EXHIBIT 16
CHRISTOPHER DOWHAN declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am Vice-President, Distribution, for defendant DirectRevenue, LLC. I submit this declaration in support of the defendants’ motions to dismiss the complaint and to stay this litigation pending arbitration. I am familiar with the facts set forth herein.

2. Defendants DirectRevenue, LLC ("DirectRevenue"), and BetterInternet, LLC ("BI") are Delaware limited liability companies with principal places of business in New York. DirectRevenue is the parent company of BI.

3. DirectRevenue has created, targeted advertising software (the "Software"), distributed by BI, which computer users download onto their machines.
The Software delivers advertisements to a user's screen based on the user's web browsing preferences.

The DirectRevenue/B1 End User License Agreement

4. Attached hereto as Exhibit A is a true and correct copy of B1's End User License Agreement (the "EULA"), in substantially the form that has been available and in effect since at least February 2004. This is the same EULA that was annexed to the Defendants' initial memoranda in support of their motions. The EULA governs the download, installation, and use of the Software and other programs downloaded from B1.

5. The EULA has undergone periodic changes since it was first drafted, including a revision that occurred subsequent to the filing of the Complaint. A true and correct copy of this revision is attached hereto as Exhibit B. Since at least February 2004, however, the EULA has remained materially the same. For example, both versions attached contain the arbitration clause cited by Defendants in their memoranda, which has been included in the EULA since at least February 2004. As is evident from these versions of the EULAs, aside from B1's redesignation as "ABI" (both of which refer to BetterInternet, LLC) in the later revision, the arbitration clause is identical in each version attached.

6. The EULA is made available to users in electronic form, at the B1 web site. As such, it can be displayed in varied type sizes, depending on the user's display hardware and software settings. Further, users can print the EULA in a variety of ways. For example, the user can click a link on the EULA page to navigate to a "printer
friendly" version, which can then be sent to the printer. Alternatively, the user can highlight the text of the EULA and copy it into a word processor, adjusting the type size and style to his own preferences prior to printing.

**Installation Of The Software Under Service Pack 1**

7. Attached hereto as Exhibit C are true and correct copies of screen shots demonstrating the Software installation process when users of the Microsoft Windows XF Service Pack 1 ("SP1") operating system (and older operating systems) downloaded the Software from BI's website, www.abetterinternet.com. In this demonstration, the user is downloading a product called Flashtalk, which allows computer users to talk to each other telephonically over the internet. (Screen Shot 1.) As explained in the EULA, BI's targeted advertising Software accompanies the Flashtalk download.

8. As the screen shots demonstrate, when the user clicked on the link for Flashtalk, a dialog box appeared, asking the user if they wished to continue with the download. (Screen Shot 2.) Specifically, the message read, "Do you want to install and run the latest version of Flashtalk? By clicking 'Yes,' you acknowledge that you have read and understand Betterinternet's Consumer Policy Agreement and agree to be bound by its terms." This message was displayed in the dialog box as blue hyperlink text, signaling to the user that more information was available by clicking that text. Clicking the blue hyperlink text sent the user to the full text of the EULA, as shown in the next shot (Screen Shot 3). The hyperlink message was drafted by BI to integrate with the
generic window presented by Windows. In other words, Windows SP1 displayed a
dialog box for every download of this type (from any publisher) that reads “Do you want
to install and run ‘___________’ signed on _______ and distributed by _______.”
Each individual publisher, if they so choose, supplies the text that Windows XP inserts
into the blanks. In this case, BI additionally opted to have the text displayed as a
hyperlink to the EULA.

9. Download and installation of the Software could not continue until
the user assented by clicking the “Yes” button at the bottom of the dialog box. (Screen
Shot 4.) If the user wished to decline, they could click “No,” and the download process
would abort. Clicking “More Info” provided more information about BI, and about BI’s
electronic signature, which verifies the authenticity of the composer code producing this
download process.

10. Clicking “Yes” allowed the download of the Software to begin.
Once the Software downloaded, the installation began. (Screen Shot 5.) This process
prompted the user for some additional choices regarding preferences. When the
installation process was complete, a small browser window opened to notify the user that
the installation had succeeded, and the FlashTalk program opened. (Screen Shot 6.)

Installation Of The Software Under Service Pack 2

11. Upon information and belief, as of or about August 6, 2004, Microsoft
released an upgrade to the Windows XP operating system, known as Service Pack 2
(“SP2”). Service Pack 2 implemented several changes in the operation of Microsoft’s
Internet Explorer ("IE") web browser program, most of which were aimed at increasing IE's security provisions. In practice, however, SP2 also created many unforeseen problems of incompatibility with or improper function of other software programs. Indeed, the scope of these problems is evident by searching the internet for "Windows XP SP2 Problems" at www.google.com, which yields article after article about the frustrating experiences of users following their upgrades to SP2.

12. Upon information and belief, because of the uncertain effects of SP2, it took a substantial period of time — many months following the release — before SP2 was widely deployed. I understand that many companies opted not to upgrade to SP2 initially, and advised their employees not to do so, until their information technology departments could determine what compatibility issues the company computer systems would face upon applying the SP2 upgrade. An example of a news story discussing this lag in acceptance of SP2, see PC World, "Businesses Still Wary of XP SP2," available at http://www.pcworld.com/news/article0aid,120588,00.asp (April 5, 2005.) According to that article, as late as April of this year, only 24 percent of business systems surveyed had upgraded to SP2.

13. Attached hereto as Exhibit D are true and correct copies of screen shots demonstrating the Software installation process when users of the Microsoft Windows XP SP2 operating system downloaded the Software from BI's website, www.aBetterInternet.com. Again, the use in the demonstration is downloading Flashback (Screen Shot 1), and, again, as explained in the EUULA, BI's targeted advertising Software
accompanies FlashTalk. As evident below, the changes wrought by SP2 resulted in some unforeseen changes in the download process, which changes resulted entirely from Microsoft’s design of SP2, and not from any action on DirectRevenue or BI’s part.

14. With SP2, when the user clicked on the FlashTalk link on the BetterInternet home page, the operating system automatically blocked the dialog box that had previously been presented (see Ex. C, Screen Shot 2). Instead, the IE browser displayed a message about the download, which IE itself created using the text provided by BetterInternet for the tag “attached” to the Software. Hence, rather than receiving the dialog box with the “Yes,” “No,” and “More Info” buttons, the user received a message, generated by the operating system (not by BI), that “The site might require the following ActiveX control: the latest version of FlashTalk? By clicking... from BetterInternet?” Click here to install.”

15. The bold language in the preceding paragraph represented SP2’s attempt to create a message to the user based on the information supplied by the publisher, in this case, BI. However, due to the limited amount of text that SP2 allows to be displayed in this message, SP2 automatically truncated BI’s message so it could fit in the new window. Nonetheless, this message served on the user by SP2 was itself clickable, as it said, and the user could again request the Software by clicking the message. Otherwise, the user could close the window, and the installation process aborted.
16. Clicking the message described in the preceding paragraph then led to a new dialog box (Screen Shot 3), which contained the blue hyperlink to the EULA. Again, however, due to constraints on text put in place by Microsoft (and unforeseen by and initially unknown to DirectRevenue and Bi), the dialog box truncated Bi's intended message, so that it read, "Do you want to install this software? Name: 'the latest version of Flashtalk? By Clicking Yes..." If any event, SP2 left enough of the message intact to notify the user that clicking to install had consequences ("By clicking Yes..."), and to signal that the hyperlink should have been clicked for additional information. Clicking the hyperlink that read "the latest version of Flashtalk? By clicking Yes..." took the user to the EULA (Screen Shot 4).

17. Additionally, SP2's new download dialog box contains buttons labeled "Install" and "Don't Install", rather than "Yes" and "No," as under SP1. (Screen Shot 5.) Clicking on "Don't Install" aborts the process just as clicking "No" had done previously. Clicking "Install" causes the software to download, and the installation proceeds as it did under SP1. (Screen Shots 6-7.) Because the hyperlink message had been designed with SP1's dialog box in mind, however, the message regarding the software still referred to the user clicking "Yes" rather than "Install."

Bi Revises The Installation Process

18. Bi subsequently revised the process of installing the software from Bi's website. This revision was carried out with an eye toward exceeding the standards for compliance with proposed federal legislation governing consumer software.
downloads. DirectRevenue and BI wanted to stay ahead of the curve with regard to this proposed legislation.

19. Attached hereto as Exhibit E are true and correct copies of screen shots detailing the revised installation process that resulted from DirectRevenue's and BI's efforts. In the demonstration displayed in these screen shots, the user is downloading Clean Getaway, another BI software product, which assist a user in clearing out a web browser's history file after a browsing session ends. (Screen Shot 1.) Like the Flashtalk download described above, as explained in the EULA, BI's targeted advertising Software downloads along with Clean Getaway.

20. Under the new download and installation process, clicking on one of the BI software products (such as Clean Getaway) takes the user to a page providing a more detailed description of the product, and summarizing some of the information already provided in the EULA regarding the cost-free provision of the software and the function of the Software in serving occasional ads. (Screen Shot 2.) At the bottom of this screen, the site displays a hyperlink to the full EULA, along with a message notifying the user that they must review and accept the EULA prior to downloading and using BI's products.

21. If the user clicks on "Download now!" at the right side of the screen, Windows displays a dialog box, prompting the user to provide instructions as to what to do with the installation file that is going to be downloaded. (Screen Shot 3.)
22. Following the download, the user clicks to open the installation file, and SPl2 displays a dialog box confirming that the user wishes to run the installation program and verifying the digital signature of the file. (Screen Shot 4.) If the user clicks “Don’t Run,” the installation aborts. If the user clicks “Run,” the installation process begins. (Screen Shot 5.) The first step briefly introduces the product to the user, and prompts the user to click “Next” to continue. Upon doing so, the user is presented with another explanation of how the program and the Software work, similar to the one described in paragraph 20, above. (Screen Shot 6.)

23. Clicking “Next” takes the user to the next step of the installation process, in which the installation program displays the full text of the EULA in a scrollable window, with a link to a printer-friendly version if the user desires a hard copy of the EULA. (Screen Shot 7.) The installation cannot proceed until the user selects, “I have read and accept the agreement,” whereupon the “Next” button becomes clickable and the process can continue (Screen Shots 8 & 9).

24. When the installation has completed, the program displays a final dialog box, again summarizing the function of the Software, and, as detailed in the EULA, notifying the user of the easy process by which the Software can be removed if the user so desires. (Screen Shot 10.)
Regardless of Operating System, Users Are Given the Opportunity to Read the EULA, and Cannot Proceed Until They Have Had That Opportunity

25. The foregoing paragraphs demonstrate that, regardless of which operating system a user has on his or her computer, the user is presented with the opportunity to read the EULA prior to downloading the software from BI’s web site, and the user cannot proceed until they have that opportunity and either take advantage of it or opt to skip it. While SP2 initially caused certain glitches that changed the way the notice was presented, the user was still made aware that, by continuing to download the software, some condition or consequence would come into effect, and this message was always presented as a hyperlink, the most basic indicator to even novice users of the internet that more information is available by clicking the text.

Every Time The Software Series A Ceres Branded Ad, Users Are Given Another Opportunity To Read The EULA

26. Once the user has installed the software, it periodically serves ads, the content of those ads being based on the user’s web browsing preferences. As Plaintiff acknowledges, he received ads contained in “Ceres” branded windows. Attached hereto as Exhibit F are true and correct copies of screen shots displaying a sample Ceres ad.

27. As visible in Screen Shot 1, these Ceres windows contain, in the upper right corner (next to the “X” used to close the window), a button with a question mark, allowing the user to click for information. Clicking the information button opens a
browser window that clearly explains the source of the ad, explains the function of the software, gives instructions on how to uninstall the software if the user chooses to do so, (Screen Shot 2), and presents another opportunity to view the EULA, in the form of a hyperlink to the EULA at the bottom of the window. (Screen Shot 2) (The hyperlink leads to the EULA, as displayed in Screen Shot 3.) Because users close the ads by clicking on the "X" in the upper right corner, placement of the information button in that same location makes the information button relatively conspicuous — users mouse over the button every time they close an ad.

DirectRevenue's and BI's Standard Distribution Agreement With Software Distributors:

28. Plaintiff, in his memorandum opposing the motion to dismiss, refers to, but fails to attach, the DirectRevenue/BI Standard Distribution Agreement, the terms of which govern third parties' rights to distribute the software. Attached hereto as Exhibit G is a true and correct copy of said Standard Distribution Agreement.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
June 21, 2005

CHRISTOPHER DOWHAN

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EXHIBIT A TO DECLARATION OF
CHRISTOPHER DOWHAN
a better internet

(CESIS ADVERTISING SOFTWARE)

1. Acceptance of This Agreement - This BetterInternet End User License Agreement ("Agreement") is a contract between you (the "Licensee") and BetterInternet, LLC, a Delaware corporation with a mailing address of 2713 Cinderella Road, Suite 400, Winnipeg MB R3H 1E6 ("BetterInternet"), and governs your use of all ad targeting software ("Software") and other BetterInternet software and services provided by you ("product", "Software"), this Agreement includes BetterInternet’s Privacy Policy. Please read the terms of this Agreement carefully before installing and using the Software.

This Software will collect information about websites you access and will use that information to display advertising on your computer.

By clicking "yes" or downloading, installing or using the Software, you acknowledge that you have read and understand this Agreement and agree to be bound by its terms. If you do not agree to be bound by the terms of this Agreement, you may not download or use the Software, and will close this window without downloading the Software or clicking yes to indicate your acceptance of this Agreement.

2. Functionality - BetterInternet is an advertising software known as Cesis, delivers advertising and promotional information and promotional messages to your computer screen while you view Internet web pages. BetterInternet is able to provide you with free or charge as a result of your agreement to download and use BetterInternet and accept the advertising and promotional messages it delivers.

By installing the Software, you understand and agree that the Software may, without any further prior notice to you, automatically perform the following: display advertisements of advertising and pay it fee to BetterInternet in the form of pop-up ads, pop-under ads, premilinks and other various advertising displays to and advertisements of related websites based on the information you view while websites you visit, are not personally identifiable data that the websites you have visited, are in certain URLs including your browser. You may remove the Software from your computer, and install the same becomes or additional software, including smart cards and cookies, that are not installed without your express consent; install desktop icons and installation files; install software from BetterInternet affiliates; and accept third-party Software.

In addition, you understand and agree, by installing the Software, that BetterInternet and/or the Software may, without any further prior notice to you, remove, disable or render inoperable certain elements programs resident on your computer, which, in turn, may disable your computer’s performance and software logging on your computer, including hardware and software programs, as well as any adverse impacts on your computer.

Certain applications or functions that may already on your computer or that are accessible through the Internet may prevent the Software from being accessible to your computer. By installing certain applications or functions that may already on your computer, you agree that BetterInternet may install the Software without providing a notice regarding such actions. By doing so, such applications or functions may also access to your computer as a result of installing updated or new software components on your computer. You agree that BetterInternet may install the Software without providing a notice regarding such actions. By doing so, such applications or functions may also access to your computer as a result of installing updated or new software components on your computer.

3. Privacy Policy - BetterInternet, during or after your use of the Software, does not collect any personally identifiable information about you, such as your name, address, telephone number or e-mail address, nor does BetterInternet require such information from you before downloading or installing the Software. However, BetterInternet requires such information from you before downloading or installing the Software. BetterInternet requires such information from you before downloading or installing the Software. BetterInternet requires such information from you before downloading or installing the Software.

http://www.abetterinternet.com/policies.htm

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address, your domain, your operating system, your browser version, type and language and your Internet Service Provider.

Advertisements may be displayed of advertisers who give a fee to BetterInternet and you may be provided with and/or redirected to content of other parties and/or links to third party websites or content or offered the opportunity to download software from third party software vendors. BetterInternet is not responsible for the privacy practices of such advertisers, content providers, third party, software vendors or websites. BetterInternet encourages you to read the privacy policies of such advertisers, content providers, third party, software vendors and websites.

BetterInternet may use invisible tracking of counting known as "web Beacons" to register that a particular web page has been viewed and/or "cookies" or other analogous identifiers that betterInternet transfers to your computer's hard drive in order to enable BetterInternet's system to recognize your web browser. BetterInternet chooses and may use certain other types of non-personally identifiable information, including certain of the web pages that you view, the amount of time that you spend on certain websites, your responses to ads served by BetterInternet, certain software installed to your computer and software characteristics and preferences, non-personally identifiable information of web pages and forms, software usage characteristics and preferences, and your IP. BetterInternet associates this information with a randomly-assigned anonymous identifier for your computer. You may see this information to enable the functionality of the Software, to periodically update the Software, to deliver and display ads served by BetterInternet, or serve a fee to BetterInternet, provide you with or redirect you in content or websites of such advertisers or other parties and offer you the opportunity to download software from third party vendors.

BetterInternet may share non-personally identifiable aggregate information about you with third parties, including advertisers.

If we have further questions about betterInternet's privacy/clickfree, you may contact us at publications@betterInternet.com.

6. Children's Privacy Policy and Use - The Software is not directed to children. BetterInternet and you cannot determine with any degree of certainty whether a child is using a computer at a given time, this "Children's Privacy Policy and Use" applies to software that is not directed to children and it is a policy that is compliant with the Children's Online Privacy Protection Act and with the Federal Trade Commission's "Children's Online Privacy Protection Act." The Software is not directed to children and it is not intended to collect personally identifiable information from children under the age of thirteen.

BetterInternet does not knowingly collect any personally identifiable information from children under the age of thirteen. If BetterInternet becomes aware that it has inadvertently received personally identifiable information and/or data from a user under the age of thirteen, BetterInternet will delete such data from its records and will cease to collect any new data from that computer, requiring any non-personally identifiable data.

Since BetterInternet does not knowingly collect any personally identifiable information from children under the age of thirteen, BetterInternet does not knowingly disclose such information to third parties, including, because BetterInternet does not knowingly collect any personally identifiable information of and/or data from children under the age of thirteen, BetterInternet does not participate in or engage in commercial trade of personal information of children under thirteen without providing personally identifiable information.

For more information on software's privacy policy, visit the FTC Privacy Policy, sponsored by the Federal Trade Commission at http://www.ftc.gov/compliance/children/.

5. User Limitations - You must be at least 18 years of age or older to download or use the Software. By downloading the Software, you represent and warrant to BetterInternet that you are therein years of age or older.

6. Software License - The Software, which shall be deemed to include any enhancements or modifications thereto and related documentation, is a copyright work. Subject to your compliance with all of the terms and conditions of this Agreement, BetterInternet grants to you a non-transferable, non-exclusive, personal, non-commercial license to download, install and use the Software on and to one computer and you use the Software in accordance with this Agreement for non-commercial purposes only. BetterInternet may terminate this License at any time without notice.

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http://www.abetterinternet.com/policies.htm

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If any part of these warranties, conditions or limitations is found to be invalid or unenforceable for any reason or if BetterInternet is liable to you for any other reason, then BetterInternet's aggregate liability for all claims under such circumstances shall not exceed the lesser of ten dollars ($10) or the amount paid by you for your use of the Software.

12. Termination and Removal of Software - by entering into this Agreement, you understand that BetterInternet may store a record of your computer for purposes of monitoring and controlling your use of the Software. If you fail to comply with any of the terms of this Agreement or if you fail to comply with any of the terms of any other Agreement that you have entered into with BetterInternet, BetterInternet may terminate this Agreement or your right to continue to use the Software at any time.

Further, you agree that you will not initiate, permit, authorize or assist any third party or application to remove the Software from your computer, or disrupt its operation or the operation of any other user. You agree that removal of the Software from your computer will not be permitted by you pursuant to the instructions set forth herein.

13. Anti-Spam Policy And Acceptable Use - While BetterInternet encourages you to refer friends, family, colleagues, or others to use the Software, you may not use it only through methods that are consistent with the terms and conditions of your own Internet Service Provider as well as powerful standards of email as user-to-user behavior. In particular, you may not use the Software to send junk mail, viruses, spam, or other unsolicited bulk mail. Other prohibited methods of spamming include, but are not limited to, the sending of unsolicited bulk mail, unsolicited email messages, or unsolicited advertising or promotional material. You may use the Software to send unsolicited bulk mail, unsolicited email messages, or unsolicited advertising or promotional material if the unsolicited bulk mail, unsolicited email messages, or unsolicited advertising or promotional material are sent only to persons with whom you have a business relationship, and which you have obtained their consent to send such unsolicited bulk mail, unsolicited email messages, or unsolicited advertising or promotional material.

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14. Acceptance to Software - To use the Software, you must pay all your equipment to establish a connection to the Internet and pay for your own costs, including paying any fees, you must examine and accept the Software that you have the necessary rights and permissions to install the Software on the computer used for these purposes.

15. Other Warranties - The Software is provided "as is" and notwithstanding any other warranties included in the Web as a whole, BetterInternet disclaims all warranties for express or implied, including, but not limited to, the warranties of merchantability, fitness for a particular purpose, accuracy, and non-infringement. In no event will BetterInternet be liable for any direct, indirect, incidental, punitive, special, exemplary, or consequential damages, including, but not limited to, loss of use, loss of data, or other loss resulting from the use of the Software or your inability to use the Software, even if BetterInternet has been advised of the possibility of such damages.

16. Third Party Software - During the process of downloading and/or using the Software, you may also be offered the opportunity to download software from third party software providers. Such software is your own responsibility to evaluate, and BetterInternet will not be liable for any damage or loss that results from the downloading and use of such third party software.

17. Governing Law - The terms of this Agreement are governed by the laws of the country in which you reside. If you reside in the United States, then this Agreement is governed by the laws of the Commonwealth of Virginia.

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compliance or claims related to the Third Party Software should be directed to the appropriate vendor. "THE THIRD PARTY SOFTWARE IS PROVIDED "AS IS" AND "WITH ALL FAULTS." BETTERINTERNET MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE QUALITY, SAFETY OR SUITABILITY OF THIS SOFTWARE; EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BETTERINTERNET BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER THEY MAY ARISE AND EVEN IF BETTERINTERNET HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

There are inherent dangers in the use of any software available for downloading on the Internet, and Betterinternet cautions you to make sure that you carefully understand the potential risks before downloading any of the Third Party Software. You are solely responsible for adequate protection and backup of your data and equipment used in connection with any of the Third Party Software, and Betterinternet will not be liable for any damages that you may suffer in connection with using any of the Third Party Software.

17. Illegal, Unauthorized, Or Fraudulent Content Or Activities. - The Software may be used only for lawful purposes and in a lawful manner and in compliance with this Agreement. You agree to comply with all applicable laws and regulations. Betterinternet has the right, but not the obligation, to suspend or terminate any violation of its policies and take any other action it deems appropriate, including but not limited to terminating your access to the Software without notice. To protect Betterinternet systems and users, to ensure the safety and operation of Betterinternet business and services, or in response to subpoenas, court orders, or legal requirements, Betterinternet may access and disclose any information that it considers necessary or appropriate, including user contact details, in addressing and bringing of violations, copyright infringement, and Web usage paths. By using the Software, you expressly consent to the foregoing use and disclosure.

18. Applicable Law, Jurisdiction and Venue. - This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any principles of conflicts of laws, and you hereby consent to the personal and exclusive jurisdiction of the State and Federal courts sitting in the County of New York, State of New York.

19. Arbitration. - Except as provided in the next paragraph, you and Betterinternet agree that any and all disputes, controversies and claims relating in any way to the Software, this Agreement or the breach thereof (including the arbitration of any claim or dispute and the enforceability of this paragraph) shall be submitted to and resolved by means of a confidential arbitration before a single arbitrator administered by the American Arbitration Association under its then current Commercial Arbitration Rules and conducted in the County of New York, State of New York. The arbitrator's award shall be final and may be entered as a judgment in any court of competent jurisdiction. You and Betterinternet may waive in any court of competent jurisdiction only to stay or compel arbitration under the Agreement to a specific extent, that is enforceable, if not made contrary to public policy, of an arbitration agreement by a provision in a contract evidencing a transaction involving goods in interstate commerce.

However, to the extent you have in any manner violated or threatened to violate BetterInternet's rights in the Software, Betterinternet may seek injunctive or other equitable relief in any court of competent jurisdiction and you irrevocably consent to jurisdiction and venue in such courts.

20. Changes. - Betterinternet may change any of the terms and conditions contained in this Agreement, without notice to you. You are responsible for reviewing this Agreement before downloading the Software. This Agreement may be changed by Betterinternet at any time, in its sole discretion. Notice of material changes to this Agreement will be posted on Betterinternet's website at www.betterinternet.com when they become effective. You are solely responsible for reviewing this Agreement and any applicable changes. You agree that your continued use of the Software after any changes to this Agreement, either to the Privacy Policy, terms effect will constitute your acceptance of such changes. If you do not wish to accept the changes to this Agreement, do not continue to use the Software after the effective date of such changes and uninstall the Software.

21. General Provisions. - This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, claims, representations and understandings of the parties in connection with the subject matter hereof, oral or written. If for any reason, an arbitrator or court of competent jurisdiction finds any provision of this Agreement, or portion thereof, unenforceable, the remaining provisions of this Agreement shall continue in full force and effect and the provision in question shall be read, or replaced with another provision, to give maximum effect to the intent of the parties as reflected by this plain language. Betterinternet's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of betterinternet's right to subsequently enforce such provision or any other provision of this Agreement. No employee of any of these Agreements should contain any express or implied warranty or condition beyond the express terms of this Agreement relating to ownership of Intellectual Property and propriety rights, warranty disclaimers, limitation of liability, indemnification shall survive the termination of this Agreement and the termination of your use or access to the Software, for whatever reason. You acknowledge that you violation of the provisions relating to Intellectual Property and proprietary rights may cause serious damage to Betterinternet which is unquantifiable but nonetheless real and impermissible. Accordingly, in fear defect determines in its sole discretion that you

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have violated or will violate any such provision, BetterInternet will be entitled to injunctive relief from a court of competent jurisdiction restraining such violation. BetterInternet's specific remedies set forth under this Agreement for any breach by you of this Agreement or otherwise shall be cumulative and shall not restrict or limit BetterInternet's ability to resort to any other remedy available under law or equity. Any rights not expressly granted herein are reserved.

22. International Access. The Software is provided from the United States of America. The laws of other countries may differ regarding the access and use of the Software. BetterInternet makes no representations regarding the legality of the Software in any other country and it is your responsibility to ensure that your use complies with all applicable laws outside of the U.S.A.

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EXHIBIT B TO DECLARATION OF
CHRISTOPHER DOWHAN
Some of these third parties may attempt to install a virus, worm, Trojan horse and/or other malicious and unwanted agents onto your computer. In order to ensure the safety of your computer, AIB may remove the virus, worm or Trojan horse from your computer.

These third parties may also attempt to limit particular domain names into your browser's list of 'trusted sites,' require host file changes or manipulate your network communication functionality without first obtaining your consent. As such, such third parties may obtain access to your computer as a means to install unwanted or damaging components on your computer.

You understand and agree that AIB may block the list of all trusted sites in your browser from time to time. Therefore, you may need to re-configure an inspected particular web page which you will previously accessed as trusted site. AIB believes this to be necessary because it enhances the security of your computer and provides you with the ability to choose whether or not to install certain components on your computer.

Some third parties may attempt to disrupt network communication to and from your computer on AIB servers. This may include the manipulation of either your DNS configuration, or your computer's host file. If AIB believes that a third party is impeding your network communications, we reserve the right to correct the conflict in order to preserve proper communication.

You understand and agree, by installing the Software that AIB and/or the Software only, without any additional notice to you, remove, disable or restrict impinging other software programs resident on your computer. This is done, partly disable or restrict impinging other software resident on your computer, including software worked with your software. This may also have your adverse impacts on your computer.

If you do not want AIB and/or the Software to make these security measures, you should not install the Software, or follow the procedures set forth below in Section 3 to remove the Software.

6. Privacy - AIB does not require you to provide any personally identifiable information in order to download or use the Software. However, the Software does collect certain types of non-personally identifiable information about individuals who install and use the Software. None of the information collected is used by AIB to identify you personally. The use and collection of your information is in accordance with AIB's privacy policy located at www.abetternet.com/privacy-policy and is incorporated as part of this Agreement.

7. Software License. The Software, including any documentation, enhancements, additions or other modifications therein, is a copyrighted work belonging to AIB and its licensors. AIB grants to you a personal, revocable, nonexclusive, non-assignable and non-transferable license to download, install and use the Software on a single computer and to use the Software only as permitted under this Agreement for non-commercial purposes only.

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12. Limitation of Liability. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL AAB OR ANY OF ITS AFFILIATES BE LIABLE TO ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, INFORMATION PROVIDERS OR LICENSORS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES (REGARDLESS OF THE FORM OF ACTION OR PROCEEDING) ARISING OUT OF OR RELATED TO (I) ANY USE OF THE SOFTWARE BY ANY PERSON, INCLUDING BUT NOT LIMITED TO, ANY DAMAGE CAUSED BY VIRUSES OR OTHER HARMFUL CODES, ERRORS OR OMISSIONS IN ANY INFORMATION AND CONTENT ACCESSED THROUGH THE SOFTWARE, (II) ANY USE OR ABILITY TO USE THE SOFTWARE FOR WHATEVER REASON, INCLUDING BUT NOT LIMITED TO COMMUNICATIONS FAILURE OR ANY OTHER FAILURE WITH TRANSMISSION OR DELIVERY OF ANY INFORMATION ACCESSED THROUGH THE SOFTWARE, OR (III) ANY GOODS OR SERVICES DISCUSSED, PURCHASED OR OBTAINED, DIRECTLY OR INDIRECTLY, THROUGH THE SOFTWARE, IN EACH CASE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Some jurisdictions do not allow for the exclusion of certain warranties or the limitation of liability for certain damages. Accordingly, some of the above limitations may not apply to you.

If any part of these warranty disclaimers or limitations of liability is found to be invalid or unenforceable for any reason or if AAB is liable to you for any other reason, then AAB's aggregate liability for all claims under such circumstances shall not exceed the greater of ten dollars ($10.00) or the amount paid by you for your use of the Software.

13. Acceptable Use Policy. While AAB encourages you to refer friends, family, colleagues, and others to use the Software, you may do so only through methods that are consistent with the terms and conditions of your own Internet Service Provider as well as prevailing standards of acceptable Internet use and behavior. In particular, you may not use the Software for or the server, name, traditions, or any intellectual properties of AAB for computers with the sending of unsolicited e-mail, or cause to be used AAB equipment, network connectivity, or any resources to originate, deliver, relay, or otherwise transmit unsolicited e-mail messages. You may not engage in any of these practices for nothing (or for any other purpose), without prior authorization, in making service, or advertising, in such a way that AAB network addresses or AAB hosted Web or e-mail services are in any way identified and associated with the sending of unsolicited email. Other prohibited methods of advertising or promoting your involvement with AAB include multiple postings of messages to Internet newsgroups, mailing lists, chat rooms (including IRC, AIM, ICQ), or other interactive chat services or other online boards. Incidents of "spamming"
or similar inappropriate behavior or other violations of the terms of use of the Software should be reported to
contact@abetterinternet.com.

You may only use the Software for lawful purposes and in strict compliance with this Agreement and all applicable
laws. You may not use the Software to post or transmit any message or content, including linking to any message or
content, which is abusive, vulgar, hateful, obscene, scurrilous, inflammatory or otherwise objectionable; is being
used to harass, stalk or otherwise threaten a person; is libelous, defamatory or invades any privacy or publicity rights
of any third party; misrepresents or masks the true identity of any party; infringes any copyright, trademark, service
mark, patent, trade secret or confidentiality obligation; contains any illegal contents of libraries, or any pyramid
schemes; or contains any virus, trojan horse, new bomb or any other harmful or disabling software code.

You may not use any persons, means, devices or arrangements to commit fraud, redirect Internet traffic in a
deceptive or fraudulent manner, interfere with the proper operation of the Software or facility or manipulate results or
information generated or collected in connection with the Software.

ABI has the right, but not the obligation, to investigate any reported violation of its policies and take any action it
determines appropriate, including but not limited to terminating your access to the Software without notice. To protect
ABI's systems and users, to ensure the integrity and operation of ABI's business and systems, or in response to
subpoenas, court orders, or legal requirements, ABI may access and disclose any information that it considers
necessary or appropriate, including IP addressing, traffic information and Web usage paths. By using the Software,
you expressly consent to the foregoing use and disclosure.

14. Promotional Applications - During the process of downloading and/ or using the Software, you may also be
offered the possibility to download software from third party software vendors pursuant to license agreements or
other arrangements between such vendors and yourself ("Promotional Applications"). Please note that the
Promotional Applications are subject to different license agreements or other arrangements, which you should read
carefully. By downloading and using Promotional Applications, you accept such license agreements or other
arrangements and acknowledge that you have read them and understand them. ABI disclaims to the maximum
extent permitted by applicable law, any responsibility for or liability related to the Promotional Applications. Any
questions, complaints or claims related to the Promotional Applications should be directed to the appropriate vendor.

PROMOTIONAL APPLICATIONS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS". ABI MAKES NO REPRESENTATIONS OR
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APPLICATIONS, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF
MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. TO THE MAXIMUM EXTENT
PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ABI BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE,
SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER THEY MAY ARISE AND EVEN IF ABI HAS BEEN
PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. Applicable Law; Jurisdiction And Venue - This Agreement shall be governed by and construed in accordance
with the laws of the State of New York, without giving effect to any principles of conflicts of laws, and you hereby
consent to the personal and exclusive jurisdiction of the state and federal courts sitting in the County of New York,
State of New York.

16. Arbitration - Except as provided in the next paragraph, you and ABI agree that any and all disputes,
controversies and claims relating in any way to the Software, this Agreement or the breach thereof (including
the arbitration of any claim or dispute and the enforceability of this paragraph) shall be submitted to and resolved by
means of a confidential arbitration before a single arbitrator ("Arbitrator") selected by the American Arbitration
Association under its then current Commercial Arbitration Rules and conducted in the County of New York, State of New
York. The Arbitrator shall conduct the Arbitration proceedings, render and enter judgment and may be seated as a judge in any court of competent jurisdiction. You and ABI may litigate in any court of competent jurisdiction only to stay or compel arbitration under this Agreement or
to confirm, modify, vacate or enter judgment on the award rendered by the arbitrator and to enforce the judgment
that is entered. This Agreement will not be governed by the United Nations Convention of Contracts for the
International Sale of Goods, the application of which is hereby excluded. To the fullest extent permitted by applicable
law, no arbitration under this Agreement shall be joined to an action involving any other current or former user of the
Software, whether through class arbitration proceedings or otherwise.

However, to the extent you have in any manner violated or threatened to violate ABI's rights in the Intellectual
Property, ABI may seek injunctive or other appropriate relief in any court of competent jurisdiction and you
irrevocably consent to jurisdiction and venue in such courts.

17. Changes - ABI may change any of the terms and conditions contained in this Agreement, including the privacy
policy referenced in Section 12 above, and other policies and guidelines governing the Software, at any time in its
sole discretion. Notices of material changes to this Agreement will be posted on ABI's website at www.abetterinternet.com
whereby they become effective. You are solely responsible for reviewing the notices and any applicable policies. You
agree that your continued use of the Software after any changes to this Agreement, including the Privacy Policy, take
effect and constitute your acceptance of such changes. If you do not wish to accept the changes to this Agreement,
do not continue to use the Software after the effective date of such changes and uninstall the Software.

18. General Provisions - This Agreement constitutes the entire agreement of the parties with respect to the subject
matter hereof and supersedes and cancels all prior and contemporaneous agreements, claims, representations and

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understanding of the parties in connection with the subject matter hereof, unless written, in, or any testing, an
attempt or court of competent jurisdiction shall any provision of this Agreement, or portion thereof, unenforceable,
then the remainder of this Agreement shall continue in full force and effect and the provisions in question will be read,
or replaced with another provision, to give maximum effect to the intention of the parties as reflected by its plain
language. ABI’s failure to enforce the strict performance of any provision of this Agreement will not constitute a
waiver of ABI’s right to subsequently enforce such provision or any other provisions of this Agreement, nor waiver of
any provision of this Agreement shall be effective unless in writing. All provisions of this Agreement relating to
ownership of Intellectual Property and Proprietary Rights, warranty disclaimers, limitation of liability, and
indemnification shall survive the termination of this Agreement and the termination of your use of access to the
Software, for whichever reason. You acknowledge that enforcement of the provisions relating to Intellectual Property
and Proprietary Rights may result in damage to ABI which is unquantifiable but nonetheless real and irreparable.
Accordingly, in the event ABI determines in its sole discretion that you have violated or will violate any such
provisions, ABI will be entitled to equitable relief from a court of competent jurisdiction restraining such violation.
ABI’s specific remedies set forth under this Agreement for any breach by you of this Agreement or otherwise shall be
cumulative and shall not restrict or limit ABI ability to recover any other remedy available under law or equity. Any
rights not expressly granted herein are reserved.

19. **International Access:** The Software is provided from the United States of America. The laws of other countries
may differ regarding the access and use of the Software. ABI makes no representations regarding the legality of the
Software in any other country and it is your responsibility to ensure that your use complies with all applicable laws
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EXHIBIT C TO DECLARATION OF
CHRISTOPHER DOWHAN
For XP-SP2, Win2k, Win95, WinME, Win97, etc. machines, this is how the download works.

Browse to www.betterinternet.com website and click on a product link - Flashtalk in this example. Some of our distribution will show an ad and automatically pop the window we see in the next image below this one.
The ActiveX pop-up window appears and asks the user if they want to continue with the download and agree to the EULA which is accessible through the linked blue text at the top of the window.
By clicking on the blue text at the top of the pop-up you are sent to the webpage with our full FULA.
If you click on the “No” button, the install is aborted and nothing is installed. If you click on the “More Info” button, you can get more information about BetterInternet and the way we signed the code with our Authenticode keys. By clicking “Yes,” you proceed with the download and installation of the ad client and FlashTalk application.
The user is prompted with a couple more installation preferences screens for the Flashtalk application.
And finally, after the installation is complete we open a small browser window to indicate that the installation was successful, and the FlashTalk application is launched.
EXHIBIT D TO DECLARATION OF
CHRISTOPHER DOWHAN
On an XP-SP2 machine, here's what the download sequence looks like:

Browse to www.shetterinternet.com website and click on a product link - Flashtalk in this example. Some of our distribution will show an ad and automatically pop the window we see in the next image below this one.
After clicking on the download link, XP-SF2 by default will block the download of our application. Technically, this is an `<OBJECT>` tag that has always been supported by IE browsers as the way to download "ActiveX" content. Our OBJECT tag is pointing to a CAB file which would pop a small window in XP-SP1, Win2K, Win98, WinNT, WinMe, etc. prompting the user to choose "Yes" or "No" to the download. In this case, that pop-up is suppressed and the message about the download is shown in a strip of text across the top of the browser window that started the download sequence.
Here we can see that the strip of text is "active" and we can click on it to install the ActiveX control – the second time the user has had to ask now.
This second request pops another window that has a link to our EULA. At this point the phrasing is different from the pop-up we would see for an ActiveX download on XP-SP1 machines, and the rest.
By clicking on this link, a browser window is opened and reveal the EULA in its entirety.
By clicking on the "Don't Install" button, the entire process is aborted and nothing has been installed. By clicking on the Install button, the ad client and FlashTalk application are installed.
The FlashTalk application walks through a set of windows to confirm installation preferences, etc.
And finally, after the installation is complete we open a small browser window to indicate that the installation was successful, and the FlashTalk application is launched.
EXHIBIT E TO DECLARATION OF
CHRISTOPHER DOWHAN
Class Get Away/Installation Step 2 of 4

Why do Class Get Away Free?

Class Get Away is provided to the public at no charge because it is necessary to advertise the Informational Network. Not only are you helping the Informational Network, but you are also helping the Informational Network to be better known. You will receive free software by the proper display of Class Get Away. The software will be displayed on all computer monitors or on any other display technology. All software/Informational Network will receive the brand name - nothing on the upper left corner.

Thank You - enjoy your free version of Class Get Away.

Download now!
Ceres Help Window (Accessed by clicking on the question mark found on the top right-hand corner of the advertisement window):
EXHIBIT G TO DECLARATION OF
CHRISTOPHER DOWHAN
STANDARD DISTRIBUTION AGREEMENT

The signed Insertion Order ("IO") combined with these Standard Distribution Agreement Terms (collectively, the "Agreement") by and between Better Internet, LLC, a Delaware corporation, with a mailing address of 7211 Consevile Road, Suite 400, Wilmington, DE 19809-6660 ("BI") and the entity that counter-signed the IO ("Company") are effective as of the date of the IO ("the Effective Date").

WHEREAS, Company provides software distribution and/or advertising distribution via the Company Desktop (as defined below) and other products and services;

WHEREAS, BI is in the business of providing promotional offers and software downloads to online consumers; and

WHEREAS, both parties wish that the BI Product (as defined below) be distributed by Company in accordance with the terms of the Agreement;

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

Company Desktop is the Company software and proprietary desktop.

Distributor is the installation of the Product to the Company Desktop as set forth by Company.

Final Distribution Unit is the Product that has been negotiated by the Company Desktop for release to the public;

provided that if the Product is not required to be integrated with the Company Desktop, the Final Distribution Unit ships as the Product itself.

Party is either party to this Agreement.

Product is the BI software product or products that are installed to the Company Desktop user base.

Registered User is each unique Internet desktop that does not currently have the Product and that receives and completes installation of the Product in connection with the Distribution by Company hereunder.

Update is any correction, update, upgrade, patch or other modification in addition to the Distribution.

2. DISTRIBUTION AND REGISTRATION

2.1 Fulfillment. Company shall bear the costs of fulfillment, including without limitation, diskette reproduction, labeling, packaging, postage and handling fees, Internet downloading, or other means of distribution. Company shall use best efforts to ensure timely distribution of the Product in accordance with this Agreement. Company will not release the Final Distribution Unit to the public until BI's written approval has been obtained in accordance with one of the following two approaches unless otherwise approved by BI in writing:

(a) BI will provide a test mechanism to Company to enable Company to perform BI mandated tests to inspect that the final distribution (up to and including the Release Date) is consistent with the test results, and the Product will be forwarded to BI with the request for release (b) Company will give the Final Distribution Unit to BI for quality assurance and approval for release. If Company fails to obtain written approval from BI in accordance with one of these two processes for each new version or release of the Final Distribution Unit, Company undertakes and agrees that BI is not liable for any errors or in any manner breaches of the Final Distribution Unit and will not pay for any damages or costs of any kind in connection to the release of the Final Distribution Unit.

2.2 Registration. Company represents and warrants that the Product will not be installed until after each potential Registered User has agreed to the terms of the End User License Agreement ("EULA") provided by BI or (b) a EULA that provides BI with rights, limitations or quality and other terms and conditions that are equivalent to those set forth in BI's standard EULA. Without limiting the foregoing, Company represents and warrants that each potential Registered User will be specifically informed that they are downloading the Product prior to the time that download commences and will receive any other disclosures as required by law.

Each Registered User will be assigned a unique identity that will be used as the basis for the payments to be made herein.

2.3 Reporting. BI will make commercially reasonable efforts to report to Company, approximately once per day,
the number of Registered Users created. Unless requested by Company within five (5) days after delivery thereof, the parties shall deem such report accurate and Company shall write its right to challenge the accuracy of that report.

2.4 Records. If and company shall keep, maintain and preserve for at least one (1) year following termination or expiration of the Terms, accurate records relating to its activities above and the calculation and payment of payments hereunder.

2.5 Audit Rights. Company shall maintain accurate records of the calculation of, and all data necessary to calculate the payments made hereunder. During the Term and three (3) months following expiration or termination of this Agreement, Company, at its expense, and upon fifteen (15) business days advance notice to Us, shall have the right, once during each calendar year and during standard business hours only, to audit such records, in order to verify the figures reported and the amounts owed by Us under this Agreement. Any underpayment discovered (and settled by Us) shall be paid within fifteen (15) business days. Any over payment discovered shall be debited from the next due payment or repaid to Us within fifteen (15) business days if no payment is due.

2.6 Customer Support. As between the parties, Company will have no support obligations as to the Registered Users in connection with the Product. All support and maintenance responsibilities in connection with the Product will be between Us and each Registered User; provided that Company shall have all support and maintenance responsibilities in connection with the Company Desktop. In addition, all updates that may be provided to Registered users will be distributed directly to Registered Users via the Internet; provided that Company will provide reasonable cooperation to Us in connection with its efforts to distribute updates.

3. FEES

Fees and payment terms shall be set forth in the applicable IO. If it shall have no payment obligations other than as set forth in any IO signed by Us.

4. TERM & TERMINATION

4.1 Unless terminated earlier pursuant to this Section or otherwise specified in the IO, this Agreement shall continue for a one (1) year term commencing on the Effective Date (the “Initial Term”), and, unless either Party gives written notice of termination to the other at least sixty (60) days prior to the end of the Initial Term, this Agreement shall automatically renew by successive one (1) year terms (each, a “Renewal Term” and collectively, with the Initial Term, the “Term”).

4.2 A party may terminate this Agreement at any time provided that, this Agreement may be terminated as follows:

(a) at any time by either Party by giving written notice to the other at least thirty (30) days prior to the termination date; or

(b) at any time by either Party by giving written notice to the other at least ten (10) days prior to the termination date.

5. CONFIDENTIALITY

Each Party shall treat as proprietary and shall maintain in strict confidence all Confidential Information of the other and shall not, within the period prior written consent of such other Party, disclose such Confidential Information or use any such Confidential Information other than in furtherance of its obligations hereunder. "Confidential Information" shall mean any information of Company or Us which is, or should reasonably be understood to be, confidential or proprietary to the disclosing party, including, but not limited to, any information, property, or proprietary rights relating to the disclosing party’s business or financial affairs, or any information concerning or relating to the disclosing party's proprietary software products, services, applications, technologies, processes, developments, algorithms, formulas, technology, designs, schematics, drawings, engineering, and hardware configuration information, and the disclosing party's proprietary information relating to the disclosing party's operations and business or financial plans or strategies, including but not limited to the terms and existence of this Agreement, customers, customer IDs, orders, finance documents and projections, product pricing and marketing, financial or other strategic business plans or information disclosed to the receiving party by the disclosing party, either directly or indirectly, in writing, or

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Confidential Information shall not include information, which the receiving Party can demonstrate:

(a) Is known to the receiving Party at the time of the disclosure by the disclosing Party, as evidenced by written records of the receiving Party;
(b) Has become publicly known and made generally available through no- wrongful act of the receiving Party;
(c) Has rightfully been received by the receiving Party from a third party who is authorized by the disclosing Party to make such disclosures;
(d) Was independently developed by the receiving Party without any use of the Confidential Information of the disclosing Party and by employees of the receiving Party who have not had access to the Confidential Information, as demonstrated by facts created at the time of such independent development;
(e) Is disclosed generally to third parties by the disclosing Party without restrictions similar to those contained in this Agreement; or
(f) Is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving Party shall provide prompt notice of such court order or requirement to the disclosing Party to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

Notwithstanding any of the foregoing, it is expressly agreed and understood that Company shall not use and shall treat as Confidential Information, any and all data and information relating to (a) which users of the Company catalog are Registered Users; (b) the interactions between the Product and Registered Users; and (c) any other information relating to the use, distribution or deletion of the Product by Registered Users (collectively, the "User Data"). The User Data shall be deemed the sole and exclusive property of BI and BI’s Confidential Information.

6. LICENSE

BI hereby grants to Company

(i) The limited, non-exclusive, non-transferable, world-wide and revocable right and license to distribute the Product (including without limitation the software therein) in accordance with the terms of this Agreement;

(ii) The limited, non-exclusive, non-transferable, world-wide royalty-free and revocable right and license to use the BI Product trademark and logo, in accordance with BI’s branding guidelines and subject to BI’s prior written approval, solely for the purpose of marketing and promoting the Product during the term of this Agreement. Nothing in this Agreement shall be construed to transfer any rights to the other Party not expressly granted hereunder. All use of the Product trademark and logo shall inure to the benefit of BI.

7. OWNERSHIP

The Parties shall retain all right, title and interest in and to their respective products/services, patents, copyrights, trade secrets, trademarks, service marks, and trade names worldwide, as well as any and all intellectual property rights and all modifications and enhancements thereon, subject to the licenses necessary to enter into this Agreement.

8. LIMITED WARRANTIES

Each Party hereby represents and warrants to the best of its knowledge that as of the Effective Date its products and/or software do not infringe any U.S. patents issued, or any copyright, trademark, or other intellectual property rights, and that its performance hereunder will not conflict with any duties owed to, or rights held by, third parties. Company further represents and warrants that it shall perform hereunder (a) in a competent and professional manner with due care; (b) in accordance with all applicable laws; and (c) shall make no representations, warranties or other communications concerning the Product other than as expressly authorized in writing by BI.

9. LIMITATIONS OF LIABILITY - NO OTHER WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS RESPECTIVE SOFTWARE OR SERVICE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN NO EVENT SHALL BI BE LIABLE FOR ANY LOSS OF DATA, LOST PROFITS, OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND
NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN,
NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, IN NO EVENT SHALL BE LIABLE IN ANY MANNER
FOR ANY DAMAGES OR OTHER LIABILITIES OF ANY KIND, (A) ARISING IN CONNECTION WITH OR OTHERWISE
RELATING TO ANY THIRD-PARTY ADVERTISING SERVED THROUGH THE PRODUCT OR (B) IN AN AMOUNT IN EXCESS
OF THE TOTAL FEES PAID BY IT TO COMPANY UNDER THIS AGREEMENT IN THE SIX MONTHS PRIOR TO THE EVENT
GOING TO THE LIABILITY.

10. INDEMNIFICATION

Company hereby agrees to indemnify and hold harmless BI, its employees, directors, officers, agents and
representatives for all claims, damages, loss, liability and expenses (including reasonable attorney's fees) arising out
of or relating to Company's performance or nonperformance under this Agreement or Company's breach of this
Agreement.

11. GENERAL

11.1 This Agreement may not be construed to create a joint venture or partnership between the Parties hereto and
neither shall have the right, power or authority at any time to act on behalf of, to impose any obligation on or to
represent the other, except as expressly set forth herein.

11.2 No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or
subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in
writing and signed by an authorized representative of the waiving Party.

11.3 This Agreement shall immediately terminate, and to the extent that any term or condition of this Agreement is
specifically determined by any court to be, in whole or in part, invalid or unenforceable. Such termination, however,
will not operate to discharge either Party from the obligation to pay the other Party any sums not such other
Party or exchange any liability that had been incurred prior thereto.

11.4 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DELAY IN THE PERFORMANCE OF ANY OF ITS
OBLIGATIONS HEREBUNDER DUE TO ANY CAUSE BEYOND SUCH PARTY'S REASONABLE CONTROL OR DUE TO ACTS
OF GOD, ACTS OF CIVIL OR MILITARY AUTHORITIES, FIRES, LABOR TURBULENCE, EPIDEMICS,
GOVERNMENTAL RULES OR REGULATIONS, WAR, RISKS, DELAYS IN TRANSPORTATION, SHORTAGES OF RAW
MATERIALS, SHORTAGES OF SERVICES, POWER OUTAGES, OR UNAUTHORIZED HACKING OR THROUGH THE
INTERNET.

11.5 The laws of the State of New York without regard to its conflict of interest principles shall govern this
Agreement. The parties agree to submit to the exclusive jurisdiction of the state and federal courts in new York, New
York.

11.6 No event shall either Party be required to perform any obligation under this Agreement if it is determined
that performance of such obligation violates any pH or foreign law, rule or regulation.

11.7 Company shall at all times during the Term maintain in effect a general liability policy of insurance, including
errors and omissions professional liability, with coverage and limits no less than $1,000,000 per occurrence
$2,000,000 annual aggregate. The insured shall be primary over any other insurance covering it, and it shall remain
in effect continuously for the Term of this Agreement and for one (1) year thereafter. Company will name BI as an
additional insured to such insurance policies. Company will promptly provide to BI certificate(s) from its insurers
indicating the amount of insurance coverage, the nature of such coverage and the expiration date of such applicable
policy. No such insurance policy will be cancelled, expired or otherwise terminated during the Term without the
express written consent of BI.

11.8 The rights and obligations of each Party hereunder shall be to the benefit of the successors of the Parties
hereby, provided any right or obligation hereunder shall not be assigned without the prior written approval of the
other Party that shall not be unreasonably withheld; provided, however, either Party may assign this Agreement to
an assignee of all or substantially all of such Party's assets, whether by merger, operation of law or otherwise, without
the other Party's prior written consent.

11.9 This Agreement (excluding the JCO) constitutes the entire agreement between the Parties with respect to the
subject matter hereof and supersedes all prior and contemporaneous agreements of communications. It shall not be
modified except by a written agreement dated subsequent to the date of this Agreement, specifically referring to this
Agreement, and signed on behalf of both Parties by their respective duly authorized representatives.

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EXHIBIT 17