sites, web pages and similar rights and items; (vii) all licenses, sublicenses and other agreements or permissions including the right to receive royalties, or any other consideration related to the property described in (i)-(vi) (“IP Licenses”); and (viii) all rights to sue at law or in equity for any infringement or any other impairment of any of the property or rights described in (i) to (vii), including the right to collect damages and proceeds therefrom.

(b) *Schedule 3.16(b)* sets forth a list of all material registrations, filings and applications of the Intellectual Property owned by Exl and Exl (India) as well as all material IP Licenses under which either Exl or Exl (India) is a licensor or licensee or otherwise uses any Intellectual Property.

(c) (i) Exl and Exl (India) exclusively own or otherwise possess legally enforceable rights to use free and clear of any and all Liens or material restrictions, any and all Company Intellectual Property, including without limitation the Intellectual Property set forth on *Schedule 3.16(c)(i)* constituting Migration.

(ii) After the transactions contemplated by this Agreement, except as set forth in *Schedule 3.16(c)(ii)*, Exl and Exl (India) will continue to own all right, title and interest in and to or have a license to use all Company Intellectual Property on substantially identical terms and conditions as Exl and Exl (India) enjoyed immediately prior to such transactions.

(d) To the knowledge of Consecoco, Exl and Exl (India) have not infringed upon or otherwise violated the intellectual property rights of any third party, or received in writing any claim alleging any such infringement or other violation. Neither Consecoco, Exl nor Exl (India) have been, during the twenty-four months preceding the date hereof, a party to any claim, nor, to the knowledge of Consecoco, is any claim threatened or is there any basis for a claim, that challenges the validity, enforceability, ownership or right of Exl and Exl (India) to use, sell or license any Company Intellectual Property or any IP License. To the knowledge of Consecoco, no third party is infringing upon any Company Intellectual Property.

(e) Except as set forth on *Schedule 3.16(e)*, and to the knowledge of Consecoco, Consecoco, Exl and Exl (India) have taken commercially reasonable action to maintain and protect each item of Intellectual Property owned by Exl or Exl (India). Exl and Exl (India) have taken commercially reasonable precautions to

protect the secrecy, confidentiality, and value of their Trade Secrets and the proprietary nature and value of the Company Intellectual Property.

(f) Exl and Exl (India) have substantially performed all obligations imposed on them pursuant to the IP Licenses, have made all undisputed payments required to date, and are not, nor is another party thereto, in breach of or default thereunder in any material respect, nor, to the knowledge of Conseco, is there any event with which notice of lapse of time or both would constitute a material default thereunder. All of the material IP Licenses are in full force and effect, and, with respect to Exl and Exl (India), will continue to be on substantially identical terms immediately following the Closing. Except as set forth on *Schedule 3.16(f)*, the transactions contemplated by this Agreement will not result in the termination of, or otherwise require the consent of any party to, any material IP Licenses. ExlService Holdings and the Outside Investors acknowledge that Conseco is in the process of obtaining certain specific consents and the Outside Investors and ExlService Holdings shall not be entitled to any remedy against Conseco with respect to the failure by Conseco to obtain such consents, provided that, Conseco has made a good faith effort to obtain such consents. Conseco agrees to be responsible for any and all costs and fees (up to \$350,000) associated with obtaining such consents.

(g) Exl and Exl (India) do not use or collect any of the information they collect from their web site visitors or other parties ("Customer Information") in an unlawful manner, or in a manner that violates Exl and Exl (India)'s privacy policy or the privacy rights of their customers. This transaction will not violate Exl and Exl (India)'s privacy policy as it currently exists or as it existed at any time during which any of the Customer Information was collected or obtained.

3.17 Title to Properties. Exl and Exl (India) own outright and have good title to all of the properties owned by them, including all of the assets reflected on the Balance Sheet and the properties described in Sections 3.15 and 3.16 or, with regard to the properties described in Section 3.16, possesses legally enforceable rights to use such properties, in each case free and clear of any Lien, except for (a) Liens specifically described in the notes to the Financial Statements; (b) properties disposed of, or subject to purchase or sales orders, in the ordinary course of business since the Balance Sheet Date; (c) Liens securing Taxes, assessments, governmental charges or levies, or the claims of materialmen, carriers, landlords and like persons, all of which are not yet due and payable or are being contested in good faith, so long as such contest does not involve any substantial danger of the sale, forfeiture or loss of any assets; and (d) Liens set forth on *Schedule 3.17*.

3.18 Liabilities. As of the Balance Sheet Date and as of the date of this Agreement, neither Exl nor Exl (India) had any material direct or indirect indebtedness, liability Claim, loss, damage, deficiency, obligation or responsibility, known or unknown, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, accrued, absolute, contingent or otherwise, whether or not of a kind required by GAAP to be set forth on a financial statement or in the notes thereto ("Liabilities") that were not fully and adequately reflected or reserved against on the

Balance Sheet or described on any Schedule or in the notes to the Financial Statements. Except as set forth on *Schedule 3.18*, neither Exl nor Exl (India) has, except in the ordinary course of business, incurred any material Liabilities since the Balance Sheet Date. Neither Conseco, Exl nor Exl (India) has any knowledge of any circumstance, condition, event or arrangement that could reasonably be considered to hereafter give rise to any material Liabilities of Exl or Exl (India) except as disclosed in the Financial Statements or the notes thereto, or otherwise set forth on *Schedule 3.18*.

3.19 Cash. Exl and Exl (India) have no less than \$3,666,443.28 of cash which is not subject to any Liens

3.20 Customers.

(a) *Schedule 3.20(a)* accurately lists, by dollar volume paid for the 12 months ended on the Balance Sheet Date, the 10 largest customers of Exl and Exl (India), taken as a whole (the "Material Customers").

(b) Except as set forth on *Schedule 3.20(b)*, the relationships of Exl and Exl (India) with their customers are good commercial working relationships and, except as set forth on *Schedule 3.20(b)*, (i) within the last 12 months, no Material Customer has threatened to cancel or otherwise terminate or intends to cancel or otherwise terminate, its relationship with Exl and/or Exl (India), as the case may be, (ii) no Material Customer has during the last 12 months decreased materially or threatened to decrease or limit materially, or intends to modify materially its relationship with Exl and/or Exl (India), as the case may be, or intends to decrease or limit materially its services to Exl and/or Exl (India), as the case may be, or its usage or purchase of the services or products of Exl and/or Exl (India), as the case may be, (iii) the acquisition of the Shares by ExlService Holdings and the consummation of the Contemplated Transactions will not have a material adverse effect on the relationship of Exl and/or Exl (India), as the case may be, with any of its Material Customers, (iv) within the last 12 months, no customers have threatened to cancel or otherwise terminate, or intend to cancel or otherwise terminate, their relationships with Exl and/or Exl (India), as the case may be, the loss of which would have an adverse effect on the Condition of the Companies, (v) within the last 12 months, no customers have decreased or threatened to decrease or limit, or intend to modify their relationships with Exl and/or Exl (India), as the case may be, to the extent of having an adverse effect on the Condition of the Companies and (vi) the acquisition of the Shares by ExlService Holdings and the consummation of the Contemplated Transactions will not affect the relationships of Exl and/or Exl (India), as the case may be, with any customers to the extent of having an adverse effect on the Condition of the Companies. *Schedule 3.20(b)*, sets forth a list of: (i) all matters relating to material complaints filed with Exl and/or Exl (India) by their customers, and (ii) any other material customer complaints brought to the notice of senior officers of Exl and/or Exl (India).

### 3.21 Employee Benefit Plans.

(a) *Schedule 3.21(a)* lists all Benefit Plans. With respect to each such plan, Conseco heretofore has delivered, or has caused Exl and/or Exl (India) heretofore to have delivered, to the Outside Investors, or has made available to the Outside Investors or their representatives, true, correct and complete copies of (or, to the extent no such copies exist, accurate descriptions of), to the extent applicable (i) all plan texts and agreements and related trust agreements or annuity contracts; (ii) all summary plan descriptions and material employee communications; (iii) the most recent annual report (including all schedules thereto); (iv) the most recent actuarial valuation; (v) the most recent annual audited financial statement and opinion; (vi) if the plan is intended to qualify under Code section 401(a), the most recent determination letter received from the IRS; and (viii) all material communications with any Governmental Body (including the DOL, IRS and PBGC).

(b) *Schedule 3.21(b)* lists all “employee benefit plans” as defined in Section 3(2) of ERISA, which are subject to Title IV of ERISA or Section 412 of the Code which at any time during the six year period ending on the date hereof were maintained or contributed to by Conseco, Exl, Exl (India) or any Commonly Controlled Entity (“Pension Plans”).

(c) Except as disclosed in *Schedule 3.21(c)*:

(i) With respect to each Benefit Plan and Pension Plan, no event has occurred, and there exists no condition or set of circumstances in connection with which Exl or Exl (India) reasonably could, directly or indirectly (through a Commonly Controlled Entity or otherwise), be subject to any liability under ERISA, the Code or any other applicable Law, except liability for benefits claims and funding obligations payable in the ordinary course.

(ii) Each Benefit Plan conforms in all material respects to, and its administration is in compliance with, its terms and all applicable Laws. Each Benefit Plan intended to comply with section 401(a) of the Code is the subject of a favorable determination letter from the IRS as to the plan’s qualification and the qualification of the trust of each such plan under Section 501 of the Code and no events, circumstances or conditions exist which would jeopardize such plans’ and trusts’ qualified status.

(iii) Conseco, Exl, Exl (India) and each Commonly Controlled Entity have made all payments due from such respective entity to date with respect to each Benefit Plan and Pension Plan.

(iv) There is no “amount of unfunded benefit liabilities,” as defined in Section 4001(a)(18) of ERISA, in any of the Benefit Plans or Pension Plans. The “benefit liabilities,” as defined in Section 4001(a)(16) of ERISA, of each of the Benefit Plans and Pension Plans do

not exceed the fair market value of the assets of such Benefit Plan or Pension Plan, as applicable.

(v) There has been no “reportable event,” as that term is defined in Section 4043 of ERISA and the regulations thereunder, with respect to any Benefit Plan or Pension Plan which would require the giving of notice or any event requiring disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA.

(vi) There is no violation of ERISA with respect to the filing of applicable reports, documents and notices regarding the Benefit Plans and Pension Plans with the Secretary of Labor or the Secretary of the Treasury or the furnishing of such documents to the participants or beneficiaries of the Benefit Plans and Pension Plans.

(vii) All amendments and actions required to bring the Benefit Plans into conformity in all respects with all of the applicable provisions of ERISA and other applicable laws have been made or taken except to the extent that such amendments or actions are not required by law to be made or taken until a date after the Closing Date.

(viii) Any bonding required with respect to the Benefit Plans and Pension Plans in accordance with applicable provisions of ERISA has been obtained and is in full force and effect.

(ix) With respect to each Benefit Plan and Pension Plan, there are no funded benefit obligations for which contributions have not been made or properly accrued and there are no unfunded benefit obligations that have not been accounted for by reserves, or otherwise properly footnoted in accordance with GAAP, on the Financial Statements.

(x) No Benefit Plan or Pension Plan is a “multiemployer plan” as defined in Code Section 414(f) or ERISA sections 3(37) or 4001(a)(31). No Benefit Plan or Pension Plan is a multiple employer plan within the meaning of the Code section 413(c) or ERISA sections 4063, 4064 or 4066. No Welfare Plan is a “multiple employer welfare arrangement” as defined in ERISA section 3(40).

(xi) There are no Claims or Liens pending or, to the knowledge of Consecro, threatened (other than routine claims for benefits) with respect to any Benefit Plan or Pension Plan or against the assets of any Benefit Plan or Pension Plan.

(xii) Each Pension Plan that is not qualified under Code section 401(a) is exempt from Part 2, 3 and 4 of Title I of ERISA as an unfunded plan that is maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, pursuant to ERISA sections 201(2), 301(a)(3) and 401(a)(1).

(xiii) No assets of Exl or Exl (India) are allocated to or held in a “rabbi trust” or similar funding vehicle.

(xiv) Each Benefit Plan that is a “group health plan” (as defined in ERISA section 607(1) or Code section 5001(b)(1)) has been operated at all times in compliance with the provisions of COBRA and any applicable similar state Law.

(xv) There are no reserves, assets, surpluses or prepaid premiums with respect to any Welfare Plan.

(xvi) Exl and Exl (India) are not obligated to provide benefits under any Retiree Welfare Plan.

(xvii) The consummation of the Contemplated Transactions will not under any Benefit Plan or other Exl or Exl (India) agreement, policy or commitment (A) entitle any current or former Employee to severance pay, unemployment compensation or any similar payment; (B) accelerate the time of payment or vesting, or increase the amount of any compensation due to, or in respect of, any current or former Employee; (C) result in or satisfy a condition to the payment of compensation that would, in combination with any other payment, result in an “excess parachute payment” within the meaning of Code section 280G(b); or (D) constitute or involve a prohibited transaction (as defined in ERISA section 406 or Code section 4975), constitute or involve a breach of fiduciary responsibility within the meaning of ERISA section 502(l) or otherwise violate Part 4 of Subtitle B of Title I of ERISA.

(xviii) None of Conseco, Exl, Exl (India), any Commonly Controlled Entity, or any organization with respect to which Exl or Exl (India) is a successor or parent corporation, within the meaning of Section 4069(b) of ERISA, has engaged in any transaction described in Section 4069 of ERISA.

(xix) No liability under any Benefit Plan or Pension Plan has been funded or satisfied with the purchase of a contract from an insurance company that is not rated AA by Standard & Poor’s Corporation or the equivalent by each other nationally recognized rating agency.

(xx) Neither Conseco, Exl nor Exl (India) is a party to any contract, plan or commitment, whether legally binding or not, to create any additional Benefit Plan or to modify any existing Benefit Plan.

(xxi) No stock or other security issued by Conseco, Exl, Exl (India) or a Commonly Controlled Entity forms or has formed a material part of the assets of any Benefit Plan.

(xxii) As of the Closing Date, neither Exl nor Exl (India) has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act, as it may be amended from time to time, and within the 90-day period immediately following the Closing Date, will not incur any such liability or obligation if, during such 90-day period, only terminations of employment in the normal course of operations occur. There has been no “mass layoff” or “plant closing,” as each such term is defined by WARN, with respect to the employees of Exl or Exl (India), with respect to which there could be any future liability to such employees under WARN.

(xxiii) To the knowledge of Conseco, neither Exl nor Exl (India) have had or are reasonably expected to have any Liability, either direct or indirect, absolute or contingent, as a result of any misclassification of a person (A) as an independent contractor rather than as an Employee, or (B) or as an exempt or non-exempt employee.

(xxiv) With respect to each Benefit Plan maintained outside the jurisdiction of the United States, including any such plan required to be maintained or contributed to by applicable law, custom or rule of the relevant jurisdiction (“Foreign Plan”):

(1) all employer and employee contributions to each Foreign Plan required by law or by the terms of such Foreign Plan have been made, or, if applicable, accrued in accordance with normal accounting practices;

(2) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the Closing, with respect to all current or former participants in such plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Foreign Plan and no transaction contemplated by this Agreement shall cause such assets or insurance obligations to be less than such benefit obligations; and

(3) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

### 3.22 Employee Relations.

(a) *Schedule 3.22(a)* lists, as of the date hereof, the number of Employees in the aggregate, the number of full-time personnel and, as of April 13, 2002, the number of contract workers of Exl and Exl (India).

(b) Except as disclosed in *Schedule 3.22(b)*,

(i) None of the Employees is represented by a union, and neither Exl, Exl (India) nor any labor union or other organizing efforts to represent the Employees have been conducted within the last 5 years or are now being conducted.

(ii) To the knowledge of Conseco, neither Exl nor Exl (India) at any time had, nor is there now threatened, a strike, picket, work stoppage, work slowdown or other labor dispute. All persons employed by Exl and Exl (India) are properly classified by Exl and Exl (India) as an employee for payroll, Tax and accounting purposes.

(iii) Exl and Exl (India) have not violated any provision of any Law or Order of any Governmental Body regarding the terms and conditions of employment of Employees, former Employees or prospective Employees or other labor-related matters, including, without limitation, laws, rules, regulations, orders, rulings, decrees, judgments and awards relating to immigration, discrimination, fair labor standards and occupational health and safety, wrongful discharge or violation of the personal rights of Employees, former Employees or prospective Employees.

(c) Neither Exl nor Exl (India) is a party to nor have Exl and Exl (India) ever been party to any collective bargaining agreements, and none of Conseco, Exl and Exl (India) have any knowledge of any organizing activities currently occurring or being planned. There is no dispute, Claim or proceeding pending with, or threatened by, the Immigration and Naturalization Service with respect to Exl or any Employee.

3.23 **Insurance.** *Schedule 3.23* sets forth a list (specifying the insurer, describing each pending claim thereunder and at the Closing Date will set forth the aggregate amounts paid out under each such policy from January 1, 1999 through the dates set forth on *Schedule 3.23* and the aggregate limit, if any, of the insurer's liability thereunder) of all policies or binders of fire, liability, product liability, worker's compensation, vehicular and other insurance held by or on behalf of Exl or Exl (India). Such policies and binders are valid and binding in accordance with their terms, are in full force and effect, and insure against risks and liabilities with respect to events occurring at any time prior to the Closing Date to an extent and in a manner customary in the industries in which Exl or Exl (India) operate. Neither Exl nor Exl (India) is in default with respect to any provision contained in any such policy or binder or has failed to give any required notice or present any claim under any such policy or binder in due and timely fashion. Except for claims set forth at the Closing Date on *Schedule 3.23*, there are no outstanding unpaid claims that have been reported to either Exl or Exl (India) under any such policy or binder, and the Company has not received any notice of cancellation or non-renewal of any such policy or binder. Except as set forth on *Schedule 3.23*, neither Exl nor Exl (India) has received any notice from any of its insurance carriers or any Governmental Body that any insurance premiums will or may



be materially increased in the future or that any insurance coverage listed on *Schedule 3.23* will or may not be available in the future on substantially the same terms as now in effect, and there is no basis for the issuance of any such notice or for any such action. A copy of the loss runs prepared by Exl's and Exl (India)'s insurance carriers for the last two years has been delivered to the Buyer.

3.24 Officers, Directors and Employees. *Schedule 3.24* sets forth (a) the name, title and total compensation of each officer and director of Exl and Exl (India); (b) the name, title and total compensation of each other Employee, consultant, agent or other representative of Exl and Exl (India), provided, however, in the case of Employees, consultants, agents or other representatives of Exl (India), such information shall only be required for individuals who are expected to receive a total compensation of \$35,000 or more for 2001 and for the nine months ended September 30, 2002; (c) all wage and salary increases, bonuses and increases in any other direct or indirect compensation received by such persons since the Balance Sheet Date, which are not in accordance with written personnel or compensation policies, copies of which are attached as exhibits to *Schedule 3.24*; (d) any payments or commitments to pay any severance or termination pay to any current or former officer, director or employee of Exl and Exl (India); and (e) any accrual for, or any commitment or agreement by Exl and Exl (India) to pay, such increases, bonuses or pay. Except as set forth on *Schedule 3.24*, Exl and Exl (India) have not received any notice from any such person whether orally or in writing that he or she will cancel or otherwise terminate such person's relationship with Exl and/or Exl (India), as the case may be.

3.25 Operations of Exl and Exl (India). Except as set forth on *Schedule 3.25*, since the Balance Sheet Date neither Exl nor Exl (India) has:

- (a) declared or paid any dividends or declared or made any other distributions of any kind to any stockholders of Exl or Exl (India), or made any direct or indirect redemption, retirement, purchase or other acquisition of any shares of its capital stock;
- (b) except for short-term bank borrowings in the ordinary course of business, incurred any indebtedness for borrowed money;
- (c) reduced their cash or short-term investments or their equivalent, other than to meet cash needs arising in the ordinary course of business, consistent with past practices;
- (d) waived any material right under any Contract or other agreement of the type required to be set forth on any Schedule attached hereto;
- (e) made any change in its accounting methods or practices or made any change in depreciation or amortization policies or rates adopted by it;

(f) materially changed any of its business policies, including advertising, investment, marketing, pricing, purchasing, production, personnel, sales, returns, budget or product acquisition policies;

(g) made any loan or advance to any shareholders of Exl or Exl (India), or, other than in the ordinary course of business, officers, directors, Employees, consultants, agents or other representatives, or made any other loan or advance;

(h) except for inventory or equipment in the ordinary course of business, sold, abandoned or made any other disposition of any of its properties or assets or made any acquisition of all or any part of the properties, assets, capital stock or business of any other person;

(i) paid, directly or indirectly, any of its material Liabilities before the same became due in accordance with its terms or otherwise than in the ordinary course of business;

(j) terminated or failed to renew, or received any written threat (that was not subsequently withdrawn) to terminate or fail to renew, any Contract or other agreement that is or was material to the Condition of the Companies;

(k) amended its certificate of incorporation (except as contemplated by this Agreement), by-laws or memorandum and articles of association (or comparable instruments) or merged with or into or consolidated with any other person, subdivided or in any way reclassified any shares of its capital stock or changed or agreed to change in any manner the rights of its outstanding or issued and paid up capital stock or the character of its business;

(l) acquired, sold, leased, licensed, transferred, pledged, encumbered, granted or disposed of (whether by merger, consolidation, purchase, sale or otherwise) any assets, including any Intellectual Property (other than the acquisition and sale of inventory or the disposition of used or excess equipment and the purchase of raw materials, supplies and equipment, in either case in the ordinary course of business consistent with past practice), or entered into any material commitment or transaction outside the ordinary course of business; or

(m) engaged in any other material transaction other than in the ordinary course of business or in any activity or transaction which has had a material adverse effect on the Condition of the Companies.

3.26 Potential Conflicts of Interest. Except as set forth on *Schedule 3.26*, (a) none of Conseco, Exl or Exl (India), (b) no officer, director or affiliate of Conseco, Exl or Exl (India), (c) no relative or spouse (or relative of such spouse) of any such officer, director or affiliate and (d) no entity controlled by one or more of the foregoing:

(a) own(s), directly or indirectly, any interest in, or is an officer, director, employee or consultant of, any person which is, or is engaged in business as, a competitor, lessor, lessee, supplier, distributor, sales agent or customer of Exl or Exl (India);

(b) own(s), directly or indirectly, in whole or in part, or use(s) any property that Exl or Exl (India) uses in the conduct of the Company Business other than the telecommunications equipment owned by Conseco (such equipment shall be listed on *Schedule 3.26(b)*); or

(c) has/have any Claim whatsoever against, or owes any amount to or is owed any amount by, Exl or Exl (India), other than Claims which are being satisfied or released prior to or concurrently with the Contemplated Transactions.

3.27 Revenue Advances. As of the date of this Agreement, Conseco is not entitled to collect any amounts from Exl and/or Exl (India) in connection with any "advance revenue payment" or any other forms of Indebtedness entered into between Conseco, Exl and/or Exl (India) other than the "advance revenue payments" evidenced by the contracts or wire transfer records attached hereto as an exhibit to *Schedule 3.27*. As of the Closing Date, immediately after giving effect to the Contemplated Transactions, Conseco will not be entitled to collect any amounts in connection with any advance revenue payments or other forms of Indebtedness entered into between Conseco, Exl and/or Exl (India) and any obligations for Exl and/or Exl (India) to pay money to Conseco, or any of its affiliates, shall be canceled without any additional payments.

3.28 Conseco Customer Payments. As of the date of this Agreement, none of Conseco and its affiliates (other than Exl and Exl (India)) owes Exl or Exl (India) any amounts other than amounts outstanding, which are not past due, pursuant to customer invoices from Exl to Conseco and/or its affiliates.

3.29 Full Disclosure. No representation or warranty of Conseco contained in this Agreement, and no other agreement or certificate furnished at the Closing by or on behalf of Conseco to the Outside Investors and ExlService Holdings pursuant to this Agreement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made, in the context in which made, not materially false or misleading.

3.30 Report. Conseco has received a report from Lazard Frères concerning the Contemplated Transactions; a copy of such report is attached hereto as an Exhibit to *Schedule 3.30* (and there has been no amendment, modification or supplement to such report).

3.31 Legal Opinion. All facts that have been assumed in the legal opinion, provided by Conseco's counsel, are true and accurate.

3.32 Wind-Down Costs. Consecoco has disclosed to the Outside Investors all material information relevant to Consecoco's analysis of (a) the costs of winding down the businesses of Exl and Exl (India) and (b) potential liabilities which may be incurred in connection with the winding down of the businesses of Exl and Exl (India), including, but not limited to, all material documentation prepared in connection with such analysis.

4. Representations and Warranties of ExlService Holdings. ExlService Holdings represents and warrants to Consecoco as follows:

4.1 Due Incorporation and Authority. ExlService Holdings is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being and as heretofore conducted.

4.2 Authority to Execute and Perform Agreement. ExlService Holdings has the full legal right and power and all authority and approvals required to enter into, execute and deliver this Agreement and each and every agreement and instrument contemplated hereby to which ExlService Holdings is or will be a party and to perform fully its obligations hereunder and thereunder. This Agreement has been duly executed and delivered by ExlService Holdings, and on the Closing Date, each and every agreement and instrument contemplated hereby to which ExlService Holdings is a party will be duly executed and delivered by ExlService Holdings and (assuming due execution and delivery hereof and thereof by the other parties hereto and thereto) this Agreement and each such other agreement and instrument will be valid and binding obligations of ExlService Holdings enforceable against ExlService Holdings in accordance with their respective terms. The execution and delivery by ExlService Holdings of this Agreement and each and every other agreement and instrument contemplated hereby to which ExlService Holdings is a party, the consummation of the transactions contemplated hereby and thereby and the performance by ExlService Holdings of this Agreement and each such other agreement and instrument in accordance with their respective terms and conditions will not (a) violate any provision of the certificate of incorporation, by-laws or comparable instruments of ExlService Holdings; (b) require ExlService Holdings to obtain any consent, approval, authorization or action of, or make any filing with or give any notice to, any Governmental Body or any other person; (c) violate, conflict with or result in the breach of any of the terms and conditions of, result in a material modification of the effect of, otherwise cause the termination of or give any other contracting party the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under, any Contract to which ExlService Holdings is a party or by or to which ExlService Holdings or any of their properties is or may be bound or subject; or (d) violate any Law or Order of any Governmental Body applicable to ExlService Holdings.

## 5. Covenants and Agreements.

5.1 Publicity. The parties agree that no publicity release or announcement concerning this Agreement or the Contemplated Transactions shall be made without advance approval thereof by Conseco and ExlService Holdings, which approval shall not be unreasonably withheld or delayed. Nothing contained herein shall be construed to prohibit the Outside Investors, after the Closing, from making any publicity release or announcement concerning this Agreement or the Contemplated Transactions.

5.2 Expenses. After the Closing, Exl shall reimburse Oak Hill and FT Ventures for up to \$2 million of their appropriately documented out-of-pocket and third party expenses incurred in connection with the preparation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel and accountants. Except as provided in the immediately preceding sentence, neither Exl nor Conseco shall have any obligation to reimburse any party to this Agreement, or any other person, for any fees or expenses incurred in connection with this Agreement or the Contemplated Transactions. Except as specifically provided herein, each of the Outside Investors, ExlService Holdings and Conseco shall each bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel and accountants.

5.3 Indemnification of Brokerage. Conseco represents and warrants to ExlService Holdings and the Outside Investors that no broker, finder, agent or similar intermediary (a "Broker") has acted on behalf of Exl, Exl (India) and/or Conseco in connection with this Agreement or the Contemplated Transactions, and that there are no brokerage commissions, finder's fees or similar fees or commissions payable in connection therewith based on any agreement, arrangement or understanding with Exl, Exl (India) and/or Conseco, or any action taken by Exl, Exl (India) and/or Conseco. Conseco agrees to indemnify and hold harmless ExlService Holdings and the Outside Investors from any Claim or demand for commission or other compensation by any Broker claiming to have been employed by or on behalf of Exl, Exl (India) and/or Conseco, and to bear the cost of legal expenses incurred in defending against any such claim. ExlService Holdings and the Outside Investors represent and warrant to Conseco that no Broker has acted on behalf of any of ExlService Holdings and the Outside Investors in connection with this Agreement or the Contemplated Transactions, and that there are no brokerage commissions, finders' fees or similar fees or commissions payable in connection therewith based on any agreement, arrangement or understanding with any of ExlService Holdings and the Outside Investors, or any action taken by any of ExlService Holdings and the Outside Investors. ExlService Holdings and the Outside Investors agree to indemnify and hold harmless Conseco from any Claim or demand for commission or other compensation by any Broker claiming to have been employed by or on behalf of ExlService Holdings and/or the Outside Investors, and to bear the cost of legal expenses incurred in defending against any such claim.

5.4 Related Parties. Conseco shall, prior to the Closing, pay or cause to be paid to Exl or Exl (India), as the case may be, all amounts owed to Exl or Exl (India) by Conseco or any affiliate of Conseco other than Exl and Exl (India). At and as of the Closing, any debts of Exl or Exl (India) owed to Conseco or to any affiliate of Conseco other than Exl and Exl (India) shall be canceled, except for any debts or obligations arising under this Agreement or the Contemplated Transactions. Conseco shall, prior to the Closing, terminate all agreements between Conseco and its affiliates and either or both of Exl and Exl (India), except for such agreements as shall be necessary to document the Contemplated Transactions.

5.5 Required Consents. Conseco shall, prior to or following the Closing, use its commercially reasonable efforts to obtain, at its sole expense, all Required Consents.

5.6 Tax Return Filing.

(a) Conseco shall prepare or cause Exl and Exl (India) to prepare, in the ordinary course of business and in a manner consistent with past practices, and timely file (including extensions to file) all Tax Returns required to be filed by Exl and Exl (India), the due date of which (without extensions) occurs on or before the Closing Date and pay (i) all Taxes due with respect to any such Tax Returns, and (ii) all other Taxes due or claimed to be due from or with respect to Exl or Exl (India) on or before the Closing Date.

(b) Conseco will prepare and file, in a timely manner, any Tax Returns due to be filed by Exl or Exl (India) after the Closing Date but relating solely to periods of time prior to the Closing Date, which returns shall be prepared (i) in the ordinary course of business, (ii) on a basis consistent with past practices, and (iii) in a manner so that none of Oak Hill, Exl or Exl (India) will be subject to a material adverse effect for periods of time (or portions thereof) beginning after the Closing Date. Conseco will provide Oak Hill with copies of such Tax Returns after they are filed.

(c) ExlService Holdings shall prepare and file or cause Exl or Exl (India), as the case may be, to prepare and file all Tax Returns of Exl and Exl (India) required to be filed with any taxing authority for any Tax period that begins before and ends after the Closing Date (a "Straddle Period"), which returns shall be prepared in the ordinary course of business and on a basis consistent with past practices with the understanding that such Tax Returns will be subject to the written consent of Conseco prior to filing, which consent shall not be unreasonably withheld. The parties agree that it shall be reasonable for Conseco to withhold such consent with respect to any return that complies with this paragraph if (i) such Tax Return is inconsistent with the requirements of law or (ii) any position taken on such Tax Return could have an adverse effect on Exl, Exl (India) or Conseco for periods ending prior to the Closing Date. Conseco shall be liable for all Pre-Closing Taxes, and Exl, Exl (India) and Exl Holdings shall be liable for all Post-Closing Taxes, with respect to any Tax Return filed for a Straddle Period. ExlService Holdings shall notify Conseco of the amount of Taxes with respect to a Straddle Period for which Conseco is liable under this Section 5.6. Conseco

shall pay the amount of such Taxes to ExlService Holdings in immediately available funds at least 5 business days prior to the date such Taxes are required to be paid. For purposes of this Agreement, in the case of any Taxes of Exl or Exl (India) that are payable with respect to any Straddle Period, the portion of any such Taxes that constitutes Pre-Closing Taxes shall: (i) in the case of Taxes that are either (x) based upon or related to income or receipts, or (y) imposed in connection with any sale, transfer or assignment or any deemed sale, transfer or assignment of property (real or personal, tangible or intangible) be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date; and (ii) in the case of Taxes (other than those described in clause (i) above) that are imposed on a periodic basis with respect to the business or assets of Exl or Exl (India) or otherwise measured by the level of any item, be deemed to be the amount of such Taxes for the entire Straddle Period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding Tax period) multiplied by a fraction the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period. For purposes of clause (i) of the preceding sentence, any exemption, deduction, credit or other item that is calculated on an annual basis shall be allocated to the portion of the Straddle Period ending on the Closing Date on a pro rata basis determined by multiplying the total amount of such item allocated to the Straddle Period times a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period. For purposes of this Agreement, Post-Closing Taxes shall mean any Taxes due with respect to a Straddle Period that are not Pre-Closing Taxes. In the case of any Tax based upon or measured by capital (including net worth or long-term debt) or intangibles, any amount thereof required to be allocated under this Section 5.6 shall be computed by reference to the level of such items on the Closing Date.

5.7 Tax Audits and Other Proceedings. Oak Hill, FT Ventures, ExlService Holdings, Exl, Exl (India) and Consecoco shall cooperate fully, as and to the extent reasonably requested by any other party, in connection with any Tax audit, litigation or other Tax proceedings relating to the business of Exl or Exl (India). Such cooperation shall include the retention and, upon any other party's request, the provision of records and information reasonably relevant to any such audit, litigation or proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any records and information provided hereunder. Oak Hill, FT Ventures, Exl, Exl (India) and Consecoco further agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to Exl and Exl (India) as is reasonably necessary to the preparation and filing of any Tax Return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer to any inquiry relating to Tax matters by any Governmental Body.

5.8 Revenue Advances. At or prior to the Closing, Conseco shall cancel any and all rights Conseco and any of its affiliates (other than Exl) have to collect any amounts due on any "advance revenue payments" provided by Conseco to Exl, including, but not limited to, the "advance revenue payments" evidenced by contracts or wire transfer records attached hereto as an Exhibit to *Schedule 3.27*.

5.9 Post-Closing Investment. After the Closing, but in no event later than 30 days after the Closing, the Outside Investors will invest at least \$10 million in cash (the "Funds") in ExlService Holdings. Upon receipt of the Funds from the Outside Investors, and through April 30, 2003, ExlService Holdings shall make available to Exl (India) a credit facility (the "Credit Facility"), between Exl (India) and ExlService Holdings, for \$10,000,000, to be drawn from time to time in the ordinary course of business. The Board of Directors of ExlService Holdings shall make a determination in its sole discretion of the amount of funds available after April 30, 2003, to Exl (India) under the Credit Facility. Within 30 days of the Closing, as the Funds are being invested, the Outside Investors will deliver a certificate to Conseco which shall certify that such Funds have been invested.

5.10 Conseco Customer Payments. Prior to the Closing Date, Conseco shall make all payments due on customer invoices from Exl to Conseco such that at the Closing there are no customer payments for which Conseco and its affiliates are past due.

5.11 Management Incentive Plan. Prior to the Closing, Conseco shall assume all liabilities of Exl and/or Exl (India) in connection with the Management Incentive Plan.

5.12 Trademark Assignment. Immediately prior to Closing, Conseco shall execute and deliver to Oak Hill the Trademark Assignment attached hereto as Exhibit 1, (the "Trademark Assignment"), for purposes of assigning all of Conseco's right, title and interest in the trademarks and goodwill referenced therein to ExlService Holdings and for purposes of recording the Trademark Assignment in the U.S. Patent and Trademark Office. Conseco shall execute any other documents as may be reasonably required to carry out the purposes of the Trademark Assignment.

5.13 License Agreements.

(a) Contemporaneously with the execution of this Agreement, Conseco shall cause Conseco Services, LLC, and ExlService Holdings shall cause Exl, to execute that certain license agreement attached hereto as Exhibit 2 (the "Conseco Services License Agreement").

(b) Contemporaneously with the execution of this Agreement, Conseco shall cause Conseco Services, LLC, and ExlService Holdings shall cause Exl, to execute that certain license agreement attached hereto as Exhibit 3 (the "Exl License Agreement").



(c) Contemporaneously with the execution of this Agreement, Conseco shall execute or shall cause one of its Affiliates, and ExlService Holdings shall cause Exl, to execute that certain license agreement attached hereto as Exhibit 4 (the "Conseco Trademark License Agreement").

(d) If within twelve (12) months following the Closing, ExlService Holdings identifies any Intellectual Property that is owned by Conseco or any Affiliate of Conseco that, prior to the Closing, is used solely by Exl and/or Exl (India) in connection with the Company Business, ExlService Holdings shall notify Conseco of the same, and promptly thereafter, provided that such Intellectual Property is owned by Conseco or any Affiliate of Conseco, Conseco shall execute, or cause its Affiliates to execute for no additional consideration, an assignment in favor of Exl of all right, title and interest in and to such Intellectual Property on an "AS-IS, WHERE-IS" basis. Immediately following such assignment, Exl shall enter into a license agreement with Conseco Services, LLC, on substantially the same terms as those contained in the Exl License Agreement, pursuant to which Conseco Services, LLC shall be permitted to use the same for all purposes other than the Company Business or in competition with the Company Business during the Restricted Period.

5.14 Acknowledgement. Conseco hereby acknowledges that upon Closing, as between Exl and Exl (India) on the one hand and Conseco and its affiliates on the other hand, Exl and Exl (India) shall own all right, title and interest to all Company Intellectual Property constituting Migration, and Conseco shall take such further actions as reasonably required to ensure that Exl and Exl (India) own all such right, title and interest to such Company Intellectual Property.

5.15 Further Assurances. Each of the parties shall execute such documents and take such further actions as may be reasonably required to carry out the provisions hereof and the Contemplated Transactions.

## 6. Non-Competition.

6.1 Covenants Against Competition. Conseco acknowledges that (i) Exl and Exl (India) are engaged in the business of outsourcing in India of call center, customer service, back office and similar business processes (excluding computer programming and computer services) for businesses located outside India (the "Company Business"); (ii) Conseco's relationship with Exl and Exl (India) has provided it, and will continue to provide it with access to and possession of Trade Secrets of Exl and Exl (India) and Confidential Information; (iii) the agreements and covenants contained in this Article 6 are essential to protect the Company Business and goodwill of Exl and Exl (India); and (iv) the Oak Hill Entities would not purchase such shares of capital stock but for such agreements and covenants. Accordingly, Conseco covenants and agrees as follows:

### (a) Non-Compete.

(i) For a period of 3 years following the Closing (the "Restricted Period"), neither Conseco nor any of its subsidiaries or current affiliates shall, directly or indirectly, through any means, now known or hereinafter developed, (including through the so-called World-Wide-Web, Internet or any so-called "on-line" service or other electronic media) directly or indirectly, (x) engage in the Company Business for its own account anywhere in the Restricted Territory (as defined below); (y) except as agreed to in writing by ExlService Holdings, engage in any of the following with a person engaged in the Company Business anywhere in the Restricted Territory with respect to the Restricted Territory: (1) render any services to such person, (2) enter into any licensing agreements with respect to the Licensed Materials (as defined in the Conseco Services License Agreement) licensed pursuant to the Conseco Services License Agreement with such person, (3) assign the Conseco Services License Agreement to such person, (4) enter into any licensing agreements with respect to the Logo (as defined in the Conseco Trademark License Agreement) licensed pursuant to the Conseco Trademark License Agreement with such person, or (5) assign the Conseco Trademark License Agreement to such person; or (z) become interested in any such person in any capacity, including as a partner, shareholder, principal, agent, trustee or consultant anywhere in the Restricted Territory; provided, however, Conseco and its subsidiaries and current affiliates may own, directly or indirectly, solely as an investment, securities of any person traded on any national securities exchange or listed on a national quotation system if neither Conseco nor any of its subsidiaries or current affiliates is a controlling person of, or a member of a group which controls, such person and does not, directly or indirectly, own 1% or more of any class of securities of such person. For all purposes hereof, the term "Restricted Territory" shall mean each and every province, state, city or other political subdivision of the Republic of India.

(ii) As used herein, "Internet" shall mean the computer-generated, computer-mediated, or computer-assisted transmission, reception, recordation or display arising from any network or other connection of instruments or devices now known or hereafter invented capable of transmission, reception, recordation and/or display (such instruments or devices to include, without limitation, computers, laptops, cellular or PCS telephones, pagers, PDAs, wireless transmitters or receivers, modems, radios, televisions, satellite receivers, cable networks, smart cards, and set-top boxes).

(b) Confidential Information; Personal Relationships. Conseco promises and agrees that, either during the Restricted Period Conseco will not (x) disclose to any person who is not an Employee or (y) use for the benefit of Conseco or others, any Confidential Information or Trade Secrets of Exl or Exl (India) and other subsidiaries other than pursuant to the terms of the TSA's (as defined below); provided, however, that this provision shall not preclude Conseco from using or disclosing Confidential Information or Trade Secrets if (i) use or disclosure of such information shall be required by applicable Law or Order of any Governmental Body or (ii) such

information is readily ascertainable, now or hereafter, from public or published information or trade sources or otherwise known generally to the public (other than information known generally to the public as a result of a violation of this Section 6.1 by Conseco).

(c) Property of Exl and Exl (India). All memoranda, notes, lists, records and other documents (and all copies thereof), including such items stored in computer memories, on microfiche or by any other means, made or compiled by or on behalf of Exl and relating to the Company Business are and shall be the property of Exl and Exl (India) and Conseco with respect to such materials that relate to Conseco's business, and shall be delivered to Exl and Exl (India) promptly after the Closing or at any other time on request.

(d) Employees of Exl and Exl (India). Except as agreed to in writing by Oak Hill, Conseco, Exl and Exl (India), during the Restricted Period, Conseco shall not, directly or indirectly, solicit for hire any Employee or encourage any such Employee to leave such employment (with the exception of general solicitations not specifically directed at Exl, Exl (India) or their affiliates).

6.2 Rights and Remedies Upon Breach. If Conseco breaches, or threatens to commit a breach of, any of the provisions of Section 6.1 (the "Restrictive Covenants"), ExlService Holdings, the Outside Investors, Exl and Exl (India) shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to ExlService Holdings, the Outside Investors, Exl and Exl (India) under Law or in equity:

(a) Specific Performance. The right and remedy to have the Restrictive Covenants specifically enforced by any court of competent jurisdiction, it being agreed that any breach or threatened breach of the Restrictive Covenants would cause irreparable injury to ExlService Holdings, the Outside Investors, Exl and Exl (India) and that money damages would not provide an adequate remedy to ExlService Holdings, the Outside Investors, Exl and Exl (India); and

(b) Accounting. The right and remedy to require Conseco, in the event of Conseco's breach of the provisions of this Section 6, to account for and pay over to ExlService Holdings, the Outside Investors, Exl and Exl (India), all compensation, profits, monies, accruals, increments or other benefits derived or received by Conseco as the result of any transactions by Conseco constituting a breach of the Restrictive Covenants.

6.3 Severability of Covenants. Conseco acknowledges and agrees that the Restrictive Covenants are reasonable and valid in geographical and temporal scope and in all other respects. If any court determines that any of the Restrictive Covenants, or any part thereof, is invalid or unenforceable as to Conseco, the remainder of the Restrictive Covenants shall not thereby be affected and shall be given full effect without regard to the invalid portions.

6.4 Blue-Penciling. If any court determines that any of the Restrictive Covenants, or any part thereof, is unenforceable as to Conseco because of the duration or geographic scope of such provision, such court shall have the power to reduce the duration or scope of such provision, as the case may be, and, in its reduced form, such provision shall then be enforceable.

6.5 Enforceability in Jurisdictions. ExlService Holdings, the Outside Investors and Conseco intend to and hereby confer jurisdiction to enforce the Restrictive Covenants upon the courts of any jurisdiction within the geographical scope of the Restrictive Covenants. If the courts of any one or more of such jurisdictions hold the Restrictive Covenants unenforceable by reason of the breadth of such scope or otherwise, it is the intention of ExlService Holdings, the Outside Investors and Conseco that such determination not bar or in any way affect any of ExlService Holdings', the Outside Investors' or Conseco's right to the relief provided above in the courts of any other jurisdiction within the geographical scope of the Restrictive Covenants, as to breaches of the Restrictive Covenants in such other respective jurisdictions, the Restrictive Covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent covenants.

6.6 Early Termination. Notwithstanding the provisions of this Section 6, if, within 6 months of the date hereof, Exl and Exl (India) shall willfully and deliberately breach (the "Breach") a material term of a substantial nature of the Transition Services Agreement, dated as of the date hereof, by and among Conseco, Conseco Services, LLC, Exl and Exl (India) or the Transition Services Agreement, dated as of the date hereof, by and among Conseco, Conseco Finance Corp., Exl and Exl (India) (collectively, the "TSA's"), and such Breach shall continue for a period of thirty (30) days after written notice of such Breach has been provided by Conseco to Exl and Exl (India) (the "Notice Date"), then the Restricted Period shall end on the Notice Date.

7. Survival of Representations and Warranties of Conseco After Closing. Notwithstanding any right of ExlService Holdings or the Outside Investors to investigate fully the affairs of Exl and Exl (India) and notwithstanding any knowledge of facts determined or determinable by ExlService Holdings and/or the Outside Investors pursuant to such investigation or right of investigation, ExlService and the Outside Investors have the right to rely fully upon the representations, warranties, covenants and agreements of Conseco contained in this Agreement or in any other agreements or certificates delivered at the Closing pursuant to this Agreement. All such representations, warranties, covenants and agreements shall survive the execution and delivery of this Agreement and the Closing hereunder to the extent provided in the following sentence. Except for those representations and warranties in Sections 3.1 (Due Incorporation and Authority), 3.2 (Subsidiaries and Other Affiliates), 3.4 (Outstanding Capital Stock; Title) and 3.5 (Options or Other Rights) (all of which representations and warranties shall survive without limitation), all representations and warranties of Conseco contained in this Agreement shall terminate and expire immediately after the Closing Date, with respect to any General Claim based upon, arising out of or otherwise in respect of any fact, circumstance or Claim (other than facts, circumstances or Claims for which Conseco

had actual knowledge, or which arise as a result of fraud by Conseco) of which ExlService Holdings and/or the Outside Investors prior to that date shall not have given written notice to Conseco as provided in Section 8.3 below.

## 8. General Indemnification.

### 8.1 Obligation of Conseco to Indemnify.

(a) Conseco acknowledges: (i) the Outside Investors will need to invest additional capital in order to maintain the viability of Exl and Exl (India); (ii) the continued existence of Exl and Exl (India) will be of benefit to Conseco and its affiliates; and (iii) the Outside Investors are entering into this Agreement in reliance on Conseco's representations and warranties contained herein.

(b) Subject to the limitations contained in Article 7 and Section 8.4, Conseco agrees to indemnify, defend and hold harmless the Outside Investors and ExlService Holdings (and their partners, directors, officers, employees, affiliates, successors and assigns) from and against all Claims, losses, liabilities, damages, deficiencies, judgments, assessments, fines, settlements, costs or expenses (including interest, penalties and fees, reasonable expenses and disbursements of attorneys, experts, personnel and consultants incurred by the indemnified party in any action or proceeding between the Indemnifying Party and the indemnified party or between the indemnified party and any third party, or otherwise) ("Losses") based upon, arising out of or otherwise in respect of any inaccuracy in or any breach of any representation, warranty, covenant or agreement of Conseco contained in this Agreement or in any other agreements or certificates delivered at the Closing by Conseco pursuant to this Agreement.

8.2 Tax Treatment. It is the intention of the parties hereto that any payment under this Section 8 shall be treated as an adjustment to the Purchase Price for federal, state, local and foreign income tax purposes and the parties agree to file their Tax Returns accordingly. In the event that any such payment is not so treated, the amount of such payment shall be increased so that, after payments of all Taxes due thereon, the amount retained by the Indemnitee is equal to the amount such party would have retained if no such Taxes had been due.

### 8.3 Notice and Opportunity to Defend.

(a) Notice of Asserted Liability. The party making a claim under this Article 8 is referred to as the "Indemnitee," and the party against whom such claims are asserted under this Article 8 is referred to as the "Indemnifying Party." All claims by any Indemnitee under this Article 8 shall be asserted and resolved as follows: promptly after receipt by the Indemnitee of notice of any Claim or circumstances which, with the lapse of time, would or might give rise to a Claim or the commencement (or threatened commencement) of a Claim including any action, proceeding or investigation (an "Asserted Liability") that may result in a Loss, the Indemnitee shall give notice thereof (the "Claims Notice") to the Indemnifying Party.

The Claims Notice shall describe the Asserted Liability in reasonable detail, and shall indicate the amount (estimated, if necessary and to the extent feasible) of the Loss that has been or may be suffered by the Indemnitee. The omission of any Indemnitee to so notify the Indemnifying Party of any such Claims Notice shall not relieve the Indemnifying Party from any liability which it may have to such Indemnitee unless, and only to the extent that, such omission results in the Indemnifying Party's forfeiture of substantive rights or defenses or otherwise materially prejudices the Indemnifying Party's defense of the Claim.

(b) Opportunity to Defend.

(i) The Indemnifying Party may elect to compromise or defend, at such party's own expense and by such party's own counsel, any Asserted Liability, except any Asserted Liability by any customer of Exl or Exl (India) with respect to the business conducted by Exl or Exl (India) prior to the Closing, which shall be subject to Section 8.3(b)(ii). If the Indemnifying Party elects to compromise or defend such Asserted Liability, it shall within 30 days (or sooner, if the nature of the Asserted Liability so requires) notify the Indemnitee of such party's intent to do so, and the Indemnitee shall cooperate, at the expense of the Indemnifying Party, in the compromise of, or defense against, such Asserted Liability. If the Indemnifying Party elects to compromise or defend such Asserted Liability the Indemnitee may participate in such compromise or defense at its sole expense. If the Indemnifying Party elects not to compromise or defend the Asserted Liability, fails to notify the Indemnitee of such party's election as herein provided or contests such party's obligation to indemnify under this Agreement, the Indemnitee may pay, compromise or defend such Asserted Liability (at the Indemnifying Party's sole expense). Notwithstanding the foregoing, neither the Indemnifying Party nor the Indemnitee may settle or compromise any Asserted Liability over the objection of the other; provided, however, consent to settlement or compromise shall not be unreasonably withheld. If the Indemnifying Party chooses to defend any Asserted Liability, the Indemnitee shall make available to the Indemnifying Party any books, records or other documents within such party's control that are necessary or appropriate for such defense.

(ii) In the case of any Asserted Liability by any customer of Exl or Exl (India) with respect to the business conducted by Exl or Exl (India) prior to the Closing, in connection with which ExlService Holdings and/or the Outside Investors, as the case may be, may make a claim against Consecro for indemnification pursuant to Section 8.1, ExlService Holdings and/or the Outside Investors, as the case may be, shall have the exclusive right at its option to defend any such Asserted Liability, subject to the duty of ExlService Holdings and/or the Outside Investors, as the case may be, to consult with the Indemnifying Party and such party's attorneys in connection with such defense and provided that no such Asserted Liability shall be compromised or settled by ExlService Holdings and/or the Outside Investors, as the case may be, without the prior consent of the Indemnifying Party, which consent shall not be

unreasonably withheld. The Indemnifying Party shall have the right to recommend in good faith to ExlService Holdings and/or the Outside Investors, as the case may be, proposals to compromise or settle Asserted Liabilities brought by a supplier or customer, and ExlService Holdings and/or the Outside Investors, as the case may be, agree to present such proposed compromises or settlements to such supplier or customer. All amounts required to be paid in connection with any such Asserted Liability pursuant to the determination of any Governmental Body, and all amounts required to be paid in connection with any such compromise or settlement consented to by the Indemnifying Party, shall be borne and paid by the Indemnifying Party. The parties agree to cooperate fully with one another in the defense, compromise or settlement of any such Asserted Liability.

8.4 Scope of Indemnification. The indemnification provided for in Section 8.1 shall be subject to the following limitations:

(a) Notwithstanding anything to the contrary stated herein, in no event shall Consecoco be obligated to pay for indemnification under Section 8.1 an aggregate amount in excess of \$10,000,000.

(b) Notwithstanding anything to the contrary stated herein, the limitation of Consecoco's liability under this Agreement set out above at Sections 8.4(a) shall not limit the obligation of Consecoco to make payments for indemnification under this Article 8 if the Losses giving rise to claims for indemnification (A) arise from any representations and warranties which are incorrect or in breach due to fraud by Consecoco, (B) arise from any representations and warranties which are incorrect or in breach and Consecoco has actual knowledge of such inaccuracy or breach or (C) arise from inaccuracies or breaches of the representations and warranties of Consecoco contained in Sections 3.1 (Due Incorporation and Authority), 3.2 (Subsidiaries and Other Affiliates), 3.4 (Outstanding Capital Stock; Title), 3.5 (Options or Other Rights) and 5.6 (Tax Return Filing).

## 9. Miscellaneous.

### 9.1 Certain Definitions.

(a) As used in this Agreement, the following terms have the following meanings:

"affiliate" means, with respect to any person, any other person controlling, controlled by or under common control with, or the parents, spouse, lineal descendants or beneficiaries of, such person.

"Benefit Plan" means any employee benefit plan, arrangement, policy or commitment, whether oral or written, (whether or not an employee benefit plan within the meaning of section 3(3) of ERISA), including, without limitation, any employment or individual consulting agreements for personal services, or deferred compensation

agreement, executive compensation, bonus, incentive, pension, profit-sharing, savings, retirement, stock option, stock purchase or severance pay plan or other equity-based compensation, any life, health, disability or accident insurance plan or any holiday or vacation practice, with respect to which employees, directors, or other service providers, past and/or present, participate, or as to which Exl or Exl (India) has or in the future is likely to have any direct or indirect, actual or contingent material liability.

“COBRA” means the provisions of Code section 4980B and Part 6 of Subtitle B of Title I of ERISA.

“Commonly Controlled Entity” means any entity which is under common control with Exl or Exl (India) within the meaning of Code section 414(b), (c), (m), (o) or (t).

“Confidential Information” means any information other than Trade Secrets that is not generally available to the public and that is treated as confidential or proprietary by Exl or Exl (India), whether or not marked or designated as “confidential” or “proprietary.”

“DOL” means the United States Department of Labor.

“Employee” means any individual employed by Exl or Exl (India).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Exl (India) Shares” means all of the shares of issued and fully paid up equity shares of Exl (India), of Rupees 10 per equity share.

“GAAP” means generally accepted accounting principles in the United States.

“General Claim” means any claim based upon, arising out of or otherwise in respect of any inaccuracy in or any breach of any representation or warranty of Conesco contained in this Agreement.

“Indebtedness” means, as to any Person, all obligations, contingent and otherwise, which in accordance with GAAP consistently applied should be classified upon such person’s balance sheet as liabilities, but in any event including liabilities secured by any mortgage, pledge, security interest, lien, charge or other encumbrance existing on property owned or acquired by such person whether or not the liability secured thereby shall have been assumed, letters of credit open for account, obligations under acceptance facilities and all obligations on account of guaranties, endorsements and any other contingent obligations in respect of the Indebtedness of others whether or not reflected on such balance sheet or in a footnote thereto. The amount of any Indebtedness shall be deemed to be an amount equal to the stated or determinable amount of such



Indebtedness or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof.

“IRS” means the Internal Revenue Service.

“knowledge of Conseco” or any variant thereof means the knowledge of Gary Wendt, Ruth Fattori, William T. Devanney, Jr., James Larkin, Gene Bullis, Rick Dykhouse, David Herzog, and any lawyers who are employees of Conseco or its affiliates who have reviewed this Agreement.

“Lien” means any lien, pledge, mortgage, deed of trust, security interest, claim, lease, license, charge, option, right of first refusal, easement, servitude, or similar encumbrance to title.

“Management Incentive Plan” means the Management Incentive Plan for Exl established by Conseco effective August 1, 2001.

“Migration” means (i) the DMAIC for Process Migration Manual, and (ii) all materials, including Trade Secrets and Confidential Information, relating to migration processes as currently conducted by Exl and its subsidiaries in connection with the Company Business.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any Benefit Plan which is a pension plan within the meaning of ERISA section 3(2) (regardless of whether the plan is covered by ERISA).

“person” means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“property” or “properties” means real, personal or mixed property, tangible or intangible.

“Purchase Price” means the aggregate amount paid by the Outside Investors to Conseco for the Shares.

“Retiree Welfare Plan” means any Welfare Plan that provides benefits to current or former Employees beyond their retirement or other termination of service (other than coverage mandated by COBRA, the cost of which is fully paid by the current or former Employee or his or her dependents) or any applicable state law.

“Trade Secrets” means any trade secrets, research records, processes, procedures, manufacturing formulae, know-how, technology, blue prints, databases, designs, plans, inventions, invention disclosures and improvements thereto (whether or not patentable or subject to copyright, mask work, or trade secret protection).

“Welfare Plan” means any Benefit Plan which is a welfare plan within the meaning of ERISA section 3(1) (regardless of whether the plan is covered by ERISA).

“\$” means United States dollars.

The following capitalized terms are defined in the following Sections of this Agreement:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Asserted Liability	8.3(a)
Balance Sheet	3.7(a)
Balance Sheet Date	3.7(a)
Broker	5.3
Claims	3.12
Claims Notice	8.3(a)
Closing	1.1
Closing Date	2
Code	3.8(e)
Company Business	6.1
Company Intellectual Property	3.16(a)
Condition of the Companies	3.3
Conseco	Preamble
Contemplated Transactions	3.8(n)
Contracts	3.11
Copyrights	3.16(a)
Customer Information	3.16(i)
Exl	Preamble
ExlService Holdings	Preamble
Exl (India)	3.1
Financial Statements	3.7(a)
Foreign Plan	3.21(c)(xxiv)
FT Ventures	Preamble
Governmental Bodies	3.9
Indemnifying Party	8.3(a)
Indemnatee	8.3(a)
Intellectual Property	3.16(a)
IP Licenses	3.16(a)
Internet	6.1(a)(2)
Laws	3.9
Leased Real Property	3.14(b)
Liabilities	3.18
Licensed Materials	6.1(a)(i)(y)(2)
Logo	6.1(a)(i)(y)(4)
Losses	8.1(b)
Material Customers	3.20(a)

<u>Term</u>	<u>Section</u>
Oak Hill	Preamble
Orders	3.9
Outside Investors	Preamble
Patents	3.16(a)
Pension Plans	3.21(b)
Permits	3.10
Purchase Price	1.2
Real Property Leases	3.14(b)
Required Consents	3.11
Restricted Period	6.1(a)
Restrictive Covenants	6.2
Shares	Recital
Software	3.16(a)
Straddle Period	5.6(c)
Tangible Property	3.15
Tax Returns	3.8(b)
Taxes	3.8(a)
Tax Sharing Agreement	3.8(j)
Trademarks	3.16(a)
TSA's	6.6

9.2 Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, sent by overnight courier service for next day delivery, if a facsimile number is provided below, sent by facsimile transmission or sent by certified or registered mail, postage prepaid. Any such notice shall be deemed given when so delivered personally, or, if sent by overnight courier service, one business day after delivery of such notice into the custody and control of an overnight courier service or, if permitted hereunder, sent by facsimile transmission or, if mailed, five days after the date of deposit in the United States mails, as follows:

- (i) if to Oak Hill, to:
  - c/o Oak Hill Capital Partners, L.P.
  - 201 Main Street, Suite 2415
  - Fort Worth, TX 76102
  - Facsimile: (817) 339-7350
  - Attention: Ray Pinson

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with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Facsimile: (212) 492-0303  
Attention: Kenneth M. Schneider, Esq.

with a copy to:

Oak Hill Capital Management, Inc.  
Park Avenue Tower  
65 East 55<sup>th</sup> Street, 36<sup>th</sup> Floor  
New York, NY 10022  
Facsimile: (212) 758-3572  
Attention: John R. Monsky, Esq.

(ii) if to FT Ventures, to:

601 California Street  
San Francisco, CA 94108  
Facsimile: (415) 229-3005  
Attention: David Haynes

(iii) if to ExlService Holdings, to:

201 Main Street, Suite 2415  
Fort Worth, TX 76102  
Facsimile: (817) 339-7350  
Attention: Ray Pinson

(iv) if to Conseco, to:

11825 N. Pennsylvania Street  
Carmel, IN 46032  
Attention: David K. Herzog, General Counsel  
Facsimile: (317) 817-5828

with a copy to:

Baker & Daniels  
300 North Meridian Street  
Suite 2700  
Indianapolis, IN 46204  
Attention: David C. Worrell  
Facsimile: (317) 237-1000

(v) if to Ex1, to:  
350 Park Avenue  
New York, NY 10022  
Attention: Rohit Kapoor, Chief Financial Officer  
Facsimile: (212) 872-1524

Any party may by notice given in accordance with this Section to the other parties designate another address or person for receipt of notices hereunder.

9.3 Entire Agreement. This Agreement (including the Exhibits and Schedules) and any collateral agreements executed in connection with the consummation of the Contemplated Transactions, including without limitation, the Service Agreement and the Stockholder's Agreement, contain the entire agreement among the parties with respect to the purchase of the Shares and supersede all prior agreements, written or oral, with respect thereto.

9.4 Waivers and Amendments; Non-Contractual Remedies; Preservation of Remedies. This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by the Outside Investors and Conseco or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity. The rights and remedies of any party based upon, arising out of or otherwise in respect of any inaccuracy in or breach of any representation, warranty, covenant or agreement contained in this Agreement or any documents delivered pursuant to this Agreement shall in no way be limited by the fact that the act, omission, occurrence or other state of facts upon which any claim of any such inaccuracy or breach is based may also be the subject matter of any other representation, warranty, covenant or agreement contained in this Agreement or any documents delivered pursuant to this Agreement (or in any other agreement between the parties) as to which there is no inaccuracy or breach.

9.5 Consent to Jurisdiction and Service of Process. The parties hereto shall consent to the non-exclusive jurisdiction of any Federal court of the Southern District of New York or any state court located in New York County, State of New York, with respect to any Claim arising out of or relating to this Agreement or the Contemplated Transactions and each party agrees not to assert, by way of motion, as a defense or otherwise, in any such claim, any Claim that it is not subject personally to the jurisdiction of such court, that the Claim is brought in an inconvenient forum, that the venue of the Claim is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each party further irrevocably submits to the

jurisdiction of such court in any such Claim. Any and all service of process and any other notice in any such Claim shall be effective against any party if given personally or by registered or certified mail, return receipt requested, or by any other means of mail that requires a signed receipt, postage prepaid, mailed to such party as herein provided. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

9.6 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such State.

9.7 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and legal representatives. This Agreement is not assignable except by operation of law, except that the Outside Investors and ExlService Holdings may assign their rights hereunder to any of their affiliates, to any successor to all or substantially all of its business or assets, or to any bank or other financial institution that may provide financing to one or more such parties.

9.8 Usage. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require. All terms defined in this Agreement in their singular or plural forms have correlative meanings when used herein in their plural or singular forms, respectively. Unless otherwise expressly provided, the words “include,” “includes” and “including” do not limit the preceding words or terms and shall be deemed to be followed by the words “without limitation.”

9.9 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

9.10 Exhibits and Schedules. The Exhibits and Schedules are a part of this Agreement as if fully set forth herein and all references to this Agreement shall be deemed to include the Exhibits and Schedules. All references herein to Sections, Exhibits and Schedules shall be deemed references to such parts of this Agreement, unless the context shall otherwise require.

9.11 Headings. The headings in this Agreement are for reference only, and shall not affect the interpretation of this Agreement.

9.12 Severability of Provisions.

(a) If any provision or any portion of any provision of this Agreement shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement shall not be affected thereby.

(b) If the application of any provision or any portion of any provision of this Agreement to any person or circumstance shall be held invalid or unenforceable, the application of such provision or portion of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

9.13 No Third Party Beneficiaries. No provision of this Agreement is intended to, or shall, confer any third-party beneficiary or other rights or remedies upon any person other than the parties hereto.

*[Remainder of page left blank intentionally; signature page follows]*





FINANCIAL TECHNOLOGY VENTURES (Q), L.P.  
By: FINANCIAL TECHNOLOGY MANAGEMENT, LLC

By: /s/ \_\_\_\_\_  
Name:  
Title:

FINANCIAL TECHNOLOGY VENTURES II, L.P.  
By: FINANCIAL TECHNOLOGY MANAGEMENT II, LLC

By: /s/ \_\_\_\_\_  
Name:  
Title:

FINANCIAL TECHNOLOGY VENTURES II (Q), L.P.  
By: FINANCIAL TECHNOLOGY MANAGEMENT II, LLC

By: /s/ \_\_\_\_\_  
Name:  
Title:

EXLSERVICE HOLDINGS, INC.

By: /s/ \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Stock Purchase Agreement]*

Documents Delivered in Connection with the Contemplated Transactions<sup>1</sup>

1. **Plan Termination Agreement and General Release**, by and among Conseco, Exl, ExlService Holdings, Exl (India), U.S. Bank as trustee for [\_\_\_\_\_], a trust for the benefit of certain beneficiaries set forth on Exhibit A attached thereto and certain employees
2. **Termination Agreement and General Release**, by and among Conseco, Exl, ExlService Holdings, Exl (India) and Rohit Kapoor
3. **Termination Agreement and General Release**, by and among Conseco, Exl, ExlService Holdings, Exl (India) and Vikram Talwar
4. **Confidentiality and Non-Disparagement Agreement**, by and among ExlService Holdings, Conseco, Conseco Insurance Group, Conseco Finance Corp., a Delaware corporation, Bankers Life and Casualty Company, an Illinois insurance corporation, and Exl (India)
5. **Transition Services Agreement**, by and among Conseco Services, LLC, an Indiana limited liability company, Conseco, Exl and Exl (India)
6. **Transition Services Agreement**, by and among Conseco Finance Corp., Conseco, Exl and Exl (India)
7. **Trademark Assignment**, made by Conseco, in favor of ExlService Holdings
8. **Conseco Services License Agreement**, by and between Exl and Conseco
9. **Exl License Agreement**, by and between Exl and Conseco
10. **Conseco Trademark License Agreement**, by and between Exl and Conseco
11. **Legal Opinion** issued by the general counsel of Conseco
12. **Report written by Lazard Frères**, financial adviser to Conseco (including documentation related to the cost of the wind-down versus the cost of a sale of Exl)
13. **Resignations** of certain officers and directors of Exl and Exl (India)

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<sup>1</sup> All the documents listed on this Exhibit A are dated as of the date of this Stock Purchase Agreement.

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14. **Escrow Agreement** among Chase Bank, Conesco Services, LLC, Conesco, Exl and Exl (India)
  15. **Conesco Board Resolutions and Management Appointing Restructuring Committee Resolutions** which authorize the transaction and evaluate the fairness of the transaction

Ex-A-2

## SUPPLEMENTAL STOCKHOLDERS AGREEMENT

THIS SUPPLEMENTAL STOCKHOLDERS AGREEMENT (the "Agreement") is made and entered into as of December 3, 2004, by and among ExlService Holdings, Inc., a Delaware corporation ("ExlService Holdings"), TCV V, L.P., a Delaware limited partnership, and TCV V Member Fund, L.P., a Delaware limited partnership (each, a "Purchaser" and together, the "Purchasers").

### RECITALS

WHEREAS, Vikram Talwar and Rohit Kapoor (each, a "Seller" and collectively, the "Sellers") and the Purchasers have entered into that certain Stock Purchase Agreement, dated as of the date hereof (the "Stock Purchase Agreement"); and

WHEREAS, in connection with the Stock Purchase Agreement, ExlService Holdings wishes to grant to the Purchasers certain rights, as set forth in this Agreement.

WHEREAS, it is a condition to the closing of the transactions contemplated by the Stock Purchase Agreement that the parties hereto execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the premises and agreements contained herein, the parties hereto intending to be legally bound, hereby agree as follows:

1. Definitions. Capitalized terms used in this Agreement not otherwise defined herein shall have the respective meanings assigned to them in the Stock Purchase Agreement.

2. Execution of Joinder Agreement. Each of the Purchasers and ExlService Holdings shall, contemporaneously with the execution and delivery of this Agreement, execute and deliver the Joinder Agreement, dated the date hereof, pursuant to which each of the Purchasers shall become a party to the Stockholders' Agreement of ExlService Holdings, dated as of November 14, 2002 (the "Stockholders' Agreement"), in the form attached hereto as Exhibit A (the "Joinder Agreement");

3. Representations and Warranties of ExlService Holdings. ExlService Holdings represents and warrants to the Purchasers that:

(a) *Organization and Standing*. ExlService Holdings is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each subsidiary of ExlService Holdings is a company duly organized, validly existing and in good standing under its jurisdiction of organization. Each of ExlService Holdings and its subsidiaries has all requisite corporate power and authority to own and operate its properties and assets and to carry on its business as it is currently conducted and as it is currently planned to be conducted.

(b) *Authorization.* The execution, delivery and performance by ExlService Holdings of this Agreement and that certain Escrow Agreement dated the date hereof by and among the Sellers, the Purchasers and ExlService Holdings (the “Escrow Agreement”) and compliance with all the provisions of this Agreement and the Escrow Agreement: (i) are within the corporate power and authority of ExlService Holdings; (ii) do not require any further consent or approval of any shareholders of ExlService Holdings; and (iii) have been duly authorized by all required corporate action on the part of ExlService Holdings.

(c) *Execution, Etc.* The Agreement and the Escrow Agreement has been duly and validly executed and delivered by ExlService Holdings, and, assuming the due authorization, execution and delivery hereof by the Purchasers, each such agreement constitutes the valid and binding obligation of ExlService Holdings, enforceable against ExlService Holdings in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally, and except that the availability of equitable remedies, including specific performance, may be subject to the discretion of any court before which any proceeding therefor may be brought.

(d) *Non-Contravention.* The execution, delivery and performance by ExlService Holdings of this Agreement and the Escrow Agreement and the transactions contemplated hereby and thereby: (i) do not contravene the terms of ExlService Holdings’ organizational documents, or any amendment thereof, or any provision of the Stockholders’ Agreement, (ii) do not materially violate, conflict with or result in any breach or contravention of, or the creation of any lien, security interest, encumbrance, charge, pledge, hypothecation, mortgage or other claim or restriction on transfer (each, a “Lien”) under, any contractual obligation of ExlService Holdings or any of its subsidiaries or any requirement of law applicable to ExlService Holdings or any of its subsidiaries and (iii) do not materially violate any judgment or orders of any governmental authority against, or binding upon, ExlService Holdings or any of its subsidiaries.

4. Representations and Warranties of the Purchasers. Each Purchaser represents and warrants, severally and not jointly, to ExlService Holdings that:

(a) *Organization and Standing.* Each Purchaser is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) *Authorization.* The execution, delivery and performance by each Purchaser of this Agreement and the Escrow Agreement and compliance with all the provisions of the Agreement and the Escrow Agreement: (i) are within the power and authority of each Purchaser; (ii) do not require any further consent or approval of any partners of any Purchaser; and (iii) have been duly authorized by all required action on the part of each Purchaser.

(c) *Execution, Etc.* The Agreement and the Escrow Agreement have been duly and validly executed and delivered by each Purchaser, and, assuming the due authorization, execution and delivery hereof by ExlService Holdings, each such agreement constitutes the valid and binding obligation of each Purchaser, enforceable against each Purchaser in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and except that the availability of equitable remedies, including specific performance, may be subject to the discretion of any court before which any proceeding therefor may be brought.

(d) *Non-Contravention.* The execution, delivery and performance by each Purchaser of this Agreement and the Escrow Agreement and the transactions contemplated hereby and thereby: (i) do not contravene the terms of each Purchaser's organizational documents, or any amendment thereof, (ii) do not materially violate, conflict with or result in any breach or contravention of, or the creation of any Lien under, any contractual obligation of each Purchaser or any of such Purchaser's subsidiaries or any requirement of law applicable to each Purchaser or any of such Purchaser's subsidiaries and (iii) do not materially violate any judgment or orders of any governmental authority against, or binding upon, each Purchaser or any of such Purchaser's subsidiaries.

(e) *Stock Purchase Agreement.* All representations and warranties made by each Purchaser to each Seller in the Stock Purchase Agreement, as set forth in Section 4 of the Stock Purchase Agreement, are true and correct.

#### 5. Certain Acknowledgments.

(a) *In General.* The Purchasers acknowledge and agree that ExlService Holdings has not made and does not make, and the Purchasers have not relied upon, any representation or warranty, whether express or implied, of any kind or character in connection with the transactions contemplated by the Stock Purchase Agreement except as expressly set forth in Section 3 hereof. Specifically, each Purchaser acknowledges that neither ExlService Holdings, nor any officer or director of ExlService Holdings, has made or is making any representation or warranty, expressed or implied, as to the accuracy or completeness of any information regarding ExlService Holdings furnished or made available to such Purchaser and its representative, and neither ExlService Holdings, nor any officer or director of ExlService Holdings, shall have or be subject to any liability to such Purchaser or any Person resulting from the sale to such Purchaser, or such Purchaser's use of any such information in connection with the transactions contemplated hereby. Each Purchaser acknowledges that neither ExlService Holdings, nor any officer or director of ExlService Holdings, has made or is making, and that such Purchaser has not relied on, any representation or warranty regarding the pro-forma financial information, financial projections, budgets, projections, potential public offering, estimates and/or other forward-looking statements of ExlService Holdings, and such Purchaser will not make any claim with respect thereto.

(b) *Exceptions.* Notwithstanding the provisions of Section 5(a) above, the Purchasers shall retain all rights and remedies (i) against a Seller for any breach by any such Seller who is an officer or director of the representations and warranties made under the Stock Purchase Agreement and (ii) against ExlService Holdings for any fraud committed, or fraudulent misrepresentation made, by ExlService Holdings.

(c) *Other Opportunities.* EXL Service Holdings acknowledge that, without limiting any provision of this Agreement (including Section 6(d)), any Purchaser or Permitted Disclosee may enter into a business, enter into any agreement with a third party, or invest in or engage in investment discussions with any other company (whether or not competitive with ExlService Holdings).

## 6. Covenants.

(a) *Approval Rights.* Prior to (but not concurrently with) a Liquidity Event (as defined below), for so long as the Purchasers or any Permissible Transferee (as defined in Section 8(h)) beneficially own all of the Common Shares purchased by the Purchasers pursuant to the Stock Purchase Agreement (the "Purchased Common Shares"), or, if applicable, the securities issued in exchange for or replacement thereof, the following actions shall require the prior written consent of holders of majority of the Purchased Common Shares (or such securities issued in exchange for or replacement thereof), such consent not to be unreasonably withheld, conditioned or delayed:

(i) any redemption of ExlService Holdings' Series A Preferred Stock (other than a redemption pursuant to Section 4.2.4(b) or 4.2.4(c) of the Charter);

(ii) any pre-payment of ExlService Holdings' senior promissory notes due 2007 (the "Senior Debt") (other than a payment pursuant to Section 6(b) of the Senior Debt);

(iii) the payment of any cash dividend upon ExlService Holdings' Series A Preferred Stock or Series A Common Stock (other than any cash dividend paid pursuant to Section 4.2.2 of the Charter); and

(iv) the entry by ExlService Holdings into any transaction involving ExlService Holdings or any of its subsidiaries, on the one hand, and (A) Oak Hill Capital Partners, L.P., Oak Hill Capital Management Partners, L.P. (collectively, "Oak Hill"), Financial Technology Ventures (Q), L.P., Financial Technology Ventures. L.P., Financial Technology Ventures II, L.P., Financial Technology Ventures II (Q), L.P. (collectively, "FT Ventures"), or their respective Affiliates (including, without limitation, any action taken by the Board of Directors of ExlService Holdings (the "Board") to increase the amount of the Liquidation Preference (as defined in Section 4.2.3(a) of the Charter)), or (B) any Affiliate of Vikram Talwar or Rohit Kapoor, on the other hand, unless such transaction is on terms no less favorable to ExlService

Holdings or any of its subsidiaries than those that could reasonably be expected to be obtained in a comparable arm's-length transaction with an unaffiliated third-party. For the avoidance of doubt, (x) any transaction involving ExlService Holdings or any of its subsidiaries, on the one hand, and Vikram Talwar or Rohit Kapoor, directly and not through an Affiliate of either of them, on the other hand, and (y) without limiting Section 9 hereof, any registration rights granted by ExlService Holdings to Oak Hill, FT Ventures, Vikram Talwar and Rohit Kapoor in connection with a contemplated Public Offering (as defined below) shall not be subject to this clause (iv).

For purposes of this Agreement, each of the following events shall constitute a "Liquidity Event": (1) the sale or other transfer as a result of which, immediately following such sale or transfer, fifty percent (50%) or more of the capital stock of ExlService Holdings is held by a Person (other than Oak Hill, FT Ventures or any of their Affiliates) that did not hold more than twenty percent (20%) of any class of capital stock of ExlService Holdings prior to such sale or transfer (other than transfers made pursuant to Sections 3.2(b), 3.2(d) or 3.2(f) of the Stockholders' Agreement) or the sale, lease, or other transfer or disposition of all or substantially all of the assets of ExlService Holdings, in either case whether (x) directly or indirectly, by merger, combination or other similar transaction or (y) in a single transaction or series of related transactions; or (2) an underwritten public offering and sale of equity securities of ExlService Holdings or any subsidiary thereof pursuant to an effective registration statement under the Securities Act of 1933 (the "Public Offering").

(b) *Stockholders' Agreement; Charter.* The Purchasers covenant and agree that any Purchased Common Shares will be subject to the terms and conditions of the Charter and, upon execution of the Joinder Agreement, the Stockholders' Agreement including, without limitation, any and all alienability restrictions set forth herein or therein.

(c) *Information/Inspection Rights.* ExlService Holdings shall provide to the Purchasers (i) copies of all such financial statements that are provided to any stockholder of ExlService Holdings or holder of Senior Notes promptly upon providing such financial statements to such stockholder or such noteholder, and in any event shall provide to the Purchasers copies of audited consolidated financial statements of ExlService Holdings, no later than one hundred twenty (120) days after the end of each fiscal year of ExlService Holdings, and (ii) such financial or other information (other than any information that relates to any customer, supplier or client of ExlService Holdings or any of its subsidiaries or other information that the Board, exercising its good faith business judgment, determines to be competitively sensitive information) relating to ExlService Holdings and its subsidiaries as the Purchasers may reasonably request from time to time. ExlService Holdings shall permit the Purchasers, at the Purchasers' expense, to visit and inspect, during normal business hours and upon reasonable prior written notice, ExlService Holdings' properties, to examine its books of account and records and to discuss ExlService Holdings' affairs, finances and accounts with ExlService Holdings' senior officers and directors. The rights of the Purchasers set forth



in this Section 6(c) shall terminate upon the earlier of (A) a Public Offering and (B) the date upon which the Purchasers and their Permissible Transferees, if any, collectively cease to own greater than 50% of the Purchased Common Shares (or securities issued in exchange or replacement thereof or as a dividend or other distribution thereon). Notwithstanding the foregoing sentence, after a Public Offering shall have occurred, ExlService Holdings shall cooperate with any reasonable request by the Purchasers for information with respect to ExlService Holdings and its subsidiaries that is in the public domain.

(d) *Confidentiality.* Each Purchaser (A) agrees not to use, except for the purpose of monitoring and evaluating its investment represented by the Purchased Common Shares, (B) shall use all commercially reasonable efforts to ensure that its Permitted Disclosees (as defined below) and their respective legal counsel, accountants and representatives do not use (except for the purpose of monitoring and evaluating such Purchaser's investment represented by the Purchased Common Shares) and (C) shall keep confidential, any Confidential Information (as defined below), except such information that (i) was in the public domain prior to the time it was furnished to such Purchaser, (ii) is or becomes (through no willful improper action or inaction by such Purchaser) generally available to the public or (iii) was in its possession or known by such Purchaser without restriction prior to its receipt from ExlService Holdings. Each Purchaser further agrees that it may disclose such Confidential Information only to any former, current or prospective partner, limited partner, general partner, other Permissible Transferee or management company of such Purchaser (or any employee or representative of any of the foregoing) (each of the foregoing persons, a "Permitted Disclosee") or legal counsel, accountants or representatives for such Purchaser or Permitted Disclosee, in each case to the same extent it generally provides information to such Permitted Disclosees regarding its investment (or, in the case of Permitted Disclosees constituting a Purchaser's Advisory Committee, to the extent reasonably necessary for each such Permitted Disclosee to evaluate such Purchaser's valuation of its investment represented by the Purchased Common Shares); provided that a Purchaser shall be responsible for any failure of a Permitted Disclosee to keep Confidential Information confidential in accordance with this Section 6(d). "Confidential Information" means all information, knowledge, systems or data relating to the business, operations, finances, policies, strategies, intentions or inventions of ExlService Holdings or any of its subsidiaries (including, without limitation, any of the terms of this Agreement) from whatever source obtained, whether provided pursuant to Section 6(c) of this Agreement or otherwise; provided that Confidential Information shall not include a Purchaser's valuation of its investment represented by the Purchased Common Shares or the number and type of securities of ExlService Holdings held by a Purchaser. Nothing contained in this section shall restrict any Purchaser or Permitted Disclosee from disclosing any Confidential Information to the extent required by law, rule, regulation or court order and after reasonable advance notice to ExlService Holdings.

(e) *Rights Regarding Additional Equity Financing.* ExlService Holdings agrees that until a Liquidity Event, the Purchasers shall have the right to purchase their respective Pro Rata Shares (as defined below) of (x) any issuance of Common Stock and (y) any issuance of Preferred Stock based on an equity valuation of

ExlService Holdings below \$237.5 million, in each case only if any such issuance is a Financial Investor Issuance (as defined below). For purposes of this Section 6(e), (i) a “Financial Investor Issuance” shall mean an issuance of Common Stock or Preferred Stock to a financial investor that is a corporation, partnership, limited liability company or other entity that, as of the date of such issuance, is not and has not within the prior twenty-four (24) months been a client, customer, competitor or Affiliate of ExlService Holdings, the principal purpose of which is to supply capital to ExlService Holdings and which is not entered into with the principal purpose of providing ExlService Holdings with any strategic business advantage and (ii) “Pro Rata Share” shall mean, with respect to any Purchaser at any time, a fraction, the numerator of which is the sum of the number of shares of Common Stock then collectively held by such Purchaser and its Permissible Transferees (as defined in Section 8(h)) (provided that the shares held by Permissible Transferees shall not be counted toward more than one Purchaser’s Pro Rata Share) and the denominator of which is the aggregate number of shares of Common Stock held by all of the stockholders and optionholders of ExlService Holdings (assuming the exercise and conversion of all securities exercisable for or convertible into shares of Common Stock). The mechanics for such Purchaser’s exercise of its rights under this Section 6(e), including the provision of notice to such Purchaser by ExlService Holdings of any Financial Investor Issuance, the period of time that such Purchaser has to elect to exercise any such rights and the waiver of any such rights by such Purchaser, shall be consistent with the mechanics set forth in Section 3.10 of the Stockholders’ Agreement with respect to an exercise of Pre-Emptive Rights (as defined in the Stockholders’ Agreement).

*7. Binding Effect; No Third-Party Beneficiaries.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing contained in the Agreement, express or implied, is intended to confer upon any person other than the parties hereto and their respective permitted assigns any rights or remedies of any nature whatsoever.

*8. Registration Rights.*

(a) If ExlService Holdings or any successor thereto becomes a company with equity securities listed on a national securities exchange or traded on the Nasdaq National Market pursuant to a Public Offering or otherwise, ExlService Holdings or such successor shall give each Purchaser at least twenty (20) days prior written notice of the filing of any registration statement with respect to a Public Offering or otherwise (other than a registration relating to (i) the initial public offering of ExlService Holdings, (ii) a registration of an employee compensation plan or arrangement adopted in the ordinary course of business on Form S-8 (or any successor form) or any dividend reinvestment plan, (iii) a registration of securities on Form S-4 (or any successor form) including, in connection with a proposed issuance in exchange for securities or assets of, or in connection with a merger or consolidation with, another corporation or (iv) a registration of securities in connection with a rights offering) of equity securities of the class or classes issued to such Purchaser, and, subject to Section 8(c), if requested by such Purchaser within ten (10) days of the giving of such notice, cause to be included in such registration statement all or such portion requested by such Purchaser of such equity securities so issued to and owned by, such Purchaser for public sale by such Purchaser.

Such registration rights shall be subject to such Purchaser entering into underwriting (if applicable), indemnification, and other customary agreements, and to ExlService Holdings' (or such successor's) right to defer (or require such Purchaser to suspend sales pursuant to) any such registration if it determines in good faith that such registration (or continued sales) would be adverse to ExlService Holdings' (or such successor's) interests (any such deferral or suspension period, a "Suspension Period"); provided, however, that such Suspension Period shall only be applicable to such Purchaser to the extent that substantially identical limitations are imposed and maintained on other participants in such registration (other than ExlService Holdings). ExlService Holdings or any successor thereto shall keep any registration statement filed under this Section 8 effective until the earlier of the date all securities have been sold under such registration statement or ninety (90) days (increased by the number of days, if any, that sales under any such registration statement are suspended as provided above). ExlService Holdings or any successor thereto shall bear all costs and expenses relating to such registration incurred by ExlService Holdings in connection with such registration, exclusive of any costs and expenses of such Purchaser relating to underwriters' commissions or discounts, brokerage fees, transfer taxes or fees or expenses of any counsel, accountants or other representatives retained by such Purchaser in connection with any such registration.

(b) In order to participate in a registration effected under this Section 8, to the extent not inconsistent with applicable law, the Purchasers agree not to effect any public sale or distribution of any equity securities being registered or of any securities convertible into or exchangeable or exercisable for such equity securities, including a sale pursuant to Rule 144 under the Securities Act, during the ten (10) business days prior to, and during the one hundred and eighty (180) day period beginning on, the effective date of such registration statement (except as part of such registration) if and to the extent requested by an underwriter in the case of an underwritten public offering; provided, however, such limitation on sale shall only be applicable to the Purchasers to the extent that substantially identical limitations are imposed and maintained on other participants in such public offering (other than ExlService Holdings).

(c) If a registration pursuant to this Section 8 involves an underwritten offering and the managing underwriter shall advise ExlService Holdings that, in its opinion, the total amount or kind of securities which they, ExlService Holdings and any other persons or entities intend to include in such offering is sufficiently large so as to have an adverse effect on the distribution or sales price of such securities, then ExlService Holdings shall include in such registration, (i) first, the number of securities proposed to be included in such registration for the account of ExlService Holdings and/or any equity security holders of ExlService Holdings that have exercised either (x) demand registration rights or (y) a right to participate in such registration exercised, in the case of this clause (y), by any equity security holder referred to in Section 6(a)(iv)(y) hereof or any Affiliate of any such equity security holder, in accordance with the priorities, if any, then existing among ExlService Holdings and/or such equity security holders of ExlService Holdings with registration rights, and (ii) second, the securities requested to be included in such registration by all other equity security holders of ExlService Holdings (including, without limitation, the Purchasers) who have pre existing piggy-back registration rights, pro rata among such other holders (including,

without limitation, the Purchasers) on the basis of the number of securities that each of them requested to be included in such registration.

(d) ExlService Holdings agrees to indemnify and hold harmless each Purchaser, as well as its partners, members, directors, officers, affiliates, legal counsel and each Person who controls (within the meaning of Section 15 of the Securities Act) the Purchasers from and against any and all losses, claims, damages, liabilities and expenses (including reasonable costs of investigating, preparing, settling or defending such loss, claim, damage, liability or action) (each, a "Liability" and collectively, "Liabilities"), arising out of or based upon any untrue, or allegedly untrue, statement of a material fact contained in any registration statement, prospectus, preliminary prospectus or other document (including any related registration statement) used to effect any registration pursuant to this Section 8 (in each case, as amended or supplemented if ExlService Holdings shall have furnished any amendments or supplements thereto) or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading under the circumstances such statements were made, or any violation by ExlService Holdings of the Securities Act or any rule or regulation promulgated under the Securities Act applicable to ExlService Holdings in connection with any such registration except insofar as (i) such Liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission contained in such registration statement, preliminary prospectus or final prospectus in reliance and in conformity with information concerning the Purchasers furnished in writing to ExlService Holdings by the Purchasers expressly for use therein, including, without limitation, the information furnished to ExlService Holdings pursuant to Section 8(e), (ii) such untrue statement or alleged untrue statement or omission or alleged omission was made in any registration statement, preliminary prospectus or final prospectus used after such time as ExlService Holdings advised the Purchasers that the filing of a post-effective amendment or supplement thereto was required, except the registration statement, preliminary prospectus or final prospectus as so amended or supplemented or (iii) such untrue statement or alleged untrue statement or omission or alleged omission was made in any registration statement, preliminary prospectus or final prospectus used after such time as the obligation of ExlService Holdings hereunder to keep the registration statement effective and current has expired. It is agreed that the indemnity obligation set forth in this Section 8(d) shall not apply to amounts paid in settlement of any such Liability if such settlement is effected without the consent of ExlService Holdings.

(e) In connection with any registration statement in which the Purchasers are participating pursuant to this Section 8, (i) the Purchasers shall promptly furnish to ExlService Holdings in writing such information with respect to the Purchasers as ExlService Holdings may reasonably request or as may be required by law for use in connection with any such registration statement or prospectus and all information required to be disclosed in order to make the information previously furnished to ExlService Holdings by the Purchasers not materially misleading or necessary to cause such registration statement not to omit a material fact with respect to the Purchasers necessary in order to make such statements therein not misleading, (ii) the Purchasers,

severally and not jointly, agree to indemnify and hold harmless ExlService Holdings, its legal counsel, any underwriter of the securities of ExlService Holdings covered by such registration statement retained by ExlService Holdings and each Person who controls ExlService Holdings or such underwriter (within the meaning of Section 15 of the Securities Act) from and against any Liability arising out of or based upon any untrue, or allegedly untrue, statement of a material fact contained in any registration statement, prospectus, preliminary prospectus or other document (including any related registration statement) used to effect any registration pursuant to this Section 8 (in each case, as amended or supplemented if ExlService Holdings shall have furnished any amendments or supplements thereto) or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading under the circumstances such statements were made, but only if such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with information with respect to the Purchasers furnished in writing to ExlService Holdings by the Purchasers expressly for use in such registration statement or prospectus, including, without limitation, the information furnished to ExlService Holdings pursuant to this Section 8(e); provided, however, that the total amount to be indemnified by the Purchasers pursuant to this Section 8(e) shall be limited to the net proceeds (after deducting the underwriters' discounts and commissions) received by the Purchasers in the offering to which any such registration statement or prospectus relates. It is agreed that the indemnity obligation set forth in this Section 8(e) shall not apply to amounts paid in settlement of any such Liability if such settlement is effected without the consent of the Purchasers.

(f) If the indemnification provided for in Sections 8(d) and 8(e) is held by a court of competent jurisdiction to be unavailable to a party entitled to indemnification (the "Indemnified Party") under such section with respect to any claim, loss, damage, liability or expense referred to therein, then the party required to provide indemnification (the "Indemnifying Party"), in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such claim, loss, damage, liability or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the statements or omissions that resulted in such claim, loss, damage, liability or expense, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact related to information is supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission. ExlService Holding and the Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 8(f) were based upon any method of allocation which does not take account of the equitable considerations referred to above. In no event shall any contribution by the Purchasers under this Section 8(f) exceed the gross proceeds received by the Purchasers in such offering.

(g) With a view to making available the benefits of certain rules and regulations of the Securities and Exchange Commission (the “Commission”) which may at any time permit the sale of the Purchased Common Shares to the public without registration after such time, if any, when a public market exists for the Common Stock of ExlService Holdings, ExlService Holdings agrees to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act (“Rule 144”), at all times that ExlService Holdings is subject to the reporting requirements of the Securities Act or the Exchange Act;

(ii) file with the Commission in a timely manner all reports and other documents required of ExlService Holdings under the Securities Act and the Exchange Act (at any time it is subject to such reporting requirements); and

(iii) so long as the Purchasers own any Purchased Common Shares that may not lawfully be disposed of without registration, qualification or legend, to furnish to the Purchasers forthwith upon request a written statement by ExlService Holdings as to its compliance with the reporting requirements of Rule 144 and of any other reporting requirements of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of ExlService Holdings, and such other reports and documents of ExlService Holdings and any other information in the possession of or reasonably obtainable by ExlService Holdings as the Purchasers may reasonably request in availing itself of any rule or regulation of the Commission allowing it to sell any such securities without registration.

(h) The rights and obligations of the Purchasers under this Section 8 may be assigned by the Purchasers only to (i) a transferee or assignee of not less than all of the Common Shares purchased by such Purchaser (as appropriately adjusted for stock splits, stock combinations, dividends, recapitalizations and the like), provided that such transfer is permitted under and is consummated in compliance with the terms of the Stockholders’ Agreement; (ii) any Affiliate that is wholly owned by the Purchasers or (iii) any transferee of any portion of the Common Shares that received such shares in a transaction approved in writing by ExlService Holdings (in each case, a “Permissible Transferee”).

(i) The rights and obligations of ExlService Holdings and the Purchasers under this Section 8 shall terminate when (i) a registration statement with respect to the sale of the Purchased Common Shares shall have become effective under the Securities Act and the Purchased Common Shares shall have been disposed of in accordance with such registration statement, except that the obligations of ExlService Holding and the Purchasers under Sections 8(d) through (f) shall survive the completion of any offering of the Purchased Common Shares in a registration statement, (ii) the

Purchased Common Shares may be sold in a single sale, in the opinion of counsel satisfactory to ExlService Holdings and the Purchasers, each in their reasonable judgment, without any limitation as to volume pursuant to Rule 144 (or any successor provision then in effect) under the Securities Act, (iii) the Purchased Common Shares shall have been otherwise transferred, new certificates for the Purchased Common Shares not bearing a legend restricting further transfer shall have been delivered by ExlService Holdings and subsequent public distribution of the Purchased Common Shares shall not require registration of such distribution under the Securities Act or (iv) the Purchased Common Shares and any securities issued in exchange for or in replacement thereof or as a dividend or distribution thereon) shall have ceased to be outstanding.

9. Observer Right. Prior to the occurrence of a Liquidity Event, as long as the Purchasers in the aggregate own in excess of 75% of their Purchased Common Shares, ExlService Holdings shall invite a representative of the Purchasers to attend all meetings of its Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents and other materials that it provides to its directors, other than information or other material that if provided would in the reasonable judgment of ExlService Holdings materially risk a waiver of any privilege, including the attorney-client privilege; provided, however, that all information so provided shall be subject to Section 6(d) hereof. Upon reasonable notice and at a scheduled meeting of the Board of Directors of ExlService Holdings or such other time, if any, as such Board of Directors may determine in its sole discretion, such representative may address such Board of Directors with respect to the Purchasers' concerns regarding significant business issues facing the Company. All costs associated with the observer rights set forth in this Section 9 shall be borne by the Purchasers.

10. Governing Law. The Agreement shall be construed and interpreted in accordance with the laws of the State of New York without regard to principles of conflicts of law thereof, or principles of conflicts of laws of any other jurisdiction which could cause the application of the laws of any jurisdiction other than the State of New York.

11. Submission to Jurisdiction, Selection of Forum. Each party hereto irrevocably and unconditionally consents and submits to the jurisdiction of the state courts of the State of New York, New York county and of the United States District Court located in the State of New York, New York county for any actions, suits or proceedings arising out of or relating to the Agreement and the transactions contemplated hereby, and further agrees that service of any process, summons, notice or document by U.S. registered or certified mail to ExlService Holdings, Inc. at 350 Park Avenue, 10th Floor, New York, NY 10022, Attention: Rohit Kapoor, or to the Purchasers at 528 Ramona Street, Palo Alto, CA 94301, shall be effective service of process for any action, suit or proceeding brought against such party in any such court. Each party hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit, or proceeding arising out of the Agreement or the transactions contemplated hereby, in the courts of the State of New York located in New York county or of the United States of America located in the State of New York located in New York county, and hereby further irrevocably and unconditionally waives and agrees not to plead or

claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12. Survival. The representations, warranties, covenants and agreements made herein shall survive the closing of the transactions contemplated hereby.

13. Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto. Each Purchaser's rights under Section 8 and Section 9 hereunder are not assignable other than to a Permissible Transferee. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided by this Agreement.

14. Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default of the other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of either party of any breach or default under this Agreement, or any waiver on the part of either party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing or as provided in this Agreement. All remedies, either under this Agreement or by law or otherwise afforded to either party, shall be cumulative and not alternative.

15. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if (a) delivered personally, or (b) if sent by overnight courier service (receipt confirmed in writing), or (c) if delivered by facsimile transmission (with receipt confirmed), or (d) five (5) days after being mailed by registered or certified mail (return receipt requested) to the parties in each case to the following addresses (or at such other address for a party as shall be specified by like notice):

If to a Purchaser, to:

TCV V, L.P.

TCV V Member Fund, L.P.

c/o Technology Crossover Ventures

528 Ramona Street

Palo Alto, CA 94301

Attention: Carla Newell



with a copy to:

Gunderson Dettmer Stough Villeneuve Franklin &  
Hachigian, LLP  
610 Lincoln Street  
Waltham, MA 02451  
Attention: Jay K. Hachigian, Esq.

If to ExlService Holdings, to:

ExlService Holdings, Inc.  
350 Park Avenue, 10th Floor  
New York, NY 10022  
Facsimile: (212) 872-1415  
Attention: Mr. Rohit Kapoor, President

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Fax: (212)757-3990  
Attention: Kenneth M. Schneider, Esq.

16. Modifications; Entire Agreement. No change, modification or waiver of any provision of the Agreement shall be valid unless the same be in writing and signed by ExlService Holdings and each of the Purchasers. This Agreement, the Stock Purchase Agreement and the Joinder Agreement contain the entire agreement between the parties hereto with respect to the subject transactions contemplated hereby and supersede any and all prior oral and written agreements and memoranda and undertakings between the parties hereto with regard to the subject matter hereof.

17. Headings. The headings of the Sections hereof are provided for convenience only and are not to serve as a basis for interpretation or construction, and shall not constitute a part, of the Agreement.

18. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

19. Specific Enforcement. It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any other party, that this Agreement shall be specifically enforceable, and that any breach or threatened breach of this Agreement shall be the proper subject of a temporary or

permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

20. Signature in Counterparts. The Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**EXLSERVICE HOLDINGS, INC.**

By: /s/ John R. Monsky

Name: John R. Monsky

Title: Vice President

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**PURCHASERS**

**TCV V, L.P.**

a Delaware Limited Partnership

By: Technology Crossover Management V, L.L.C.,

Its: General Partner

By: /s/ Robert C. Bensky

Name: Robert C. Bensky

Title: Attorney in Fact

**TCV V MEMBER FUND, L.P.**

a Delaware Limited Partnership

By: Technology Crossover Management V, L.L.C.,

Its: General Partner

By: /s/ Robert C. Bensky

Name: Robert C. Bensky

Title: Attorney in Fact

Address: Technology Crossover Ventures

528 Ramona Street

Palo Alto, California 94301

Attention: Carla Newell

SIGNATURE PAGE TO SUPPLEMENTAL STOCKHOLDERS AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

Solely to evidence their acknowledgment, of and consent to the entry by the Company into, this Agreement, including without limitation Section 6 hereof:

OAK HILL CAPITAL PARTNERS, L.P.

By: OHCP GenPar, L.P.,  
its general partner

By: OHCP MGP, LLC,  
its general partner

By: /s/ John R. Monsky  
Name: John R. Monsky  
Title: Vice President

OAK HILL CAPITAL MANAGEMENT  
PARTNERS, L.P.

By: OHCP GenPar, L.P.,  
its general partner

By: OHCP MGP, LLC,  
its general partner

By: /s/ John R. Monsky  
Name: John R. Monsky  
Title: Vice President

FINANCIAL TECHNOLOGY VENTURES, L.P.

By: Financial Technology Management, LLC

By: /s/  
Name:  
Title: Partner

SIGNATURE PAGE TO SUPPLEMENTAL STOCKHOLDERS AGREEMENT

FINANCIAL TECHNOLOGY VENTURES (Q), L.P.

By: Financial Technology Management, LLC

By: /s/

Name:

Title: Partner

FINANCIAL TECHNOLOGY VENTURES II,  
L.P.

By: Financial Technology Management II, LLC

By: /s/

Name:

Title: Partner

FINANCIAL TECHNOLOGY VENTURES II  
(Q), L.P.

By: Financial Technology Management II, LLC

By: /s/

Name:

Title: Partner

/s/ Vikram Talwar

Vikram Talwar

/s/ Rohit Kapoor

Rohit Kapoor

SIGNATURE PAGE TO SUPPLEMENTAL STOCKHOLDERS AGREEMENT

## JOINDER AGREEMENT

Reference is made to the Stockholders' Agreement (the "Stockholders' Agreement") dated as of November 14, 2002, by and among ExlService Holdings, Inc., Oak Hill Capital Partners, L.P., Oak Hill Capital Management Partners, L.P., Financial Technology Ventures (Q), L.P., Financial Technology Ventures L.P., Financial Technology Ventures II, L.P., Financial Technology Ventures II (Q), L.P., Vikram Talwar and Rohit Kapoor. Unless otherwise defined herein, terms defined in the Stockholders' Agreement and used herein shall have the meanings given them in the Stockholders' Agreement.

For good and valid consideration, the sufficiency of which hereby is acknowledged, each of TCV V, L.P. and TCV V Member Fund, L.P. (each an "Investor") and together the "Investors") hereby acknowledges, agrees and confirms that, by execution of this Joinder Agreement (i) such Investor will be a Stockholder pursuant to the Stockholders' Agreement, as if such Investor had executed the Stockholders' Agreement, (ii) such Investor hereby assumes all of the rights and obligations of a Stockholder under the Stockholders' Agreement and, as such, such Investor shall perform all of the obligations required by the Stockholders' Agreement and (iii) such Investor shall be bound by all covenants, agreements, acknowledgments and other terms and provisions applicable to such Investor as a Stockholder under the Stockholders' Agreement.

Each Investor hereby acknowledges, agrees and confirms that such Investor has received and reviewed a copy (in execution form) of the Stockholders' Agreement (including, without limitation, all schedules, amendments, supplements and other modifications thereto) and ExlService Holdings hereby acknowledges that it has delivered such documentation to each Investor as of the date hereof. Each Investor agrees that the Stockholders' Agreement will terminate upon the initial public offering of ExlService Holdings.

Exhibits to Supplemental Stockholders Agreement dated December \_\_, 2004

IN WITNESS WHEREOF, each Investor has caused this Joinder Agreement to be duly executed and delivered by it, by its proper and duly authorized officer as of the date written below.

Dated: \_\_\_\_\_, 2004

**INVESTORS**

**TCV V, L.P.**

a Delaware Limited Partnership

By: Technology Crossover Management V, L.L.C.,  
Its: General Partner

By: /s/ \_\_\_\_\_

Name: \_\_\_\_\_

Title: Attorney in Fact

**TCV V MEMBER FUND, L.P.**

a Delaware Limited Partnership

By: Technology Crossover Management V, L.L.C.,  
Its: General Partner

By: /s/ \_\_\_\_\_

Name: \_\_\_\_\_

Title: Attorney in Fact

Address: Technology Crossover Ventures  
528 Ramona Street  
Palo Alto, California 94301  
Attention: Carla Newell

Exhibits to Supplemental Stockholders Agreement dated December \_\_, 2004

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated November 10, 2004, included in Amendment No. 1 to the Registration Statement (Form S-1 No. 333-121001) and related Prospectus of ExlService Holdings, Inc. for the registration of its common stock.

/s/ Ernst & Young LLP

New York, New York  
January 31, 2005



January 31, 2005

Via EDGAR

Securities and Exchange Commission  
Judiciary Plaza  
450 Fifth Street, N.W.  
Washington, D.C. 20549

ExlService Holdings, Inc. – Amendment No. 1  
Registration Statement on Form S-1 (File No. 333-121001)

Ladies and Gentlemen:

On behalf of ExlService Holdings, Inc., a Delaware corporation (the “*Company*”), we submit in electronic form for filing the accompanying Amendment No. 1 to the Registration Statement on Form S-1 (“*Amendment No. 1*”) of the Company, together with Exhibits, marked to indicate changes from the Registration Statement as originally filed with the Securities and Exchange Commission (the “*Commission*”) on December 3, 2004.

Amendment No. 1 reflects the responses of the Company to comments received from the Staff of the Commission (the “*Staff*”) in a letter from Owen Pinkerton, dated December 30, 2004 (the “*Comment Letter*”). The discussion below is presented in the order of the numbered comments in the Comment Letter. Certain capitalized terms set forth in this letter are used as defined in the Registration Statement. For your convenience, references in the responses to page numbers are to the marked version of Amendment No. 1 and to the prospectus included therein (the “*Prospectus*” or Amendment No. 1, as applicable).

The Company’s responses to the Staff’s comments are as follows:

***General***

- 1. We note your disclosures that you sold options to purchase Class A and Class B common stock to directors, officers, employees, former employees and consultants from June 2003 to July 2004. We also note your stated belief that these issuances were all exempt from registration under the Securities Act pursuant to Section 3(a)(9), Section 4(2) and Regulation D, Rule 701, and a “no-sale” theory under Section 5. Please tell us the*

aggregate number of purchasers involved in the private placement and when the options became exercisable. For each issuance, please tell us the identity of the purchasers or class of purchasers and their relationship to the issuer, if any, the number of options granted to each such purchaser and the date of issuance. For each such issuance please tell us which exemption was relied upon and the basis for such reliance. Please provide us with your analysis of the availability of each exemption relied upon. Your analysis should include, among other things, a discussion of the facts relied upon and a discussion of the precautions that were taken to avoid having the manner in which the offering was conducted constitute a general solicitation. Also include a discussion of the facts that you relied upon in making your determination that each of these issuances was exempt under the exemption relied upon. For example, for issuances upon which you relied on Section 4(2), were investors provided with information similar to the information that would have been contained in a registration statement? Was an inquiry undertaken as to the purchasers' sophistication and ability to bear the economic risks of the investment? Please tell us how each person or entity qualified as a "sophisticated investor" and if you believe an entity was a sophisticated investor because all of its equity owners were sophisticated investors, please identify all of those equity owners and how you determined their sophistication.

### Response to Comment 1

#### 1. Option Grants under Stock Option Plans

The options granted under the Company's 2003 India Employee Stock Option Plan and its 2003 Stock Option Plan (together, the "Plans") were issued pursuant to the exemption from registration provided by Rule 701 under the Securities Act. In 2003, the Company granted options to purchase an aggregate of 404,600 shares of Series B common stock to its executive officers, employees, members of its advisory board and directors of its wholly-owned subsidiary, EXL India, under the Plans as provided in the table below. All of the option recipients are based in India except for seven employees, one member of the advisory board and one director of EXL India, who are based in the United States and the United Kingdom. In 2003, the Company did not grant any options to purchase shares of common stock to its directors.

<u>Grant Date</u>	<u>Number of Options</u>	<u>Exercise Price</u>	<u>Optionee</u>
April 30, 2003	43,725	\$ 0.24	4 Employees
April 30, 2003	5,000	\$ 0.24	1 Director of EXL India
April 30, 2003	5,000	\$ 0.23	1 Director of EXL India
April 30, 2003	177,375	\$ 0.23	58 Employees
April 30, 2003	92,500	\$ 0.23	5 Executive Officers

<u>Grant Date</u>	<u>Number of Options</u>	<u>Exercise Price</u>	<u>Optionee</u>
July 8, 2003	40,000	\$ 0.24	2 Employees
September 11, 2003	5,000	\$ 0.24	1 Employee
December 9, 2003	20,000	\$ 0.23	1 Executive Officer
December 9, 2003	6,000	\$ 0.23	3 Employees
December 9, 2003	10,000	\$ 0.24	2 Members of Advisory Board
<b>Total</b>	<b>404,600</b>		

In 2004, the Company granted options to purchase an aggregate of 257,100 shares of Series B common stock to its executive officers, employees and members of its advisory board under the Plans as provided in the table below. All of the option recipients are based in India, except for three executive officers and employees and one member of the advisory board who are based in the United States. In 2004, the Company did not grant any options to purchase shares of common stock to its directors.

<u>Grant Date</u>	<u>Number of Options</u>	<u>Exercise Price</u>	<u>Optionee</u>
February 5, 2004	12,000	\$ 7.50	2 Employees
February 5, 2004	30,000	\$ 7.50	1 Executive Officer
April 13, 2004	22,000	\$ 10.00	1 Executive Officer
April 13, 2004	12,100	\$ 10.00	2 Employees
April 20, 2004	30,000	\$ 10.00	1 Executive Officer
June 18, 2004	2,500	\$ 18.00	1 Executive Officer
June 18, 2004	44,000	\$ 18.00	45 Employees
June 18, 2004	5,000	\$ 18.00	1 Member of Advisory Board
October 25, 2004	6,500	\$ 23.75	4 Employees
December 6, 2004	80,000	\$ 23.75	1 Executive Officer
December 18, 2004	13,000	\$ 23.75	8 Employees
<b>Total</b>	<b>257,100</b>		

All options are subject to a vesting schedule set forth in the Plans in which 25% of the options granted on a given date vest on the first, second, third and fourth anniversaries of that date, respectively.

The Company granted all of the options to purchase shares of Series B common stock described above without registration under the Securities Act in reliance on the exemption from registration provided pursuant to Rule 701 under the Securities Act. The Company is eligible to rely on the exemption provided pursuant to Rule 701 because it is not subject to the reporting requirements of the Exchange Act and is not

required to be registered under the Investment Company Act of 1940. Each option grant was made either to an executive officer or employee (who was employed by or providing services to the Company at the time the options were granted) or to a member of the Company's advisory board (who was a natural person providing bona fide services to the Company that were not in connection with the offer or sale of securities in a capital-raising transaction and did not directly or indirectly promote or maintain a market for the Company's common stock). All option grants were made under the Plans, both of which are compensatory benefit plans for purposes of Rule 701. In addition, the aggregate exercise price of options granted during any consecutive 12-month period did not exceed 15% of the total assets of the Company, measured at the Company's most recent balance sheet date. For example, the options to purchase 257,100 shares that the Company had granted during the twelve months ended December 31, 2004 had an aggregate exercise price of \$4,246,125, which is 8.6% of the \$49,225,261 that the Company reported as total assets at September 30, 2004. Similarly, the options to purchase 404,600 shares that the Company had granted during the twelve months ended December 31, 2003 had an aggregate exercise price of \$94,045, which is 0.4% of the \$21,877,194 that the Company reported as total assets at December 31, 2003. Furthermore, the aggregate exercise price of the options sold over any consecutive 12-month period never exceeded \$5 million. Finally, pursuant to Rule 701, the Company delivered to each grantee a copy of the Plan documentation. Under these circumstances, we believe that the issuances of securities described above are exempt from registration by virtue of Rule 701. The Company has supplementally provided the Staff under separate cover letter with a copy of its 2003 Stock Option Plan and its 2003 India Employee Stock Option Plan. The Company respectfully requests that the materials so provided separately to the Staff be treated as supplemental information under Rule 418 under the Securities Act, and be returned by the Staff upon completion of its review.

## 2. Other Stock Option Grant

On July 1, 2004, the Company granted options to purchase an aggregate of 115,100 shares of Series A common stock to Prudential Financial Inc. ("Prudential"), at an exercise price of \$12.50 per share. Prudential is one of the largest U.S. insurance companies with net earnings of \$1.7 billion for the nine months ended September 30, 2004. The options issued by the Company to Prudential are immediately exercisable. The Company granted these options to Prudential without registration under the Securities Act in reliance on the exemption from registration provided pursuant to Section 4(2) of the Securities Act and Regulation S promulgated under the Securities Act. Prudential represented and warranted to the Company that it is an accredited investor within the meaning of Rule 501 of Regulation D under the Securities Act. Prudential also represented and warranted to the Company that it is a sophisticated investor with such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of acquiring the options and purchasing shares of Series A common stock upon exercise of the options, and that it is able to bear the economic risk of making such investment. In addition, the Company believes that Prudential, as one of the Company's business process outsourcing clients, has a familiarity with the Company's business, allowing it to appreciate the risk of holding the Company's Series A common stock. Furthermore, Prudential conducted customary legal and financial due diligence in connection with the issuance of the options and was afforded the opportunity (i) to ask such questions as it deemed necessary of, and to receive answers from,

representatives of the Company concerning the terms and conditions of the offering of the options and (ii) to obtain all such additional information from the Company that it considered necessary in connection with its decision to invest in the Company's Series A common stock. The Company did not make an offer to any person other than Prudential in connection with the option grant and did not make any public announcement of the transaction. Under these circumstances, the Company believes that the issuance of the options to Prudential is exempt from registration by virtue of Section 4(2).

2. *Supplementally, please tell us what consideration you gave to the potential integration of the issuances of shares and options in connection with the share conversion that will take place immediately prior to the completion of the offering. Please file, or provide us supplementally, with a copy of your Certificate of Incorporation that governs the conversion of the shares and options.*

Response to Comment 2

For the reasons set forth below, we are of the opinion that the issuance of the shares of Series A common stock in exchange for all of the shares of Series B common stock (the "*share conversion*") and the adjustment of the options to purchase shares of Series B common stock into options to purchase shares of Series A common stock (the "*option adjustment*") should not be integrated with the issuance of shares of common stock in the initial public offering of the Company.

1. The Share Conversion

The Company's amended and restated certificate of incorporation (the "*certificate of incorporation*") was adopted on December 13, 2002 and authorizes two series of common stock: (i) the Series A common stock, \$.001 par value per share, which is entitled to one vote per share, and (ii) the Series B common stock, \$.001 par value per share, which is non-voting. Having two classes of securities with different voting rights gave the Company the ability to offer and sell interests in the Company to non-director employees of the Company without affecting control over the Company. All shares of Series B common stock are held by employees and members of senior management. No members of the board of directors currently own any shares of Series B common stock. The certificate of incorporation provides that immediately prior to the occurrence of certain specific events, including the consummation of a public offering registered under the Securities Act, all of the outstanding shares of Series B common stock shall automatically be converted, with no further action required by the Company and/or the holders of Series B common stock, into shares of Series A common stock on a one-for-one basis (subject to automatic adjustments).

For your convenience, the Company has supplementally provided the Staff under separate cover letter with a copy of its existing certificate of incorporation.

We are of the opinion that the share conversion does not constitute a sale or offer of securities for the following reasons:

- (i) the share conversion will not require any investment decision on the part of the holders of the Company's Series B common stock;
- (ii) the share conversion will be an automatic event that will be triggered pursuant to the terms of the Company's certificate of incorporation as a result of the occurrence of the Company's initial public offering;
- (iii) the share conversion will be at a pre-established exchange ratio of one-for-one as set forth in the Company's certificate of incorporation;
- (iv) the share conversion will not require any stockholder vote, consent or action; and
- (v) the share conversion is not subject to any conditions that are within the control of the holders of the Company's Series B common stock.

Based upon relevant Staff interpretations in the context of private placements of convertible securities and warrants and Staff positions relating to the registration of mandatory convertible securities and the underlying securities, the sale of Series A common stock occurred at the time that each holder acquired its interest in the Series B common stock and not at the time that the Series B common stock automatically converts (see Stanley Keller, Current Issues in Private Placements: The Metaphysics of Integration of Private and Public Offerings, § III.B.1). It was at that time that each holder considered the merits and risks of acquiring its interest in the Series B common stock (including the fact that the Series B common stock would be automatically converted into shares of Series A common stock upon the occurrence of certain specific events) and made its investment decision. Accordingly, the integration analysis should be based on the status of the sales of the Series B common stock at that time.

The Company issued an aggregate of 444,538 shares of Series B common stock on June 25, 2003 to 21 managers, assistant vice presidents and members of senior management and 20,000 shares of Series B common stock to one member of senior management on June 4, 2004 without registration under the Securities Act in reliance on the exemption from registration provided pursuant to Section 4(2) of the Securities Act and Regulation S promulgated under the Securities Act. Each of these persons had a familiarity with the Company's business and could therefore appreciate the risk of holding the Company's Series B common stock. Each also had access to all information from the Company that he or she considered necessary in connection with the private placement. All remaining 64,119 of the 528,657 outstanding shares of Series B common stock at December 31, 2004 were issued upon exercise of the options described in response to Comment 1 above.

Rule 152 under the Securities Act provides that transactions not involving any public offering at the time of the transactions will be deemed “transactions by an issuer not involving any public offering” for purposes of Section 4(2) of the Securities Act even where subsequently the issuer decides to make a public offering and/or files a registration statement. In its no-action letter in *Black Box Incorporated* (available June 26, 1990) and in subsequent letters, the Staff made clear that Rule 152 applies if the private placement is completed before the registration statement for the public offering is filed and that private placements completed before the filing should not be integrated with such public offering.

The Company believes therefore that the share conversion should not be integrated with the Company’s initial public offering pursuant to Rule 152 under the Securities Act and the Staff’s interpretation of that Rule because (i) the shares of Series B common stock were issued and sold in private placements that were completed before the filing of the registration statement, (ii) the holders of Series B common stock will not be required to make any investment decision in relation to the share conversion and (iii) the consummation of the share conversion immediately prior to the consummation of the Company’s initial public offering will be subject only to conditions outside the holders’ control.

## 2. The Option Adjustment.

The Company’s Plans provide for the adjustment of the options granted under the Plans as to number, price or kind or as otherwise is determined to be equitable at the sole discretion of the Company’s board of directors or compensation committee in the event of changes in the outstanding stock or in the capital structure of the Company by reason of stock or extraordinary cash dividends, stock splits, reverse stock splits, recapitalization, reorganizations, mergers, consolidations, combinations, exchanges, or other relevant changes in capitalization occurring after the date of grant of the options (see Section 9 of the Company’s 2003 Stock Option Plan and Section 10 of the 2003 India Employee Stock Option Plan). In connection with the share conversion, the Company’s board of directors will adjust the options to purchase shares of Series B common stock so that they become options to purchase shares of Series A common stock on the same basis as the share conversion.

No change in the economic terms of the options will occur as a result of the option adjustment; the exercise price and the number of shares issuable upon the exercise of the options will remain the same. The holders of options to purchase Series B common stock (none of whom are directors of the Company) will not be taking any action, making any investment decision or providing any consideration in connection with the option adjustment. Therefore, there is no sale or offer of securities involved in the option adjustment. We note that in the context of public mergers and acquisitions, companies generally adjust their outstanding options pursuant to their stock option plans but do not register this adjustment because no offer or sale was made. We believe that the option adjustment has a similar result.

In addition, as noted above, it is at the time of the original issuance of the options that the analysis must be made. As described above in response to Comment 1, the options granted by the Company under its Plans in 2003 and 2004 were originally granted without registration under the Securities Act in reliance on the exemption from registration provided pursuant to Rule 701 under the Securities Act. Rule 701(f) provides that offers and sales exempt under Rule 701 are deemed to be part of a single, discrete offering and are not subject to integration with any other offers or sales, including offers or sales registered under the Securities Act.

Accordingly, the Company believes that the option adjustment should not be integrated with the Company's initial public offering.

The Company intends to file a registration statement on Form S-8 under the Securities Act to register those shares of Series A common stock reserved for issuance or sale under the Plans and certain shares held for resale by existing stockholders that were previously issued under the Plans.

The Company has supplementally provided the Staff under separate cover letter with a copy of its 2003 Stock Option Plan and its 2003 India Employee Stock Option Plan in response to Comment 1.

**Cover Page**

3. *Confirm that you will not circulate a preliminary prospectus until such time as you include an estimated price range and fill in blanks throughout the filing. We may have further comments when your filing includes complete disclosure.*

**Response to Comment 3**

The Company confirms that it will not circulate a preliminary prospectus until such time as it includes an estimated price range and fills in blanks throughout the Prospectus.



**Outside Back Cover Page**

4. *We note the text under the "Industry and Market Data" heading. You may not disclaim responsibility for information contained in your prospectus. If you intend to use the data throughout your prospectus, you should delete the disclaimer. In addition, supplementally provide supporting material, including the report from the Gartner Group, for any data used, marking the relevant sections for our review. Note also that if such information was prepared for the company in connection with the proposed offering, you must file a consent from the provider for the use of its name and the information attributed to it.*

Response to Comment 4

The Company has revised the Prospectus as requested. See page i of the Prospectus.

The Company has supplementally provided the Staff under separate cover letter with copies of all supporting materials cited in its Amendment No. 1, including the report from Gartner Inc., and has highlighted or otherwise indicated the portions of those materials that support its disclosure. In addition, the Company confirms that none of the information contained in the supporting materials was commissioned by or prepared for the Company.

**Summary**

*General*

5. *Revise your summary to provide a brief overview of your offering, and a more succinct description of your business, which is more completely discussed in the business section of your document.*

Response to Comment 5

The Company has revised the summary as requested. See pages 1 through 6 of the Prospectus.

6. *In a table or other similar readily identifiable manner, state the percentage of shares that will be held by the executive officers, directors, and/or affiliate stockholders after this offering.*

Response to Comment 6

The Company has revised the summary as requested. See page 5 of the Prospectus.

7. *Eliminate or reduce the use of acronyms like BPO, BFSI, and CAGR in the summary and forepart of the filing; and revise the disclosure so that*

*when they are used, their meaning is clear and their use enhances investor understanding. See updated Staff Legal Bulletin No. 7 (June 7, 1999) sample comments 1, 3 and 5.*

Response to Comment 7

The Company has revised the summary and forepart of the Prospectus as requested.

8. *Please limit the use of defined terms and industry jargon in the forepart of the filing so that it is clear to investors who may not be familiar with your industry. See Rule 421(b). We note the last sentence of the second paragraph under the “Our Business” heading and the following non-exhaustive list of industry terms throughout the summary:*

- *value-added*
- *business process outsourcing*
- *domain expertise*
- *global delivery model*
- *broad-based expertise*
- *integrated front-middle and back-office process outsourcing solutions*
- *migration*
- *end-to-end outsourcing reconciliation*
- *integrated global delivery platforms*
- *scaleable infrastructure*
- *six Sigma methodology*
- *Kaizen initiatives*
- *offshore delivery capabilities*

Response to Comment 8

The Company has revised the summary and forepart of the Prospectus as requested.

9. *Some of your risk factors are too general and could apply to any issuer or offering. For example, the risks described under the general caption, “Risks Related to India and the International Nature of our Business” beginning on page 14, should be revised to Disclose how each risk has specifically impacted your operations to date. For example:*
- *Has your business suffered any disruptions from the economic, political, social, and military uncertainties described on page 15?*
  - *Have you suffered any disruptions on your operations or any decrease in client confidence in your business as a result of any terrorist activities in India to date (page 15)?*
  - *Have your employees had difficulty obtaining entry visas in recent times (page 16)?*

Response to Comment 9

The Company has revised the risk factor disclosure as requested. See pages 10 through 21 of the Prospectus.

*Our Business, page 1*

10. *Provide supplemental support for your statements of leadership here and throughout your document, marking the relevant portions of any material provided for our review.*

Response to Comment 10

The Company has supplementally provided the Staff under separate cover letter with copies of source information for all statements of leadership in Amendment No. 1, and has highlighted or otherwise indicated the portions of those materials that support its disclosure.

11. *In the first paragraph, provide greater disclosure regarding when the majority of your long term business contracts are set to expire, including the portion of your revenues tied to contracts that are set to expire during the next twelve months.*

Response to Comment 11

The Company has revised the Prospectus as requested. See page 1 of the Prospectus. None of the Company’s client agreements is scheduled to expire during the next twelve months.

12. *If you choose to highlight your increase in revenues in the opening paragraph, please also disclose that, prior to the current period, you have experienced net losses.*

Response to Comment 12

The Company has revised the Prospectus as requested. See page 1 of the Prospectus.

13. *In the second paragraph, explain the significance of the "140 processes" (which we assume are types of jobs within an organization/business). For example, of the "140 processes" you have transferred to your operations centers, how many of them were transferred on behalf of the same client? You should revise to discuss the number in context so that investors can understand how it relates to your business success/failure.*

Response to Comment 13

The Company has revised the Prospectus as requested. See page 1 of the Prospectus.

14. *Clarify whether the increase in the number of employees mentioned in the third paragraph includes employees from India and disclose the relative number of those Indian employees. Also, balance the disclosure by stating, if true, that some of the increase in employee numbers is a function of the high turnover rate you experience as described on page 11.*

Response to Comment 14

The Company has revised the Prospectus as requested. See page 1 of the Prospectus. The Company has clarified that the number of employees represent the total number of employees of the Company as of the specified dates. Therefore these numbers are not related to the Company's turnover rate.

15. *We note the last sentence in paragraph three. Revise to describe the significance of these awards to your business, and provide copies of the certificates for our review.*

Response to Comment 15

The Company has revised the Prospectus as requested. See page 1 of the Prospectus. The Company has supplementally provided the Staff under separate cover letter with copies of these certificates.

*EXL's Competitive Strengths, page 2*

16. *If you choose to discuss your strengths in the summary, balance that disclosure by briefly discussing your competitive weaknesses. For*

*example, when discussing experience with banking, financial services, and insurance, clarify that you rely on a few industries; and when discussing long-term client relationships, clarify that you depend primarily on two clients.*

Response to Comment 16

The Company has revised the Prospectus as requested. See page 3 of the Prospectus.

17. *We note your statement here and throughout the prospectus that you have relatively predictable and recurring revenues as a result of the long-term contracts you have entered into with your clients. We further note your disclosure on page 26 of the prospectus that contracts representing a majority of your revenues are terminable at will by the client, with or without cause. This would appear to greatly impact the predictability and recurring nature of your revenues. In light of this, please revise to clearly indicate that, even though you have long-term contracts, a majority of them may be terminated for any reason at any time by the client.*

Response to Comment 17

The Company has revised the Prospectus as requested. See pages 2 and 3 of the Prospectus.

18. *Please refrain from making statements that cannot be easily proved such as a reference to your “reputation for superior service.”*

Response to Comment 18

The Company has supplementally provided the Staff under separate cover letter with copies of supporting materials and has highlighted or otherwise indicated the portions of those materials that support its disclosure. The Company confirms that none of the information contained in the supporting materials was commissioned by or prepared for the Company.

*Information About the Company, page 3*

19. *In future amendments please use a more recent date to determine the exchange rate between U.S. dollars and Indian rupees.*

Response to Comment 19

The Company has revised the Prospectus as requested. See page 4 of the Prospectus.

*Share Conversion, page 4*

20. *When known, please disclose the number of common stock outstanding after the share conversion and the number of shares issuable upon exercise of the options to purchase Class A shares. Disclose also the number of freely tradable shares after the offering, including the number of shares subject to registration rights upon commencement of this offering.*

Response to Comment 20

The Company has inserted a placeholder in the Prospectus for this information. When the information becomes available, the Company will update the Prospectus as requested. See page 4 of the Prospectus.

***Summary Consolidated Financial and Other Data, page 8***

21. *The usefulness of EBITDA adjusted for non-recurring items to derive Adjusted EBITDA is not evident. Please expand your disclosure to demonstrate the usefulness of adjusting EBITDA for goodwill impairment and extraordinary items. Refer to Questions 8, 9 and 10 of Frequently Asked Questions Regarding the Use of Non-GAAP Financial Measures ("FAQ"). In addition, please revise your disclosure to characterize the measure as something other than EBITDA as discussed in Question 14 of the FAQ.*

Response to Comment 21

The Company has revised the Prospectus as requested. See page 9 of the Prospectus. The Company supplementally advises the Staff that the Company recorded \$46,008,087 in goodwill related to the 2001 Conesco acquisition. During the period from January 1, 2002 to November 14, 2002, the Company experienced a significant decline in revenue from Conesco and determined that projections with respect to revenue and cash flows made at the time of the Conesco acquisition could not be sustained. Accordingly, the Company made an assessment that the entire goodwill balance was impaired and recorded the impairment charge.

The acquisition by the Company of all of the outstanding capital stock of Exl Inc. on November 14, 2002 resulted in the fair value of the net assets acquired exceeding the cost. In accordance with SFAS No. 141, the Company allocated the excess of fair value over cost to the non-current assets acquired. Such allocation resulted in a reduction of the carrying value of fixed assets to zero, and the Company recognized the remaining excess of the fair value of the net assets acquired over cost of \$5,027,452 as an extraordinary gain.

In accordance with item 10(e)(ii)(B) of Regulation S-K, the Company does not believe these charges are recurring in nature as it did not incur similar charges in

the preceding two years prior to incurring these charges and has not incurred similar charges since then. The Company also does not expect these charges to recur within the next two years. In addition, these charges are non-cash charges which do not require cash settlement.

**Risk Factors — Beginning on Page 9**

*General*

22. *We refer to the introductory paragraph on page 9 where you indicate that you may face other risks or uncertainties which may adversely affect your business. You must disclose all risks that you believe are material at this time. Please delete language related to other risks or unknown risks from your disclosure.*

Response to Comment 22

The Company has revised the Prospectus as requested. See page 10 of the Prospectus.

23. *Please add a risk factor discussing the high regulatory nature of your business as described on page 55, and discuss the risks associated with failing to adhere to the regulations, or failing to obtain or renew any required licenses.*

Response to Comment 23

The Company has revised the Prospectus as requested. See page 16 of the Prospectus.

24. *Please add a risk factor describing an investor's ability to bring an original action in India to enforce liabilities based upon the U.S. federal securities laws against you, your operating subsidiaries in India, and the executive officers that reside there. Discuss also the limitations in effecting service of process as described on page 89.*

Response to Comment 24

The Company has revised the Prospectus as requested. See page 19 of the Prospectus.

25. *Add a risk factor disclosing the number of potentially free trading shares resulting from the registration rights agreement you describe on page 73 and 74 and the impact those free trading shares would have on the value of your stock.*

Response to Comment 25

The Company has revised the existing risk factor disclosure on page 20 of the Prospectus as requested.

26. *Consider adding a risk factor discussing the increase in costs of becoming a public company and complying with requirements under the Sarbanes-Oxley Act.*

Response to Comment 26

The Company has revised the Prospectus as requested. See page 17 of the Prospectus.

***Risks Related to Our Business***

*We have a limited independent operating history ... page 9*

27. *Quantify the portion of your revenues derived from Conseco in recent periods, for example, since November 2002.*

Response to Comment 27

The Company has revised the Prospectus as requested. See page 11 of the Prospectus.

*We have a limited number of clients ... Page 9*

28. *State the total percentage of revenues derived from the two major clients in the heading of this risk factor.*

Response to Comment 28

The Company has revised the Prospectus as requested. See page 10 of the Prospectus.

29. *Disclose the termination dates for your contracts with Norwich and Dell and briefly explain their rights to terminate the contracts.*

Response to Comment 29

The Company has revised the Prospectus as requested. See page 10 of the Prospectus.

30. *State that Norwich is a United Kingdom based company.*



Response to Comment 30

The Company has revised the Prospectus as requested. See page 10 of the Prospectus.

*We have a long selling cycle ... page 10*

31. *It appears that the discussion in the first and second paragraph represents a separate risk factor from that discussed in the third paragraph. Consider separating these two risk factors. In the selling cycle discussion, disclose your success rate with closing a sale of your services to potential clients given that you have only two major customers.*

Response to Comment 31

With respect to the first point, the Company has revised the Prospectus as requested. See page 11 of the Prospectus. The Company supplementally advises the Staff that its success rate for closing sales of its services depends on many factors and is therefore impossible to quantify meaningfully. The process of bidding for and closing sales is subject to many variables and, accordingly, is not predictable. In particular, the Company believes that its success in attracting new clients depends to a large extent on its ability to increase the volume of services it provides to existing clients. Furthermore, the Company's historical success rate is not reflective of its current or future success rate because of the fact that the Company has been developing third-party clients only for the last two to three years. The Company believes therefore that the only meaningful indication of the Company's selling cycle success is the number of new clients the Company has acquired. The Company has revised the Prospectus to disclose that in 2004, it added four new business process outsourcing clients and nine new advisory services clients. See page 11 of the Prospectus.

*Our operating results may experience significant variability ... page 10*

32. *Discuss the extent to which the factors listed in this risk factor have impacted your operations in the past.*

Response to Comment 32

The Company has revised the Prospectus as requested. See page 11 of the Prospectus.

*Our inability to effectively manage ... page 11*

33. *Discuss more specifically the impact of the rapid pace of your growth on your business to date. For example, disclose any disruptions to your business caused by recruiting, training, and retaining so many employees in the span of four years.*

Response to Comment 33

The Company supplementally advises the Staff that it has not experienced any disruptions to its business caused by recruiting, training and retaining employees. However, the Company confirms that the recruiting, training and retaining of employees affects the Company's cost of revenues. The Company has revised the Prospectus to disclose that such costs impact its cost of revenues. See page 12 of the Prospectus.

34. *Disclose the destination of the facility you plan to invest in outside of India. We note also your belief that the new facility will provide higher value to your customers through "risk diversification." Discuss more specifically what "risks" need to be diversified and how opening a new facility will address that goal. Also, how are you "committed" to opening the new facility? Have you entered into a lease or a contractual agreement? If so, any such commitment should be discussed more fully in the business or MD&A section of your prospectus.*

Response to Comment 34

The Company has revised the Prospectus as requested. See page 12 of the Prospectus. The Company is contractually committed to one of its clients to establish and maintain a viable offshore business process outsourcing operation outside of India that is able to provide the services currently being performed for that client in India by September 2005. The Company is actively looking at a few select locations for its offshore operation but has not yet entered into any lease or other contractual agreement with respect to any location. The Company will update its disclosure in the Prospectus as and when its plans for this facility develop.

*We may fail to attract and retain ... page 11*

35. *Quantify the impact of the high turnover rate on your operations in recent periods. For example, disclose the cost of revenues for recent periods.*

Response to Comment 35

The Company has revised the Prospectus as requested. See page 13 of the Prospectus.

36. *How has the high turnover rate impacted your ability to service your current clients and obtain new clients? We note that you have serviced few clients since the company was founded.*

Response to Comment 36

The Company supplementally advises the Staff that high employee turnover rates have not impacted its ability to service its current clients or obtain new clients. The Company has been able to factor in the effects of its high turnover rate in its

business planning and, accordingly, has not experienced a reduced ability to service clients due to turnover. In addition, high turnover rates are typical in the business process outsourcing industry in India and do not impact the Company's ability to obtain new clients. The Company has serviced few clients since it was founded in part because, as is customary in the industry, the Company has focused its efforts on increasing the scale of services it provides to a few large clients, as opposed to providing services to many smaller clients.

*Wage increases in India ... page 11*

37. *Discuss the basis for your belief that wages in India are increasing at a faster pace than those in the United States. For example, are wages in India increasing as a result of recent legislation, or other political factors? If so, disclose. Also, discuss the impact of the declining U.S. dollar on U.S. wages as compared to Indian wages.*

Response to Comment 37

The Company has revised the Prospectus as requested. See page 13 of the Prospectus.

*The BPO Industry may not develop in ways that we ... page 12*

38. *Clarify whether your discussion on restricting federally funded US private companies from outsourcing jobs is based on currently proposed legislation, or just a matter of concern more generally. In that regard, do your clients rely on federal and state contracts for their operations?*

Response to Comment 38

The Company has revised the Prospectus as requested. See page 14 of the Prospectus.

*We face significant competition ... page 13*

39. *Revise the heading of this risk factor to identify the sources of your competition specifically rather than stating that they originate from a "variety of sources." Also, it should be clear in the heading that your major source of competition derives from your own clients who can perform their own jobs in-house or make their own arrangements to outsource jobs abroad. We note, for example, the agreement you have with Norwich that allows for Norwich to assume operations in Pune.*

Response to Comment 39

The Company has revised the Prospectus as requested. See page 15 of the Prospectus.

*Our client contracts contain certain termination and other provisions ... page 13*

40. *Revise to discuss the specific termination provisions that apply to your major clients such as Norwich Union and Dell. For example, what are the terms under which those clients can terminate your agreement with cause versus without cause? Also, define "little advance notice" (six months?). In this risk factor you should also quantify the revenues derived from those clients that materially contribute to your revenue so that investors can better evaluate the risk of loss of those clients.*

Response to Comment 40

The Company has revised the Prospectus as requested. See page 15 of the Prospectus.

41. *Clarify also that certain of your contracts with your major clients can be terminated without cause after the initial termination date as described on page 51, and disclose the initial termination dates.*

Response to Comment 41

The Company has revised the Prospectus as requested. See page 15 of the Prospectus.

42. *Please limit the use of cross-references here and in the risk factor section in general and revise to include the information necessary to convey the material risk. For example, disclose the effective date of the Pune and Noida agreements and the three and five year term minimums. Discuss also the Pune Agreement non-competition clause mentioned on page 75.*

Response to Comment 42

The Company has revised the Prospectus as requested. See pages 15 and 16 of the Prospectus.

*Oak Hill Capital Partners, FTVentures, certain of their respective affiliates page 14*

43. *Disclose the amount and percentage of shares that each of the persons/entities named in this risk factor hold after the offering.*

Response to Comment 43

The Company has revised the Prospectus as requested. See page 16 of the Prospectus.

44. *Please describe the affiliation, if any, among the entities listed under this risk factor. For example, would the entities be considered a "group" that would have the ability to exercise control over matters that come to a*

*vote? In addition, to the extent that the aggregate ownership percentage exceeds 50 percent following the offering, please revise the risk factor heading and discussion to clarify that they would be able to “control” most matters that come before the board, not merely “exercise significant influence” over them.*

Response to Comment 44

There are no affiliations between the persons and entities listed in this risk factor that are not already described in this risk factor. Based on representations made to the Company, the Company believes that these persons and entities should not be considered as part of a group that would be able to exercise control over matters coming up for a vote. Each of them will be acting independently with respect to its own investment and there will be no written or oral agreement among them upon consummation of this offering to act in concert or take common action with respect to the Company’s common stock. Because of the significance of their respective holdings, however, each may individually exercise significant influence over the Company.

*We may not succeed in identifying suitable acquisitions ... page 14*

45. *Supplementally advise us whether you have identified an acquisition target and/or are in discussions regarding an acquisition. We note on page 11 your statement that you are committed to investing in an operations center outside of India. We may have further comment.*

Response to Comment 45

The Company confirms that it has not yet identified an acquisition target and is not currently in discussions regarding any acquisition.

The Company is contractually committed to one of its clients to establish and maintain by September 2005 a viable offshore business process outsourcing operation outside of India that is capable of providing the services currently being performed for that client in India. The Company is actively looking at a few select locations for this offshore operation but has not yet entered into any lease or other contractual agreement with respect to any location. The Company could acquire an existing business process outsourcing operation in satisfaction of its commitment although it has not identified any such acquisition target. The Company will update its disclosure in the Prospectus as and when its plans for this facility develop.

*Substantial future sales of shares of our common stock ... page 17*

46. *Disclose any conditions under which the parties may waive the lock-up provisions. We note on page 86 that Citigroup and Goldman Sachs may release any of the securities subject to the lock-up agreements at any time without notice in their sole discretion.*

Response to Comment 46

Citigroup Global Markets Inc. and Goldman, Sachs & Co. have informed the Company that they have no present intent or arrangement to release any of the securities subject to these lock-up agreements. The release of any lock-up will be considered on a case-by-case basis. Citigroup Global Markets Inc. and Goldman, Sachs & Co. have advised the Company that factors considered in deciding whether to release shares may include the length of time before the lock-up expires, the number of shares involved, the reason for the requested release, market conditions, the trading price of the Company's common stock, historical trading volumes of the Company's common stock and whether the person seeking the release is an officer, director or affiliate of the Company. There are, however, no specific conditions or events that would require the underwriters to waive the lock-up.

*Delaware law and our amended and restated ... page 17*

47. *Briefly describe the provisions that could delay or prevent a change in control rather than to provide a cross-reference in this risk factor.*

Response to Comment 47

The Company has revised the Prospectus as requested. See page 21 of the Prospectus.

*Use of Proceeds ... page 19*

48. *Disclose the amount of accrued dividends in the first bullet point and the amount of accrued interest in the second bullet point as of September 30, 2004.*

Response to Comment 48

The Company has revised the Prospectus as requested. See page 23 of the Prospectus.

49. *Please revise this section to provide investors with more details regarding your intended uses for the majority of the net proceeds to be received in this offering. Specifically, we note your plans for hiring up to an additional 350 employees, opening a new facility in India and investing in an operations facility outside of India during 2005. Based on your existing cash position, it appears that proceeds may be used for some or all of these specific purposes. Please revise or advise.*

Response to Comment 49

The Company is currently unable to determine how it will spend any of the offering proceeds other than as already disclosed in the Prospectus. The hiring of 350

additional employees and the expansion of the Company's facility in India have been or will be financed with available cash and the Company does not currently intend to use any proceeds from this offering to that effect. In addition, as indicated in response to comment 45 above, the Company has not yet identified a site for its foreign operations center and has not yet finalized any budget or financing options for this facility at this time. Accordingly, the Company's anticipated uses for the proceeds from this offering are currently as described in the Prospectus.

*Selected Consolidated Financial Data, page 23*

50. *Please provide this tabular financial information in a left to right format beginning with the most recent fiscal period for consistency with the audited financial statements included in this registration statement. Refer to SAB Topic 11:E.*

Response to Comment 50

The Company has revised the Prospectus as requested. See pages 26 through 28 of the Prospectus.

***Management's Discussion and Analysis of Financial Condition and Results of Operations***

*Critical Accounting Policies, page 29*

51. *Please include a discussion of your accounting policy as it relates to your pension plan liability. Specifically, explain your assumptions in calculating the liability for each period and methodology for determining those assumptions. In addition, please provide readers with a quantitative analysis of the impact those assumptions have on your earnings and financial condition. Please supplementally provide us with your basis for the discount rate and rate of compensation increase assumptions for the year ended December 31, 2003.*

Response to Comment 51

The Company has revised the Prospectus as requested. See page 35 of the Prospectus. The Company supplementally advises the Staff that its discount rate reflects yields on high-quality fixed income investments and bonds issued by the Government of India having a maturity period equal to the weighted-average expected service span of the employees. The Company derives its rate of compensation increases based on weighted-average rates of historical compensation increases and future projections that includes increase in compensation to the existing employees as well as assumptions concerning staff turnover rates.

*Results of Operations, page 31*

52. *Please include a disclosure of the primary reasons for the increase in the income tax provision between the combined year ended December 31, 2002 and the year ended December 31, 2003, as well as the reasons for the effective tax rate of approximately 262% for the year ended December 31, 2003.*

Response to Comment 52

The Company has revised the Prospectus as requested. See page 39 of the Prospectus.

53. *For purposes of clarity, please consider including a discussion of the results of operations of the Company, its predecessor and pre-predecessor for only the following periods:*
- a. *Nine-months ended September 30, 2004 compared to the nine-months ended September 30, 2003*
  - b. *Year ended December 31, 2003 compared to the combined year ended December 31, 2002*
  - c. *Combined year Ended December 31, 2002 compared to the combined nine-month period ended December 31, 2001.*

Response to Comment 53

The Company has revised the Prospectus as requested. See pages 36 through 40 of the Prospectus.

54. *We note that the portion and amount of your revenues relating to new clients decreased significantly during the nine months ended September 30, 2004 as compared to the nine months ended September 30, 2003. Please discuss the reasons for this and consider whether this represents a trend in your results of operations.*

Response to Comment 54

The Company has revised the Prospectus as requested. See page 37 of the Prospectus.

*Liquidity—Beginning on page 36*

55. *Please revise your disclosure to specifically explain what “improvements in working capital management” were made in 2003. In addition, please further explain all underlying drivers contributing to changes in working capital and in cash flows from operations for each period. Finally, note*



*that changes in non-cash items, such as depreciation and amortization should have no impact on any changes in cash flows. Refer to SEC Release 33-8350 for additional guidance.*

Response to Comment 55

The Company has revised the Prospectus as requested. See page 40 of the Prospectus.

56. *Discuss liquidity on a long-term (greater than 12 months) basis. Also, in the fourth paragraph on page 37 tell us how you expect to incur \$12 million in capital expenditure in 2005 to open two new facilities (Noida, India and another facility "outside of India") when you incurred \$10 million in the nine-months ended September 2004 to open only one new facility. Disclose the location of the facility you intend to open outside of India.*

Response to Comment 56

The Company has revised the Prospectus as requested. See page 40 of the Prospectus. As indicated in response to comment 45 above, the Company has not yet identified a site for its new facility outside of India. The Company confirms that it expects to incur approximately \$11 million to \$13 million to open the two new facilities in 2005. The Company expects that each of these new facilities will have a capacity of approximately 500 seats and will therefore be significantly smaller than the \$10 million facility opened in 2004, which had a capacity of 1,400 seats and, accordingly, will cost less to open than the facility opened in 2004.

57. *Does your liquidity analysis include the anticipated expenditure for your compliance with Sarbanes-Oxley given your status as a future public company?*

Response to Comment 57

The Company supplementally advises the Staff that its liquidity analysis includes the anticipated expenditure for its compliance with Sarbanes-Oxley. The Company anticipates expenditure in 2005 of approximately \$1 million for compliance with Sarbanes-Oxley.

*Contractual Obligations, page 38*

58. *Please expand your disclosure with respect to the incentives received by EXL India, including the amounts and when the incentives are set to expire.*

Response to Comment 58

The Company has revised the Prospectus as requested. See page 42 of the Prospectus.

*Board Structure and Compensations—Beginning on page 59*

59. Clarify whether the public offering is conditioned on your amending and restating your by-laws to implement the board structure you have identified here. If not, consider adding a risk factor that alerts investors to the impact on your company if the board structure you have proposed is not implemented.

Response to Comment 59

The Company has been advised by the holders of a majority of its shares of voting stock that the Company's by-laws will be amended and restated as a condition to the offering. The Company has revised the Prospectus as requested. See page 62 of the Prospectus.

*Employment Agreements, page 62*

60. We note that Messrs. Talwar and Kapoor are each eligible for annual bonuses of up to \$100,000; however, it appears that each was paid a bonus of \$237,500 during 2003. Please advise as to whether a portion of this bonus relates to the initial bonus each received upon entering into the employment agreements in 2002. If not, please explain why the bonuses exceeded the amounts included in the employment agreements.

Response to Comment 60

The Company had incorrectly reflected bonus payments made to Messrs. Talwar and Kapoor in 2003. The Company has revised the Prospectus to reflect the corrected information. See page 64 of the Prospectus. Messrs. Talwar and Kapoor were each paid bonuses of \$175,000 in 2003. While their employment agreements provide for a contractual bonus of \$100,000, the Company's board of directors agreed to grant Messrs. Talwar and Kapoor additional bonuses in 2003 and 2004 as a result of exceptional performance by the Company in 2003 and 2004.

*Principal Stockholders—Beginning on page 72*

61. Clarify in simple terms what you mean by "gross up." Also, disclose whether the termination of the agreement between Mr. Talwar and TCV is conditioned on completion of the public offering. In addition, please provide greater disclosure as to what you mean by "approval rights and additional equity sales" as referenced in the last sentence under this heading. Finally, please file the agreement as an exhibit to the registration statement.

Response to Comment 61

The Company has revised the Prospectus as requested. See page 75 of the Prospectus.

Messrs. Talwar and Kapoor executed a stock purchase agreement with TCV to which the Company is not a party. In connection with this transaction, the Company also executed a separate agreement with TCV which it will file as Exhibit 10.24 to the Registration Statement. Because the Company is not a party to the agreement between Messrs. Talwar and Kapoor and TCV, and is not bound by such agreement, the Company is not required to file such agreement.

*Termination of Stockholder's Agreement*

62. *Expand to briefly describe the terms of the Stockholder's Agreement and how termination of that agreement upon consummation of the offering will impact other shareholders. How many shares does the agreement involve? Clarify whether the termination of the agreement is conditioned on the public offering going forward and add any risk factors highlighting the impact on shareholders in any event.*

Response to Comment 62

The Company has revised the Prospectus as requested. See page 76 of the Prospectus. The Company believes that the termination of this agreement will facilitate the consummation of this offering and will have no adverse effect on the purchasers of the Company's common stock in the initial public offering.

*Management Arrangement, page 77*

63. *Please describe the nature of the services performed by Oak Hill and FTVentures under this agreement.*

Response to Comment 63

The Company has revised the Prospectus as requested. See page 80 of the Prospectus.

*Other Related Party Transactions—Page 77*

64. *Tell us why you have not disclosed the relationships between Steven Gruber, Bradford Bernstein, and certain of your beneficial holders/affiliates.*

Response to Comment 64

The Company has revised the Prospectus as requested. See page 76 of the Prospectus.

*Underwriting—Beginning on Page 86*

65. *We note your disclosure on page 87 that an unspecified number of shares have been reserved for sale to directors, officers, or employees, or persons “who are otherwise associated with you” at the discretion of your management. Please revise to further describe the persons “who are otherwise associated with you” that may participate in the directed share program. Further, please revise the cover page to disclose the number of shares reserved and the summary to describe the directed share program. Please supplementally describe the mechanics of how and when these shares are offered and sold to investors in the directed share program. For example, tell us how the prospective recipients and number of reserved shares are determined. Tell us how and when you and the underwriters have notified or will notify the directed share investors, including the types of communications used or to be used. Discuss the procedures these investors must follow in order to purchase the offered securities. Are directed share purchasers required to establish accounts before the effective time, and, if so, what if any funds are put in newly established brokerage accounts before the effective date? How do the procedures for the directed share program differ from the procedures for the general offering to the public? In addition, if any of the recipients of the shares or their associates, employees or affiliates are broker-dealers registered with the NASD, please tell us how you will comply with the NASD’s rules relating to “hot” IPOs, if applicable. Please also supplementally provide us with copies of all materials to be used in connection with the directed share program. We may have further comment.*

Response to Comment 65

The Company has revised the Prospectus as requested to disclose directed share program information on the cover page and in the summary. See the cover page and page 6 of the Prospectus. Citigroup Global Markets Inc. (the “Directed Share Program Administrator”) will be administering the directed share program. The materials that the Company has supplementally provided to the Staff under separate cover (other than the Conflict Clearance Letter) represent the Directed Share Program Administrator’s form of directed share program materials that have previously been reviewed by Kristina S. Wyatt, Special Counsel in the Office of Chief Counsel of the Staff.

Please note that senior executives of the Company are preparing a list of directors, executive officers, employees, clients, prospective clients and friends and family of these persons whom the Company would like to invite to participate in the directed share program.

Representatives of the Company and the underwriters have agreed to reserve for the directed share program up to 5% of the amount of common shares to be sold in the proposed offering at the initial public offering price. The Company and the Directed Share Program Administrator believe that this amount represents an amount which is (1) sufficient to allow the Company to make available a limited number of shares to such individuals and (2) customary in transactions of this type. Although the Company has not determined the final number of persons it would like to invite to participate in the directed share program, the Company currently expects to invite all of its officers and directors and certain employees, and certain of their respective friends and family members, and certain of its clients and prospective clients. The Company intends to distribute the directed share program materials to potential purchasers after the preliminary prospectus is printed.

The Company and the Directed Share Program Administrator will work together to operate the directed share program. The Company will allocate shares to investors, and the Directed Share Program Administrator will handle the mechanics of distributing the shares.

The Directed Share Program Administrator and the Company will employ the following procedures in making the offering under the directed share program:

- The Company will deliver by first class mail or by Federal Express or other reputable overnight courier the directed share materials to potential purchasers once the preliminary prospectus is printed.
- If the potential investor has an interest in purchasing shares in the proposed offering, he or she must complete and mail, fax or deliver (a registered representative of the Directed Share Program Administrator will be at the Company's executive offices on specified dates to accept such delivery) the Indication of Interest Form, the IPO Questionnaire (which requests from participants who are not employees of the Company information needed to comply with the Voluntary Initiative and NASD Rule 2790), the New Account Information Form (if the person does not already have an account with the Directed Share Program Administrator), the Form W-9 and, where appropriate, the Conflict Clearance Letter so that they are received by the Directed Share Program Administrator on a specified date.
- When the offering is priced, the Company will determine the final allocation of shares among those persons who submitted timely and proper indications of interest in participating in the directed share program. The Directed Share Program Administrator will then call each such person to confirm certain pertinent information, including the purchase price, the number of shares allocated to such person, the person's continued desire to participate in the directed share program, the number of shares within the allocated amount, if any, they intend to purchase and the person's account number.

- The Directed Share Program Administrator will send a copy of the final prospectus and a written confirmation of the offer and sale to each person who, when the offering was priced, confirmed his or her intention to purchase.
- Full payment of the purchase price for the shares bought in the initial public offering through the directed share program must be received by the Directed Share Program Administrator by the settlement date, which will be three or four days after the pricing date in accordance with Rule 15c6-1 under the Securities Exchange Act of 1934. If the Directed Share Program Administrator does not receive the potential purchaser's payment by the settlement date then the Directed Share Program Administrator will notify the Company of the same and the Directed Share Program Administrator will then sell such shares into the open market.
- The Company also intends to allow participants based in the United States to participate through a website maintained by the Directed Share Program Administrator. The website is designed with specific encryption to make available to invited participants electronic versions of the preliminary prospectus, the IPO Questionnaire, the New Account Information Form, the Form W-9 and the Conflict Clearance Letter. Participants may also use the website to complete the IPO Questionnaire, to place an IOI and to confirm whether they want to purchase any of the shares that the Company may allocate to those participants who previously submitted an IOI by the IOI deadline.

The Company and the Directed Share Program Administrator currently are in the process of finalizing written materials to be provided to persons from whom expressions of interest in the proposed offering will be sought. The directed share program materials that the Company intends to deliver by first class mail or by Federal Express or other reputable overnight courier to potential purchasers will include:

- a cover letter to potential purchasers from the Directed Share Program Administrator;
- a General Information and Procedural Memorandum to potential purchasers, providing instructions and frequently asked questions and answers;
- an Indication of Interest Form to be completed by potential purchasers to indicate any interest they may have in purchasing shares in the proposed initial public offering, including the number of shares they may have an interest in purchasing;

- an IPO Questionnaire to be completed, signed and returned to the Directed Share Program Administrator by the potential purchaser, which will be used to help the Directed Share Program Administrator determine whether, under NASD rules, the potential purchaser is eligible to participate in the directed share program;
- a New Account Form to be completed by the potential purchaser in order to allow the Directed Share Program Administrator to open an account for the potential purchaser (a potential purchaser must have a Directed Share Program Administrator account in order to participate in the directed share program);
- a Form W-9 to be completed, signed and returned to the Directed Share Program Administrator by the potential purchaser. The Internal Revenue Service requires this form to be completed in order for the potential purchaser to provide the Directed Share Program Administrator with the potential purchaser's taxpayer identification and certification;
- a Conflict Clearance Letter, which must be completed for any participant that works for a company that conducts business with or seeks to conduct business with the Company. The Conflict Clearance Letter is completed by an officer of the employer and confirms that an individual's participation in the directed share program does not violate any policies of his employer; and
- a copy of the preliminary prospectus.

The Company has supplementally provided under separate cover a form of each of these documents, other than the preliminary prospectus.

The Company supplementally advises the Staff that, in connection with the directed share program, no offers were made prior to the filing of the Registration Statement with the Staff, offers will be made only with a preliminary prospectus and no funds have been or will be committed or paid prior to the effectiveness of the Registration Statement.

As described in the directed share program materials attached to this letter, the Company and the Directed Share Program Administrator will assure that this directed share program offer is consistent with Section 5 of the Securities Act and Rule 134 by:

- ensuring that each of the documents (other than the preliminary prospectus) delivered to the persons invited to participate in the directed share program will contain language that is permitted by Rule 134;
- requiring each directed share program participant to acknowledge, by signing the Indication of Interest Form, that no offer to buy any of the shares in the proposed offering can be accepted and no part of the

purchase price can be received by the Directed Share Program Administrator until the Registration Statement covering the proposed offering has been declared effective by the Commission and that any such offer may be withdrawn or revoked, without obligation or commitment, at any time prior to the prospective purchaser's confirmation of his or her intention to purchase shares is given after the effective date of the registration statement;

- providing that a potential purchaser's submission of a completed Indication of Interest Form involves no obligation or commitment of any kind, and by completing the Indication of Interest Form, the person is not binding himself or herself to purchase any shares; and
- if the potential purchaser confirms his or her intention to purchase, sending the purchaser a copy of the final prospectus that meets the requirements of Section 10 of the Securities Act, which will contain the price of the offering and other information not included in the preliminary prospectus, and a written confirmation of the sale with respect to the shares.

66. *We note your discussion regarding the marketing of this offering online on page 88. Please identify any members of the underwriting syndicate that will make copies of the preliminary prospectus available over the Internet or will engage in the electronic offer, sale or distribution of the shares. Supplementally confirm that their procedures for electronic postings or links to the prospectus or for electronic distributions have been reviewed and cleared by the Division's Office of Chief Counsel, and that the procedures have not changed since such clearance. If you become aware of any additional members of the underwriting syndicate that may engage in electronic offers, sales, or distributions after you respond to this comment, please promptly supplement your response to identify those members. We may have further comment.*

#### Response to Comment 66

Citigroup Global Markets Inc. has informed the Company that it intends to use the i-Deal Prospectus Delivery System ("i-Deal") as a complementary distribution method to deliver preliminary prospectus materials to U.S. institutional clients for this offering. Citigroup Global Markets Inc. intends to use this system to complement its process for hard copy delivery of preliminary prospectus information only. Citigroup Global Markets Inc. does not intend to distribute the final prospectus or confirmations through i-Deal or by any other electronic means. The final prospectus and related confirmations will be delivered in hard copy through existing processes.

More specifically, Citigroup Global Markets Inc. has advised the Company that it currently intends on using i-Deal solely for the distribution to U.S. institutional clients of (i) the preliminary prospectus, (ii) any preliminary prospectus



distributed in connection with any required re-circulation, and (iii) any supplement or sticker to a preliminary prospectus. Citigroup Global Markets Inc. has informed the Company that it does not intend to use i-Deal for distribution of (i) any prospectus included in any pre-effective amendment that is not otherwise (1) subject to a re-circulation or (2) distributed as a supplement/sticker to any preliminary prospectus, and (ii) any final prospectus or any supplement/sticker thereto.

Citigroup Global Markets Inc. has advised the Company that its use of the i-Deal system in the manner described above was approved by Kristina S. Wyatt, Special Counsel in the Office of Chief Counsel of the Staff, in connection with the initial public offering by Great Wolf Resorts, Inc. (Registration Number 333-118148) on December 14, 2004.

In addition, Citigroup Global Markets Inc. has advised the Company that it may send PDFs of the prospectus only to certain potential institutional investors that have received or that will receive hard copies of the preliminary prospectus.

The Company has been informed by Goldman, Sachs & Co., Merrill Lynch & Co. and Thomas Weisel Partners LLC that they or their affiliates may engage in the electronic offer, sale or distribution of the shares and that any such activities will be conducted in accordance with procedures previously reviewed and approved by the Division's Office of Chief Counsel of the Staff.

Citigroup Global Markets Inc. and Goldman, Sachs & Co. have advised the Company that none of the agreements either Citigroup Global Markets Inc. or Goldman, Sachs & Co. has with the other underwriters contractually limits the ability of those underwriters to make an Internet posting. Citigroup Global Markets Inc. and Goldman, Sachs & Co. have also advised the Company that they do not know which, if any, members of the syndicate may place a prospectus online or how they might choose to do so. The representatives currently know only who may be invited to join the syndicate and will not know the final composition of the syndicate or the allocation of shares until after the registration statement is declared effective. Consistent with this procedure, the Company included disclosure in the Prospectus about the possibility that a prospectus in electronic format may be made available either on the websites of one or more of the underwriters or in another manner. See page 92 of the Prospectus.

The Company has been advised by the joint lead managers that each member of the syndicate of this offering will be an established firm, a registered broker/dealer and an NASD member. However, due to the nature of the syndicate process, the final syndicate list and allocations of shares will not be made until the day of pricing. Shortly after the registration statement is declared effective, pricing information is determined and communicated to those firms that have expressed an interest in becoming syndicate members. After a relatively short period, in which these invitees may choose to decline to participate in the syndicate based on the negotiated terms, the final syndicate is established and allocations of shares are made. Prior to that time, Citigroup Global Markets Inc. and Goldman, Sachs & Co. know only who has been

invited to join the syndicate, but neither the final composition of the syndicate nor the allocation of the shares. Therefore, Citigroup Global Markets Inc. and Goldman, Sachs & Co. have advised the Company that they will not have an opportunity to make inquiry of the individual firms that will ultimately comprise the syndicate until after the relevance of their plans, if any, for Internet distribution have been mooted by the declaration of effectiveness of the registration statement.

To address the Staff's concerns, Citigroup Global Markets Inc. and/or Goldman, Sachs & Co. will include in a communication to the syndicate the following:

“The Securities and Exchange Commission has asked us to inform you that you may not make an online distribution of shares of the common stock of ExlService Holdings, Inc. unless you are following procedures for online distributions previously cleared with the Securities and Exchange Commission. By accepting an allocation from us, you will be deemed to be representing to us that either (i) you are not making an online distribution or (ii) you are following procedures for online distributions previously cleared with the Securities and Exchange Commission.”

Given the responsibility of each broker/dealer to comply with all applicable Commission and NASD rules, including the SEC's releases and no-action letters on Internet distributions, and given the representations that will be received by Citigroup Global Markets Inc. and Goldman, Sachs & Co. that syndicate members will so comply, there would not appear to be a regulatory need for Citigroup Global Markets Inc. and Goldman, Sachs & Co. to be responsible for the Internet activities of other syndicate members. Lead managers have not traditionally been viewed as responsible for the paper delivery activities of their syndicate members, and, by analogy, it would seem inappropriate and unnecessary for the joint lead managers to attempt to regulate their online distribution activities.

67. *Tell us whether you or the underwriters have any arrangements with a third party to host or access your preliminary prospectus on the Internet. If so, identify the party and the web site, describe the material terms of your agreement and provide us with a copy of any written agreement. Also, provide us with copies of all information concerning your company or prospectus that has appeared on their web site. If you subsequently enter into any such arrangements, promptly supplement your response. We may have further comment.*

Response to Comment 67

Neither the Company nor any of the underwriters have any arrangements with a third-party to host or access the preliminary prospectus on the Internet, other than (i) as described in the response to Comment 66 regarding Citigroup Global Markets Inc.'s use of i-Deal, and (ii) in connection with plans to conduct an Internet roadshow through Net Roadshow, Inc. (www.netroadshow.com). While Citigroup Global Markets Inc. and

Goldman, Sachs & Co. have advised the Company that they have contracted with Net Roadshow, Inc. to conduct an Internet roadshow, the purpose of such contract is not specifically to host or access the preliminary prospectus. The Company has been informed that the primary purpose of the Internet roadshow is to provide access to the roadshow to institutional customers who cannot, or elect not to, attend roadshow meetings in person. The Company has further been informed that as part of the electronic roadshow process, an electronic version of the preliminary prospectus (identical to the copy filed with the Commission and distributed to live attendees) is required to, and will, be made available on the website. In its agreement with Citigroup Global Markets Inc. and Goldman, Sachs & Co., Net Roadshow, Inc. agrees to conduct Internet roadshows in accordance with the *Net Roadshow, Inc.* no-action letter (available September 8, 1997), and subsequent no-action letters from the Commission with respect to virtual roadshows. Citigroup Global Markets Inc. and Goldman, Sachs & Co. have advised the Company that they have previously provided to the Staff copies of their agreement with Net Roadshow, Inc.

*Enforceability of Judgments, page 89*

68. *We note your statement regarding advice you have received from Indian counsel and the fact that Indian counsel is named in the "Legal Matters" section of the prospectus. Please tell us why you have not included a consent from Indian counsel regarding this advice.*

Response to Comment 68

The Company will file a consent from Indian counsel as Exhibit 23.3 to the Registration Statement.

***Notes to Consolidated Financial Statements, December 31, 2003***

*Note 1 — Organization, Basis of Presentation and Business Combinations*

Acquisition by Conseco on July 31, 2001, page F-9

69. *Please disclose how Conseco's acquisition of Exl Inc. created a new basis of accounting for Exl Inc. Refer to SAB Topic 5.J.*

Response to Comment 69

The Company has revised the Prospectus as requested. See page F-9 of the Prospectus.

Acquisition by Exl Holdings on November 14, 2002, page F-9

70. *Please disclose in further detail the nature and business reasons for the purchase transaction between the Company and Conseco and how the Company was able to purchase Exl Inc. for a purchase price (\$1) considerably below the fair value of the net assets acquired.*

Response to Comment 70

The Company supplementally advises the Staff that the consideration provided by the Company for Exl Inc. was determined by arm's-length negotiations between unaffiliated parties, and the Company believes that the consideration, which included substantial financial commitments to the business in addition to the purchase price, represented fair value for Exl Inc. on the date of acquisition.

Based on information available to the Company, in early 2002, Conseco commenced an extensive search to find a buyer for Exl Inc. or pursue a strategic business combination involving Exl Inc. Nineteen prospective buyers were contacted. Initially, four non-binding offers were received for Exl Inc. Ultimately, three prospective buyers withdrew their offers and only the investor group made an offer to purchase Exl Inc. that was accepted by Conseco's board of directors. At the time of the sale, Conseco was the largest customer of Exl Inc. (representing over 95% of revenues), and it had advised potential buyers that it planned to terminate its relationship with Exl Inc. within a short period. This created significant uncertainty about Exl Inc.'s future business prospects. Conseco also considered liquidating Exl Inc. and examined the costs of liquidation and the operational risks involved with a liquidation, including the loss of its sole outsourcing vendor. Following this review, Conseco sold Exl Inc.

71. *Please explain to us your purchase price conclusions with respect to Conseco's waiver of \$11,000,000 in advances to Exl Inc., as well as the capital contribution of \$1,000,000, and whether these amounts were factored into your purchase price calculation.*

Response to Comment 71

The Company supplementally advises the Staff that Conseco's waiver of \$11 million in advances to EXL Inc., as well as the contribution of \$1 million were transactions carried out between Conseco and EXL Inc. prior to the Company's purchase of all of the outstanding capital stock of EXL Inc. and its wholly-owned subsidiary, EXL India. They were recorded as capital contributions prior to the purchase from Conseco.

72. *Please explain in further detail the types of costs included in the \$1,446,179 in costs capitalized as part of the November 14, 2002 acquisition, as well as your capitalization conclusions, and refer to paragraph 24 of SFAS No. 141.*

Response to Comment 72

The Company has revised the Prospectus as requested. See page F-10 of the Prospectus.

*Note 2 — Summary Significant Accounting Policies*

Revenue Recognition, page F-11

73. *We note your disclosure here that you derive revenues from not only business process outsourcing (BPO) but also from voice and Internet services. Please disclose in further detail the nature of the voice and Internet services you provide, whether the voice and Internet services comprise a significant portion of your total revenues and how you determined these services did not represent a separate reportable segment as outlined under SFAS No. 131.*

Response to Comment 73

The Company has revised the Prospectus as requested. See page F-12 of the Prospectus. The Company supplementally advises the Staff that it derives revenues from business process outsourcing, which includes, among other things, services provided through the mediums of voice and Internet. Voice and Internet are not a service segment, per se, but a means of communication and delivery for providing services. As a result, no discrete financial information is available for revenues transacted through voice and Internet. The Company's chief operating decision-maker does not review operating results broken down by operations carried out through these communication channels.

74. *Please tell us how you have applied the provision of EITF 99-19 with respect to your "gross" presentation of revenues and expenses associated with your BPO services provided to customers in the context of the "Indicators of gross revenue reporting" outlined in paragraphs 7 through 14.*

Response to Comment 74

Set forth below is the Company's response to Comment 74:

The Company reports its revenues on a gross basis in accordance with paragraphs 7 through 14 of EITF 99-19.

*The Company is the primary obligor in the arrangement:* The Company is responsible for providing outsourcing services to its clients. The Company and its employees provide services and are responsible for the quality of those services. All of the Company's agreements with its clients contain client acceptance provisions for the services that it is required to render. The Company retains all of the risks and rewards as a principal in these transactions and is the primary obligor in these arrangements.

*The Company has general inventory risk (before a customer order is placed or upon a customer return):* The Company's inventory is essentially its employees. The Company must maintain the requisite level of employees to service its clients. The Company bears the risk of understaffing or overstaffing client engagements and/or projects. The employees are compensated without regard to the volume of transactions they process or the acceptance of their work by the Company's clients.

*The Company has latitude in establishing price:* The Company has latitude in establishing prices with its clients for services. The pricing terms for each contract are negotiated at the outset of entering into an agreement. The Company would not enter into an agreement if it did not believe it to be economically viable and in its best interests.

*The Company changes the product or performs part of the service:* The Company performs all services required by its clients. It is responsible for hiring employees to deliver the services, training them and managing them on a day-to-day basis. The Company has complete discretion in improving a process, provided that the ultimate delivery of its service is not adversely impacted and is acceptable to its clients. In fact, many of its agreements contain incentives or requirements for attaining efficiencies in service delivery.

*The Company has discretion in supplier selection:* The Company has complete discretion in selecting the suppliers that it uses in delivering services to its clients. Such suppliers include telecommunication companies, Internet service providers and software/hardware vendors.

*The Company is involved in the determination of product or service specifications:* The Company, along with its clients, determines the nature, type, characteristics, or specifications of the services to be provided at the beginning of the contractual term. Once service specifications have been defined and agreed to with the client, the Company is then responsible for delivering services in accordance with the agreed-upon specifications.

The Company has physical loss inventory risk (after customer order or during shipping): Not applicable.

*The Company has credit risk:* The Company assumes the credit risk for amounts billed to clients. The Company is responsible for collecting amounts billed from its clients and for paying its employees who provided those services regardless of whether or not the client has paid the amounts billed.

*Note 3 — Restatement, page F-16*

75. *Please revise your disclosure to identify the related party, explain the nature of the professional fee and explain why the fee was renegotiated. Please tell us how you evaluated APB 20 in concluding that the renegotiated fee should be restatement of expense. In addition, please tell us how you considered footnote 1 of APB 26.*

Response to Comment 75

The Company has revised the Prospectus as requested. See page F-16 of the Prospectus. The Company supplementally advises the Staff that the restatement was a correction of an error in previously issued financial statements as defined in Paragraph 13 of APB 20. This was an oversight on the Company's part based on facts that existed at the time the financial statements were prepared, and not an extinguishment of a liability as defined by APB 26.

*Note 7 — Capital Structure*

76. *Please disclose in further detail the mandatory redemption events that can cause the holders of the Company's preferred stock to be able to redeem and why these mandatory redemption events did not cause the preferred stock to be classified as a liability in accordance with paragraphs 9 and 10 of SFAS No. 150.*

Response to Comment 76

The Company has revised the Prospectus as requested. See page F-18 of the Prospectus.

*Note 8 — Employee Benefit Plans, page F-18*

77. *Please disclose the amount of contributions the Company has made to the Government Provident Fund for each period. In addition, please clarify if assets held by the Government Provident Fund are reported on the Company's balance sheet.*

Response to Comment 77

The Company has revised the Prospectus as requested. See page F-20 of the Prospectus.

*Note 11 — Stock Based Compensation*

Pre-predecessor Stock Option

78. *Please confirm that the number of shares and the weighted-average exercise prices appearing in this table are properly stated.*

Response to Comment 78

The Company supplementally confirms to the Staff that the weighted-average exercise prices and the number of shares appearing in the referenced table are properly stated. Such amounts have been adjusted to give effect to the February 2002 reverse stock split pursuant to which one equity share was issued for every 119,379 shares of EXL Inc. shares held on that date.

79. *Please supplementally explain your basis for reversing the unamortized deferred compensation related to Conseco stock options to additional paid-in capital. Tell us how you considered Issue 44 of EITF 00-23 and cite any other accounting literature you applied.*

Response to Comment 79

Set forth below is the Company's response to Comment 79:

On July 31, 2001, Conseco acquired all of the outstanding common shares of Exl Inc. In connection with this acquisition, each of Exl Inc.'s stock options that were outstanding at July 31, 2001 pursuant to its 2000 Stock Option Plan was converted into an option to purchase a number of shares of Conseco common stock as determined in the Agreement and Plan of Merger by multiplying (i) the number of shares of common stock subject to Exl Inc.'s options immediately prior to July 31, 2001 by (ii) the exchange ratio.

In accordance with FIN 44, vested stock options issued by Conseco in exchange for outstanding awards held by employees of Exl Inc. were considered to be part of the purchase price paid by Conseco. Accordingly, the fair value of Conseco's awards totaling approximately \$3.3 million was included as part of the purchase price.

For unvested stock options granted by Conseco in exchange for outstanding awards held by employees of Exl Inc. where service was required subsequent to the consummation of the acquisition in order to vest in the replacement awards, a portion of the intrinsic value of the unvested awards was allocated to unearned/deferred compensation and recognized as compensation expense over the remaining future vesting period. The amount allocated to deferred compensation, totaled approximately \$1 million. Through November 14, 2002, the Company recorded compensation expense of \$358,110 related to these awards. The unamortized deferred compensation balance was approximately \$657,000 at November 14, 2002.

On November 14, 2002, the Company purchased all of the outstanding capital stock of Exl Inc. from Conseco. The Company was under no legal obligation to assume any of the previously issued stock option awards and decided not to acquire them or exchange them as part of the acquisition. As a result of the acquisition, the previously issued stock option awards expired prior to exercise, as the option holders were no longer employees of Conseco. These options were no longer outstanding after the acquisition. As a result, the unamortized deferred compensation was reversed to additional paid-in capital.

The options granted by the Company in 2003 were in the normal course of business and were accounted for as new option grants in accordance with APB Opinion 25. The options granted to employees under the 2003 Stock Option Plan are not considered as replacement options awards as discussed in FIN 44. The 2003 option grants (i) were granted to employees regardless of the number of stock options they



previously had (i.e., no exchange ratio), (ii) were also granted to employees who joined the Company subsequent to November 14, 2002 and (iii) were first granted on April 21, 2003 after the Company had adopted the 2003 Stock Option Plan.

**Notes to Consolidated Financial Statements: September 30, 2004**

**Note 3 — Stock Based Compensation**

**Stock Option Plan**

80. *For each stock option grant within the most recent 12 months, please revise to disclose the number of options granted, the exercise price, the fair value of the common stock, and the intrinsic value per option, and the methodology used to determine the fair value and whether that valuation was contemporaneous or retrospective.*

**Response to Comment 80**

The Company has revised the Prospectus as requested. See page F-32 of the Prospectus.

**Client Options**

81. *We note that in July 2004 you issued options for 115,100 shares of Class A common stock with an exercise price of \$12.50 to a significant client and fair valued those options, using Black Scholes, at \$1,792,000 or approximately \$15.56 per share. However, we also note that you also issued 526,316 shares of Class A common stock at the same time (July 2004) for approximately \$23.75 per share. As such, please explain the assumptions used when calculating the fair value of the options issued.*

**Response to Comment 81**

The Company has revised the Prospectus as requested. See pages F-33 through F-34 of the Prospectus.

**Part II**

**Exhibits**

82. *Please provide us with copies of the exhibits, including your underwriting agreement, legal and tax opinions, or drafts of such opinions, that you intend to file with the Form S-1. We may have further comment upon our review of these documents.*

Response to Comment 82

The Company has filed all exhibits that are available at this time, and will file the remainder of its exhibits with subsequent amendments to the registration statement. As requested, the Company has supplementally provided the Staff under separate cover letter with a draft of the legal opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP. The Company does not believe that the tax disclosures in the Prospectus are material enough to require that a tax legal opinion be provided pursuant to the requirements of Item 601 of Regulation S-K.

\* \* \* \*

If you have any questions concerning the above responses, please do not hesitate to contact either the undersigned at (212) 373-3076 or John C. Kennedy at (212) 373-3025.

Sincerely,

/s/ Valérie M. Demont  
Valérie M. Demont

cc: Vikram Talwar, ExlService Holdings, Inc.  
Rohit Kapoor, ExlService Holdings, Inc.  
Amit Shashank, ExlService Holdings, Inc.  
John C. Kennedy, Paul, Weiss, Rifkind, Wharton & Garrison LLP  
Janet L. Fisher, Cleary Gottlieb Steen & Hamilton LLP  
Vishal Bakshi, Goldman, Sachs & Co.  
David Goldstein, Citigroup Global Markets Inc.  
Kapil Jain, Ernst & Young, LLP