## **EXHIBIT A**

# IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

	: Chapter 11
SCO GROUP, INC., et al., 1	: Case No. 07-11337 (KG)
Debtors.	: (Jointly Administered)
Debtors.	: (Jointy Att

AFFIDAVIT OF BRUCE COMER IN SUPPORT OF CHAPTER 11
TRUSTEE'S APPLICATION FOR AUTHORITY TO RETAIN AND
EMPLOY OCEAN PARK ADVISORS LLC AS FINANCIAL ADVISOR
AND INVESTMENT BANKER NUNC PRO
TUNCTO SEPTEMBER 15, 2009

STATE OF CALIFORNIA	)
	) ss.:
COUNTY OF LOS ANGELES	)

Bruce Comer, being duly sworn according to law, upon his oath, deposes and says:

- 1. I am a Managing Director of the firm Ocean Park Advisors LLC ("OPA" or the "Firm"), which has its principal office at 6033 West Century Boulevard, Suite 1290, Los Angeles, CA 90045. I am authorized to execute this affidavit on behalf of OPA. Unless otherwise stated in this affidavit, I have personal knowledge of the facts set forth herein.
- 2. This affidavit is being submitted in connection with the proposed retention of OPA as financial advisor and investment banker to Edward N. Cahn, Esq. (the "Chapter 11 Trustee" or "Trustee"), in his capacity as Chapter 11 Trustee for The SCO Group, Inc. and SCO

<sup>&</sup>lt;sup>1</sup> The Debtors and the last four digits of each of the Debtors' federal tax identification numbers are as follows: (a) The SCO Group, Inc., a Delaware corporation, Fed. Tax Id. #2823; and (b) SCO Operations, Inc., a Delaware corporation, Fed. Tax Id. #7393.

Operations, Inc. (collectively, the "<u>Debtors</u>") to perform services as set forth in the application seeking to retain OPA (the "<u>Application</u>").<sup>2</sup>

- 3. OPA is a financial advisory firm that has extensive experience in the technology, media, and telecommunications industries and in restructuring. The principals of OPA have extensive investment banking experience across many sectors that have included raising debt and equity capital, mergers and acquisitions, and restructuring. OPA has dedicated professionals who provide restructuring services to its clients.
- 4. The current managing directors, directors, vice presidents and associates of OPA have extensive experience working with financially troubled companies in complex merger and sale transactions, as well as financial restructurings out-of-court and in Chapter 11 proceedings.
- In connection with its proposed retention by the Trustee in these cases, OPA undertook to determine whether OPA had any conflicts or other relationships that might cause it not to be disinterested or to hold or represent an interest adverse to the Trustee, the Debtors, or their estates. Specifically, OPA obtained, from the Trustee, the names of entities that may be parties-in-interest in these chapter 11 cases (the "Potential Parties-in-Interest") and such parties are listed on "Schedule 1" attached hereto. OPA has researched its electronic client files and records to determine its connections, if any, with the Potential Parties-in-Interest. To the extent that I have been able to ascertain, OPA has not been retained within the last three years to represent any of the Potential Parties-in-Interest (or their apparent affiliates, as the case may be) in matters unrelated to these cases. As such, I am unaware of any engagements of OPA by the Potential Parties-in-Interest within the last three years.

<sup>&</sup>lt;sup>2</sup> Unless otherwise defined herein, all capitalized terms shall the meanings ascribed to them in the Application.

- 6. To the best of my knowledge, information and belief, neither OPA nor any of its employees has any connections with the United States Trustee for Region 3, or any person employed in the Office of the United States Trustee for Region 3.
- 7. To the best of my knowledge, information and belief, neither OPA nor any of its employees has any connections with or is related to the bankruptcy judge assigned to these chapter 11 cases.
- 8. Given the size of the Firm and the breadth of OPA's client base, it is possible that OPA may now or in the future be retained by one or more of the Potential Parties-in-Interest in unrelated matters without my knowledge. In addition, the Debtors have numerous customers, creditors and other parties with whom they maintain business relationships and some may not be included as Potential Parties-in-Interest. To the extent that OPA discovers any, or enters into any new, material relationship with Potential Parties-in-Interest, it will supplement this disclosure to the Court promptly.
- 9. Other than as disclosed herein, OPA has no relationship with the Trustee or the Debtors of which I am aware after due inquiry.
- 10. OPA has provided and agrees to continue to provide assistance to the Trustee in accordance with the terms and conditions set forth in the Application and the Engagement Agreement, which is attached hereto as Exhibit "1". Accordingly, I make this Affidavit in support of an order authorizing such retention.
- 11. It is the intention of OPA to seek compensation for its services as described in the Application and the Engagement Agreement in accordance with the Bankruptcy Code, the Bankruptcy Rules, the United States Trustees' Guidelines and any and all rules and orders of this Court.

- 12. OPA charges its clients for reasonably incurred, out-of-pocket expenses associated with an assignment. Except as necessary to comply with an applicable Administrative Order, all such expense billings are in accordance with the Firm's customary practices.
- 13. Based upon the foregoing, I believe OPA is a "disinterested person" as that term is defined in Bankruptcy Code section 101(14) and that OPA does not hold or represent an interest adverse to the Trustee, the Debtors, or their estates. Further, OPA's employment is not prohibited by Bankruptcy Rule 2014 or 5002.

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I declare under the penalty of perjury that the forgoing is true and correct.

By:

OCEAN PARK ADVISORS LLC

Name: Bruce Comer

	Title: Managing Director	
Sworn and subscribed to before me, a notary public for the State of California, County of Los Angeles this day of October, 2009		
Notary Public See California Jurat suit CL Fa	th Affairt Statement the, Notary Public	attacked

# CALIFORNIA JURAT WITH AFFIANT STATEMENT See Attached Document (Notary to cross out lines 1-6 below) ☐ See Statement Below (Lines 1–5 to be completed only by document signer[s], not Notary) Signature of Document Signer No. 2 (if any) Signature of Document Signer No. 1 State of California County of LOS ANGELES Subscribed and sworn to (or affirmed) before me on this \_ day of <u>007086</u> proved to me on the basis of satisfactory evidence C. L. FABER to be the person who appeared before me (.) Commission # 1653759 Notary Public - California (and Los Angeles County (2)My Comm. Expires Mar 24, 2010 Name of Signer proved to me on the basis of satisfactory evidence to be the person who appeared before me.) Signature Place Notary Seal Above OPTIONAL Though the information below is not required by law, it may prove RIGHT THUMBPRINT OF SIGNER #1 valuable to persons relying on the document and could prevent OF SIGNER #2 fraudulent removal and reattachment of this form to another document. Top of thumb here Top of thumb here **Further Description of Any Attached Document** Title or Type of Document: AFFIDAVIT IN SUPPORT OF CHAPTER II

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Signer(s) Other Than Named Above: \_\_

## SCHEDULE 1

## Potential Parties-In-Interest Searched

IBM
Red Hat, Inc.
Novell, Inc.
Cattleback Holdings
The SCO Group, Inc.
SCO Global Holdings
Me, Inc.
Me Software, Inc.
Microsoft
Sun Microsystems

## EXHIBIT 1

#### MANAGEMENT AND FINANCIAL ADVISORY SERVICES AGREEMENT

This Management and Financial Advisory Services Agreement (the "Agreement") is entered into this \_\_\_\_\_th day of October, 2009, by Edward N. Cahn, in his capacity as the Chapter 11 Trustee for the SCO Group ("The Trustee" or "SCO Group Trustee") on behalf of The SCO Group, Inc. and SCO Operations, Inc. (collectively, "SCO" or the "Company"), jointly administered debtors in chapter 11 cases pending in the Bankruptcy Court for the District of Delaware, case no. 07-11337 (KG), and Ocean Park Advisors LLC, a California Limited Liability Company ("OPA").

#### RECITALS:

WHEREAS, The Trustee has been appointed by order of the court referenced above (the "Bankruptcy Court") to assume the responsibilities of a trustee in a chapter 11 proceeding in accordance with applicable provisions of the Bankruptcy Code and to operate the Company's business during the chapter 11 case, and

WHEREAS, The Trustee is desirous of retaining OPA to provide financial consulting services in conjunction with the ongoing bankruptcy case and the restructure of SCO which may include a sale of one or more assets of the Company, and

WHEREAS, The Trustee and the Company are in need of financial and management services over the course of the next several months, and

WHEREAS, OPA has experience with and can provide advice on restructuring, reorganization, operations, asset sales, risk management, financial matters, and general corporate financial advice in The SCO Group's industry, and

WHEREAS, the Trustee and OPA desire that this Agreement shall have an effective date as of September 15, 2009 (the "Effective Date").

Now, Therefore, in consideration of the mutual covenants and stipulations hereafter, the parties agree as follows:

Section 1. Services.

(A) OPA may provide to the Trustee two discreet sets of services (the "Services"). The first subset of the Services, described in items (1) through (9) in this Section 1(A), shall commence on the Effective Date and are financial advisory services to be provided to the Trustee in conjunction with restructuring efforts and activities related to the Company's ongoing Chapter 11 bankruptcy case and restructuring through a Chapter 11 process (the "Financial Advisory Services"). The compensation for the Financial Advisory Services shall be based on hours worked (and shall also include any fees payable upon completion of a financing transaction), as more fully described in Sections 3(B) and 3(D) of

this Agreement. The second subset of services that may be rendered to the Trustee are described in items (10) through (13) in this Section 1(A) and OPA will render such services only at the request of the Trustee in conjunction with the sale of the assets of the Company (the "Sell Side Services"). The compensation for the Sell Side Services shall be as set forth in Section 3(C) of this Agreement.

- (1) Assisting the Trustee to develop and implement a restructuring plan for the Company
- (2) Reviewing the Company's business, operations and financial results and projections
- (3) Advising the Trustee on the Company's tactics in negotiations with stakeholders or prospective investors and assist with such negotiations
- (4) Advising the Trustee with respect to potential Financing Transactions (as defined in Section 3(D) below)
- (5) Assisting the Trustee with internal and external documentation needs on its restructuring and asset sale plans
- (6) Attending meetings with the Trustee, Management of SCO and/or others as necessary or appropriate
- (7) Providing testimony with respect to matters where OPA has been engaged to advise the Trustee in any proceeding before the Bankruptcy Court
- (8) Assisting the Trustee and its counsel to generate a plan in connection with the restructuring of the debt and other obligations of the Company or liquidation of assets
- (9) Providing general support in the review of financial forecasts, cash analysis, liquidity analyses and any other analysis that the Trustee will need in analyzing the liquidity of the Company and its options for restructuring
- (10) Acting as the Trustee's advisor in connection with the sale of the Company assets, including under Section 363 of the Bankruptcy Code or pursuant to an approved plan of reorganization or liquidation
- (11) Determining a range of values for the Company's assets including but not limited to the business exclusive of litigation proceeds as well as the value of its intellectual property
- (12) Developing a sales strategy and alternative packaging for the assets across all of the SCO companies
- (13) Assisting the Trustee in evaluating potential purchasers of the Company's assets and conducting an auction of the assets
- (B) To the extent that the Trustee requests that OPA perform additional services (including but not limited to the rendering of a fairness opinion) not included in the list of Services above, the scope and fees for such additional services shall be mutually agreed upon by the Trustee and OPA in writing, in advance of any performance of such services. OPA shall not provide and shall not be requested to provide underwriting or placement agent services that would be construed under applicable federal or state securities laws to be an activity requiring a broker or dealer license. OPA is not assuming any responsibility for (i) any decision by the Trustee, the Company or any other person or entity to pursue (or not

pursue) any business strategy or to effect (or not effect) any sale, financing, restructuring or other transaction or (ii) any appraisal or valuation of any of the assets or liabilities of the Company or any other person or entity. OPA makes no representations or warranties regarding whether the Trustee or the Company will be able to consummate any sale, financing, restructuring or other transaction.

(C) In rendering the Services requested herein, OPA shall be entitled to take direction solely from the Trustee and its counsel and to rely upon such direction. The failure of OPA to follow the direction of any other party shall not constitute a breach of this Agreement by OPA nor will it subject OPA or any of the Indemnified Parties (as defined in Section 9, below) to any liability.

## Section 2. Use of Work Product; No Guaranty of Outcome or Results.

OPA has been retained to act solely as an advisor to the Trustee, and not as an agent or fiduciary, and not as an advisor to any other person or entity. Any duties arising out of this engagement shall be owed solely to the Trustee. This engagement is not intended to confer rights on any person or entity (including shareholders, employees or creditors of the Company) other than the Trustee as against OPA or any of the Indemnified Person (as defined in Section 9). It is expressly understood that the work product produced in connection with this engagement is solely for the Trustee and may not be duplicated, reproduced or utilized for any other purpose other than for the purposes outlined herein.

OPA will exercise its professional judgment in performing its work for the Trustee; however, OPA is not a guarantor of any specific outcome or results. Additionally, the analysis, conclusions and recommendations produced by OPA in rendering the Services are dependent upon (among other things) the cooperation and participation of the Company. The Trustee and the Company shall furnish or cause to be furnished such information regarding the Company as OPA may request in connection with the Services. The Trustee and the Company agree to keep OPA advised of all developments that may materially affect the Company or the Services to be provided by OPA. OPA may rely on (a) information supplied to it by or on behalf of the Trustee, the Company, stakeholders, potential transaction parties or the representatives of any of the foregoing and (b) publicly available information (collectively, "Information") without any obligation to independently verify the Information. OPA may assume that all of the Information is accurate and complete and OPA does not assume any responsibility for the accuracy or completeness of the Information. With respect to any financial forecasts or other information that may be furnished to OPA by the Company, OPA will assume that such forecasts and information has been reasonably prepared and reflect the best then-currently available estimates and judgment of the Company's management.

### Section 3. Compensation

#### (A) Advance Retainer.

The Company shall deliver to OPA a retainer in the amount of \$40,000 (the "Advance Retainer") promptly after the issuance of the Retention Order (as defined in Section 5 below), as an advance against any fees or expenses that may become due to OPA under this Agreement. In the event that OPA elects to apply any portion of the Advance Retainer against any such fees or expenses, the Company shall immediately pay OPA such amount as shall be necessary to restore the Advance Retainer to \$40,000. Following termination of this Agreement and the satisfaction by the Company of all its outstanding obligations under this Agreement, any remaining unapplied portion of the Advance Retainer shall be returned to the Company.

#### (B) Financial Advisory Services.

In consideration for the Financial Advisory Services, the Trustee shall cause the Company to pay to OPA fees as set forth in this Section (3)(B) and in Section 3(D) below.

#### (1) Hourly Fees.

OPA shall be entitled to hourly fees (the "Hourly Fees") for the performance of the Financial Advisory Services. The Hourly Fees owed to OPA will be a function of the actual hours worked by various OPA personnel at their related hourly rates computed each month. The proceeding schedule sets forth the current hourly rates for OPA personnel that will be involved in delivering the Financial Advisory Services pursuant to this Agreement:

Managing Director	\$400 - 500
Vice President	\$250 - 400
Associate	\$150 - 250
Administrative Personnel	\$90 - 150

Hourly Fees will only be charged for services that are financial advisory in nature, and OPA will not charge Hourly Fees for hours directly associated with the Sell Side Services. Accrual of Hourly Fees commenced on the Effective Date and will cease when this Agreement is terminated

#### (2) Records.

OPA will maintain a daily record of its time and expenses to be submitted with its monthly invoices in accordance with the procedures required by the Bankruptcy Code, Rules and applicable orders of the Bankruptcy Court.

#### (C) Sell Side Services.

In consideration for the Sell Side Services, the Company will pay to OPA fees for the Sell Side Services as set forth in the following subparts of this Section (3)(C). For the avoidance of doubt, it is understood that these fees shall be in addition to the fees payable to OPA for the Financial Advisory Services.

#### (1) Sell Side Retainers.

- (a) If the Trustee requests that OPA commence providing any Sell Side Services, the Company shall within 5 business days after the date of such request (the "Sell Side Request Date") deliver to OPA a non-refundable retainer in the amount of \$30,000 (the "Sell Side Retainer"). If a Sale Transaction (defined below) does not close within 90 days after the Sell Side Request Date, OPA shall be entitled to an additional non-refundable retainer in the amount of \$30,000 (the "Second Sell Side Retainer"). Each of the Sell Side Retainer and the Second Sell Side Retainer (collectively, the "Sell Side Retainers") shall be fully earned upon payment thereof, whether or not a successful Sale Transaction occurs. The Sell Side Retainers will not be credited against any Success Fees (as defined below) or other amounts that may be payable to OPA under this Agreement. For the avoidance of doubt, the Sell Side Retainers are in addition to the Advance Retainer.
- (b) It is understood that the Trustee may request that OPA provide Sell Side Services exclusively relating to the "Norris Transaction" (as defined below) without triggering the Company's obligation to pay a Sell Side Retainer. However, if the Trustee requests that OPA provide any other Sell Side Services, work on any other potential transaction or solicit other potential parties (other than the "Norris Parties," as defined below), this Section 3(c)(1)(b) will no longer apply, and the Company will be obligated to pay the Sell Side Retainer(s). The "Norris Transaction" means the proposed transaction between the Company and the "Norris Parties" (as defined below) that was submitted by the Company to the Bankruptcy Court for approval prior to the date hereof, or a substantially similar transaction with the Norris Parties. The "Norris Parties" are Steve Norris and/or any investment group associated with or introduced to the Company by Steve Norris prior to the date hereof.

#### (2) Success Fees.

As we understand it, the Trustee is contemplating two separate sales processes: a sale of (or other transaction involving) a stand-alone patent (the "Patent Transaction") and one or more sales of (or other transaction involving)

all or a substantial portion of the Company's other assets (each, an "Asset Transaction" and collectively with the Patent Transaction, the "Sales Transactions"). The Sales Transactions may be consummated through one or more auctions, private sales, Section 363 sales, license agreements, or any other form of sale, assignment or transfer, including any recapitalization or transfer under a confirmed plan of reorganization. OPA shall be entitled to receive success fees (the "Success Fees") for each of the Sales Transactions, calculated as follows:

- (a) If the Trustee consummates the Patent Transaction, OPA will be paid, upon the closing thereof, a Success Fee equal to 15% of the "Aggregate Consideration" (as defined below) generated from the Patent Transaction; provided, however that in any case a minimum Success Fee of \$60,000 shall be paid to OPA.
- (b) If the Trustee consummates an Asset Transaction, OPA will be paid, upon the closing thereof, a Success Fee equal to 2.5% of the Aggregate Consideration; provided, however, that in any case a minimum Success Fee of \$150,000 shall be paid.
- (c) For purposes hereof, the term "Aggregate Consideration" means (x) the total amount of cash and the fair market value (on the date of payment) of all of the property paid and payable (including amounts paid or payable into escrow or in the future) in connection with the Sale Transaction (or any related transaction), including amounts paid and payable in respect of convertible securities, preferred equity securities, warrants, stock appreciation rights, option or similar rights, whether or not vested, plus (y) the principal amount of all indebtedness for borrowed money or other liabilities of the Company and/or other relevant entities, as applicable, as set forth on the most recent balance sheet, or, in case of the sale of assets, all indebtedness for borrowed money or other liabilities assumed by the third party.

Aggregate Consideration shall also include the aggregate amount of any dividends or other distributions declared by the Company and/or other relevant entities, as applicable, after the date hereof, and, in the case of the sale of assets, the net value of any current assets not sold by the Company and/or other relevant entities, as applicable. Aggregate Consideration shall also include all amounts paid and

payable in respect of any license, royalty, non-competition or lease agreements.

For purposes of calculating Aggregate Consideration, (i) all equity interests will be deemed transferred where a Sale Transaction is effected by the transfer of equity interests, (a) constituting more than 30% of the then outstanding equity securities of or equity interest in the relevant entity, or (b) possessing more than 30% of the then outstanding voting power of the outstanding equity securities of or equity interest in the relevant entity, and (ii) the value of securities (whether debt or equity) that are freely tradable in an established public market will be determined on the basis of the average closing price in such market for the 10 trading days prior to the closing of the Sale Transaction (the "Valuation Date"); and the value of securities that have no established public market or other property will be the fair market value of such securities or other property on such Valuation Date and any restricted stock (i.e., stock in a public company not freely tradable) received shall be valued at 85% of the public market price of such stock. Aggregate Consideration shall also be deemed to include pension liabilities and guarantees of monies borrowed assumed directly or indirectly by the third party. If the Aggregate Consideration is subject to increase by contingent payments related to future events, the portion of our fee relating thereto shall be calculated by us in good faith and paid to us upon consummation of the Sale Transaction.

- (d) The \$150,000 minimum Success Fee described in paragraph (b) above applies to all Asset Transactions, taken as a whole.
  - (e) As an example, if the Trustee consummates:
    - (i) a Patent Transaction with a value of \$1 million;
    - (ii) an Asset Transaction with a value of \$2 million involving the assignment of the Company's rights with respect to certain litigation; and
    - (iii) an Asset Transaction with a value of \$6 million involving the sale of other assets

OPA would be entitled to (i) \$150,000 in Success Fees for the Patent Transaction, (ii)

\$50,000 in Success Fees for the Asset
Transaction involving the litigation and (iii)
\$150,000 in Success Fees for the other Asset
Transaction, for a total of \$350,000 in Success
Fees for such Sale Transactions. Please note:
The numbers in this example are hypothetical,
and only for purposes of illustrating how Success
Fees would be calculated (and are not meant to
imply possible or likely values for any of the
Company's assets).

#### (D) Financing Transaction Fee.

In the event that the Trustee consummates one or more "Financing Transactions" (as defined below), whether on a stand alone basis or in connection with a Sale Transaction, OPA shall receive, in cash and upon the closing thereof, a success fee (a "Financing Transaction Fee") equal to 2.5% of the aggregate gross proceeds of such Financing Transaction; provided, however, that in any case a minimum Financing Transaction Fee of \$50,000 shall be paid to OPA.

"Financing Transaction" shall mean any transaction or series of transactions involving the public or private issuance or placement of debt securities, instruments or obligations of the Company (including any debtor-in-possession financing).

#### (E) Expenses.

In addition to any fees that may be payable (and regardless of whether any Sales Transaction or Financing Transaction occurs), the Company shall reimburse OPA on a monthly basis for any out of pocket expenses incurred by OPA in providing the Services, including (but not limited to) travel, lodging, document reproduction, telephone, facsimile and courier expenses, reasonable fees and disbursements of legal counsel (including legal fees and disbursements incurred by OPA in connection with entering into this Agreement), and other customary expenses for this type of an engagement.

#### (F) Method of Payment.

Each month, OPA will remit an invoice to the Trustee that will be due and payable by the Company upon presentation, subject to applicable orders of the Bankruptcy Court and Bankruptcy Rules. In the event that the invoice is not paid by the Company within 30 days after a certificate of no objection is issued (or in the event that the Trustee or the Company fails to use its reasonable best efforts to obtain such a certificate on an expedited basis), OPA will be entitled to interest at 1% per month. Except where otherwise expressly provided herein or agreed to by the parties, all payments due to OPA shall be paid by wire transfer of immediately available funds to an account designated by OPA.

For the avoidance of doubt, more than one type of fee may be payable to OPA hereunder. Pursuant to the terms hereof, OPA shall be entitled to earn Hourly Fees, the Sell Side Retainers, Success Fees and Financing Transaction Fees, and none of the foregoing shall be credited against (or otherwise reduce) any of the others. (For example, the Financing Transaction Fees shall not be reduced by the amount of any Hourly Fees.) In addition, OPA shall be entitled to be reimbursed for its expenses and such reimbursements shall not be credited against (or otherwise reduce) the amount of fees payable to OPA (or vice versa).

#### (G) Joint and Several Liability.

Wherever this Agreement creates an obligation of the Company, the Company shall also (to the greatest extent permissible) cause all of the affiliates controlled by the Company to be bound thereby as well. Each of the Company and such affiliates may be collectively referred to herein as a "SCO Company." For the purposes of determining the rights and remedies of OPA and the Indemnified Persons under this Agreement, any references in this Agreement to the Company shall be deemed to refer to any or all of the SCO Companies, if and to the extent that doing so provides additional protection to OPA and the Indemnified Persons.

The obligations of each SCO Company pursuant to this Agreement is joint and several and an absolute, unconditional and continuing promise of payment of such obligations and shall continue to be in force and be binding upon each SCO Company until such obligations are paid in full and the Agreement is terminated, and OPA may continue, at any time and without notice to each SCO Company, to perform under this Agreement on the faith thereof. Each SCO Company hereby waives, to the fullest extent permitted by law, any right it may have to revoke or terminate its promise to pay the obligations owing hereunder before the obligations are paid in full and this Agreement is terminated.

Each SCO Company waives any and all defenses, claims and discharges it may have against any other SCO Company or any other person or entity pertaining to the obligations owing under this Agreement, except the defense of discharge by payment in full. Each SCO Company agrees that its respective liability under this Agreement for the obligations owing hereunder shall be primary and direct, and that OPA shall not be required first to resort for payment of such obligations to a particular entity or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for any of the obligations hereunder, or to exercise its rights with respect to any collateral or otherwise under this Agreement, or to commence any action or obtain any judgment against any other SCO Company or other person or entity or against any such collateral security or to pursue any other right or remedy OPA may have before enforcing the liability of any party under this Agreement.

## UNDER NO CIRCUMSTANCES SHALL:

(i) THE TRUSTEE, ITS AGENTS, COUNSEL, SUCCESSORS OR ASSIGNS, HAVE ANY PERSONAL LIABILITY TO OPA OR ANY OTHER PERSONS; OR

(ii) OPA, ITS AGENTS, COUNSEL, SUCCESSORS OR ASSIGNS, HAVE ANY PERSONAL LIABILITY TO THE TRUSTEE OR ANY OTHER PERSONS

## FOR ANY CLAIMS RELATED TO OR ARISING UNDER THIS AGREEMENT.

## Section 4. Term of Agreement.

- (A) Subject to applicable law, OPA will commence work upon the Effective Date and unless otherwise terminated hereunder, OPA shall continue to perform the Services at the direction of the Trustee until otherwise notified by the Trustee.
- (B) Either of the parties hereto may terminate this Agreement upon thirty days' written notice to the other party; provided, however, in the event that the Trustee or the Company is in breach of any terms of this Agreement, OPA may terminate the Agreement upon five (5) days notice.
- (C) In no event shall any termination of this Agreement affect (i) OPA's rights to receive any fees which have accrued or expenses that have been incurred on or before the date of such termination or (ii) the provisions of Section 9 hereof (*Indemnification and Contribution*), which shall remain in full force and effect. In addition, in the event this Agreement is terminated by the Company, OPA shall be entitled to receive Success Fees and Financing Transaction Fees with respect to any Sale Transactions or Financing Transactions that are consummated within 12 months after such termination. If this Agreement is terminated prior to the date of the Retention Order, OPA's rights to payments under this Section 4(C) shall be subject to the approval of the Bankruptcy Court (and the Trustee and the Company shall use their reasonable best efforts to obtain such approval on an expedited basis).

## Section 5. Conditions to OPA's provision of Services.

(A) The Company is a debtor under the Bankruptcy Code, therefore the Trustee shall promptly file an application with the Bankruptcy Court to retain OPA and to cause such application to be considered on an expedited basis. Such application shall seek an order (the "Retention Order") authorization from the Bankruptcy Court to retain OPA in accordance with the terms hereof, nunc pro tunc to the Effective Date. The Trustee shall supply OPA with a draft of such application and any proposed Retention Order sufficiently in advance of their filing to enable OPA and its counsel to review and comment thereon. In any event, the Retention Order must be acceptable to OPA in all respects, and at a minimum shall approve the terms of this Agreement. In the event that a Retention Order acceptable to OPA is not issued by October [15], 2009, OPA may terminate this Agreement upon five (5) days notice.

#### Section 6 Independent Contractor

OPA is an independent contractor and nothing in this Agreement shall constitute or designate OPA or any other Indemnified Person as an employee, agent or fiduciary of the Company, the Trustee or any other person or entity.

- Section 7. (A) Representations and Warranties of Trustee. The Trustee represents and warrants to OPA as follows:
- (i) It has the power and authority to enter into this Agreement and the Agreement is the valid and binding obligation enforceable against the Company, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, to the exercise of judicial discretion as to the availability of equitable remedies such as specific performance and injunction and subject, as to enforcement of the indemnification provisions, to limitations under applicable securities laws.
- (ii) The Trustee has all right and power to bind each SCO Company to the terms of this Agreement by executing the Agreement on its behalf.
- (iii) The foregoing representations and warranties are subject to Bankruptcy Court approval.
- (B) Representations and Warranties of OPA. OPA hereby represents and warrants to the Trustee as follows:
- (i) OPA has the power and authority to enter into this Agreement. The delivery of the Services to be provided by OPA hereunder will not result in any breach of any of the terms or conditions of or constitute a default under any indenture, agreement or other instrument to which OPA is a party. This Agreement has been duly authorized, executed and delivered by OPA and it is the valid and binding obligation of OPA, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, to the exercise of judicial discretion as to the availability of equitable remedies such as specific performance and injunction, and subject, as to enforcement of the indemnification provisions, to limitations under applicable securities laws.
- (ii) OPA will not provide any confidential information to any third party other than as authorized by the Trustee or required by law or make any representations, warranties or commitments on behalf of the Trustee or the Company.
- Section 8. Dispute Resolution. If any dispute arises out of or in connection with this Agreement while any of the SCO Companies is under the jurisdiction of the Bankruptcy Court, any action or proceeding regarding such dispute shall be brought and maintained exclusively in such court. The Trustee, on behalf of itself and the Company (and, to the extent permitted by law, on behalf of any party seeking to claim through either of them) hereby:
  - (a) consents to the jurisdiction of such court;
  - (b) waives all rights to claim that such court is an inconvenient or inappropriate forum; and

#### (c) waives all rights to trial by jury

in connection with any action or proceeding arising out of or in connection with this Agreement.

Indemnification and Contribution. In consideration of the agreement of Section 9. OPA to provide services to the Trustee pursuant to this Agreement, the Company shall indemnify and hold harmless OPA, its affiliates (within the meaning of either Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended, collectively the "Acts"), and each of their respective past, present and future partners, directors, officers, members, agents, representatives, consultants, employees and controlling persons (within the meaning of the Acts) (OPA and each such other person or entity are hereinafter referred to as an "Indemnified Person"), from and against any losses, damages, expenses and liabilities (collectively "Liabilities") or actions, investigations, inquiries, arbitrations, claims or other proceedings in respect thereof, including enforcement of this Agreement (collectively "Actions") (Liabilities and Actions are herein collectively referred to as "Losses"), as they may be incurred (including all reasonable legal fees and other expenses incurred in connection with investigating, preparing, defending, paying, settling or compromising any Losses, whether or not in connection with any pending or threatened Action) to which any of them may become subject and which are related to or arise out of or in connection with this Agreement. The Company, however, shall not be liable to any Indemnified Person under the foregoing provisions with respect to any Losses to the extent that it shall have been finally determined by a court of competent jurisdiction that such Losses resulted primarily from such Indemnified Person's gross negligence or willful misconduct

The Company also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Company or any of the Company's securityholders or creditors or any other person or entity related to or arising out of or in connection with this Agreement, except for any losses of the Company that shall have been finally determined by a court of competent jurisdiction to have resulted primarily from such Indemnified Person's gross negligence or willful misconduct.

In no event, regardless of the legal theory advanced, shall any Indemnified Person be liable for any consequential, indirect, incidental or special damages of any nature. In addition, in no event shall the damages payable by the Indemnified Persons (in the aggregate) exceed the amount of fees actually received by OPA under this Agreement. Each party hereto agrees that it shall not settle any pending or threatened claim, action, suit or proceeding related to this Agreement without each affected party's prior written consent.

Promptly after its receipt of notice of the commencement of any action, any Indemnified Person will, if a claim in respect thereof is to be made against the Company hereunder, notify in writing the Trustee and the Company of the commencement thereof; but omission so to notify the Trustee and the Company will not relieve the Company from any liability hereunder which it may have to any Indemnified Person unless such failure to

provide notice has a prejudicial effect on the Company's ability to defend such claim. If the Company so elects, the Company may assume the defense of such Action in a timely manner, including the employment of counsel and payment of expenses, provided the Company provides to the Indemnified Person evidence reasonably satisfactory to the indemnified person that the Company will have the financial resources to conduct such defense actively and diligently and permits the Indemnified Person and counsel retained by the Indemnified Person at its expense to participate in such defense. Notwithstanding the foregoing, in the event the Indemnified Person determines based on advice of counsel that the Company's defense of such applicable claim gives rise to a conflict of interest between the Company and the Indemnified Persons, then the Indemnified Persons may employ on behalf of all of the Indemnified Persons a single separate counsel to represent or defend such Indemnified Persons in such action, claim, proceeding or investigation and the Company will pay the reasonable fees and disbursements of such separate counsel as incurred.

If for any reason, the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by such Indemnified Person as a result of such Losses in such proportion as is appropriate to reflect not only the relative benefits received by the Company on the one hand and the Indemnified Person on the other hand, but also the relative fault of the Company and such Indemnified Person, as well as any relevant equitable considerations; provided that in no event will the aggregate contribution by the Indemnified Persons hereunder exceed the amount of fees actually received by OPA pursuant to this Agreement.

The Trustee and the Company shall use their reasonable best efforts to ensure that any plan of reorganization or liquidation or agreement relating to a Sale Transaction or Financing Transaction (or similar plan, agreement or arrangement) includes appropriate release and exculpation provisions (acceptable to OPA), releasing, waiving and forever discharging OPA and the other Indemnified Persons from any Losses related to or arising out of this Agreement.

The rights of each Indemnified Person hereunder shall be non-exclusive and in addition to any other rights such person may have. The indemnity and contribution obligations of the Company herein shall be in addition to any liability which the Company may otherwise have and these obligations shall be binding on the Company and its successors and assigns and shall inure to the benefit of any successors, assigns, heirs and personal representatives of each Indemnified Person.

The obligations to compensate OPA under this Agreement shall be deemed an administrative expense of the chapter 11 estate in accordance with applicable sections of the Bankruptcy Code

Section 10. Entire Agreement/Amendments. This Agreement constitutes the entire agreement between the parties hereto and sets forth the rights, duties, and obligations of each to the other as of this date. This Agreement replaces any prior agreement, which is hereby expressly deemed terminated and null and void and any prior agreements, promises,

negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement shall not be modified except in writing and executed by both parties.

Section 11. Governing Law. This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Delaware, without regard to its choice of law or conflicts of laws provisions or rules.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any of the remaining provisions.

Section 12. Notices. Any written notice or communication required by this Agreement, or by law, to be served on, given to, or delivered to OPA or the Trustee or any SCO Company, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed (which in the case of the Trustee or any SCO Company, shall be to the Trustee), or in lieu of such personal service, five (5) days after being deposited in the U.S. mail, first class, postage pre-paid addressed as follows:

Edward N. Cahn Chapter 11 Trustee For the SCO Group c/o Blank Rome LLP 1201 N. Market Street Suite 800 Wilmington, DE 19801 Attn: Bonnie Fatell

Ocean Park Advisors LLC 6033 West Century Boulevard Suite 1290 Los Angeles, CA 90045 Attn: Mark Fisler

Section 13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereunder as well as their respective representatives, distributees, successors, and assigns.

Section 14. Successors and Assigns. The terms of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto, each Indemnified Person and their respective permitted successors and assigns.

Section 15. No Assignment or Delegation. Any assignment, delegation or attempted assignment or delegation of the rights or responsibilities established under this Agreement shall be null and void without the prior written duly executed consent by the party charged.

In Witness Hereof, the parties have executed this Agreement on the day and year first above written. Each Party agrees it has read and understands all the terms of this Agreement.

CHAPTER 11 TRUSTEE OF THE SCO GROUP, on behalf of the estates of the Company

By:	_(signature)
Edward N. Cahn in his capacity as the	
Chapter 11 Trustee of The SCO Group et al	

OCEAN PARK ADVISORS, LLC

By:\_\_\_\_\_\_(signature)

W. Bruce Comer III

Its Managing Director