

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
Telogy, LLC, et al., : Case No. 10-10206 ( )  
: :  
Debtors. : Joint Administration Pending  
: :  
----- X

**DEBTORS' APPLICATION TO APPOINT  
EPIQ BANKRUPTCY SOLUTIONS, LLC, AS NOTICE, CLAIMS  
AND BALLOTING AGENT TO THE DEBTORS AND  
DEBTORS IN POSSESSION AND APPROVING RELATED AGREEMENT**

The debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**")<sup>1</sup> hereby submit this application (the "**Application**") for entry of an order, pursuant to section 28 U.S.C. § 156(c), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), authorizing and approving the Debtors' agreement with Epiq Bankruptcy Solutions, LLC ("**Epiq**"), attached hereto as Exhibit A, pursuant to which the Debtors seek to retain Epiq as of the Petition Date as an official notice, claims and balloting agent of the Court to, among other things: (i) perform certain noticing functions; (ii) assist the Debtors in analyzing and reconciling proofs of claim filed against the Debtors' estates; and (iii) assist the Debtors with balloting in connection with any proposed chapter 11 plan. In support of the Application, the Debtors rely upon and incorporate by reference the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings (the "**Phillips Affidavit**"), which was filed with the Court concurrently herewith, and the Affidavit of

<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors' executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

Daniel C. McElhinney in Support of the Application for Order Approving the Employment of Epiq Bankruptcy Solutions, LLC as Agent of the Bankruptcy Court (the “McElhinney Affidavit”), a copy of which is attached hereto as Exhibit B. In further support of the Application, the Debtors, by and through their undersigned proposed co-counsel, respectfully represent as follows:

### **BACKGROUND**

1. On January 24, 2010 (the “Petition Date”), Telogy, LLC and e-Cycle, LLC filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes. As of the date hereof, no official committee of unsecured creditors has been appointed.

2. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Phillips Affidavit.

### **JURISDICTION**

3. This Court has jurisdiction to hear the Application under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are 28 U.S.C. § 156(c), Bankruptcy Rule 2002 and Local Rule 2002-1(f).

### **RELIEF REQUESTED**

4. By this Application, the Debtors seek entry of an order: (i) approving the agreement between the Debtors and Epiq, dated as of January 6, 2010 (the “Engagement”

Agreement”), annexed hereto as Exhibit A; (ii) authorizing the Debtors to retain Epiq as notice, claims, and balloting agent (the “Claims Agent”) in connection with these chapter 11 cases; and (iii) granting related relief.

### SERVICES TO BE PROVIDED<sup>2</sup>

5. The Debtors propose to retain Epiq on the terms and conditions set forth in the Engagement Agreement. Pursuant to the Engagement Agreement, Epiq will perform, among others, the following services, if necessary, as the Claims Agent, at the request of the Debtors or the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware (the “Clerk’s Office”):

- (a) Prepare and serve required notices in these chapter 11 cases;
- (b) After the mailing of a particular notice, prepare for filing with the Court a certificate or affidavit of service that includes an alphabetical list of persons to whom the notice was mailed and the date and manner of mailing;
- (c) Receive and record proofs of claim and proofs of interest filed;
- (d) Create and maintain official claims registers;
- (e) Transmit to the Clerk’s Office a copy of the claims registers upon request and/or at agreed upon intervals;
- (f) Act as balloting agent;
- (g) Provide access to the public for examination of copies of the proofs of claim or interest without charge during regular business hours;
- (h) Record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide notice of such transfers as required by Bankruptcy Rule 3001(e);

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<sup>2</sup> The following shall serve only as a summary of the services to be provided by Epiq. If there are any discrepancies between the Application and the Engagement Agreement, the Engagement Agreement shall govern.

- (i) Comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;
- (j) Promptly comply with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe; and
- (k) Perform such other administrative and support services related noticing, claims, docketing, solicitation and distribution as the Debtors or the Clerk's Office may request.

6. In addition to the foregoing, the Debtors seek to retain Epiq to assist with the administrative tasks associated with the: (a) reconciliation of claims; (b) preparation of their schedules of assets and liabilities and statements of financial affairs; and (c) preparation, mailing and tabulation of ballots for the purpose of voting to accept or reject any chapter 11 plan proposed by the Debtors in these cases.

#### **EPIQ'S DISINTERESTEDNESS**

7. Although the Debtors do not propose to retain Epiq under section 327 of the Bankruptcy Code, to the best of the Debtors' knowledge, based on the McElhinney Affidavit, Epiq is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates.

8. If any new facts or relationships are discovered, the Debtors understand that Epiq will supplement its disclosure to the Court.

#### **EPIQ'S COMPENSATION**

9. The Debtors propose to retain Epiq at the rates set forth in the Engagement Agreement. The cost of Epiq's services will be paid from the Debtors' estates as provided by 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code. The Debtors believe the proposed rates to be charged by Epiq for the services to be performed are reasonable and

appropriate for services of this nature. The Debtors reviewed the rates of other firms prior to selecting Epiq and believe that Epiq's rates are reasonable given the nature and quality of its services.

10. Prior to the Petition Date, the Debtors paid Epiq a retainer in the amount of \$5,000. Epiq shall apply the retainer first against all prepetition fees and expenses, and then the balance of the retainer shall be applied against the first bill that will be rendered by Epiq to the Debtors for the postpetition fees and expenses incurred by the Debtors in connection with services rendered by Epiq.

11. The Debtors propose to pay Epiq in the ordinary course of business after the submission of an invoice in reasonable detail describing the basis for the fees and expenses requested to be paid thereto, unless Epiq is advised that the Debtors object to the invoice, in which case the Debtors either will consensually resolve the objection or promptly schedule a hearing before the Court to consider the disputed invoice. If the invoice is disputed, the Debtors will remit to Epiq only the undisputed portion of the invoice and, if applicable, will pay the remainder to Epiq upon resolution of the disputed portion, as mandated by this Court or otherwise resolved consensually.

12. The Debtors request that the undisputed fees and expenses Epiq incurs in the performance of the above-described services be treated as administrative expenses of the Debtors' chapter 11 estates and be paid by the Debtors in the ordinary course of business without further application to the Court.

13. The Debtors understand, based on the McElhinney Affidavit, that Epiq shall not cease providing services to the Debtors pursuant to the terms of the Engagement Letter for any reason, including nonpayment, without prior order of this Court authorizing Epiq to do

so; provided, however, that Epiq shall be permitted to seek such an order on an expedited basis by filing a request for termination with the Court and providing notice of such request to counsel for the Debtors, counsel for any official committee of creditors appointed in these cases, and the Office of the United States Trustee by e-mail, facsimile or overnight delivery.

14. If Epiq's services are terminated, Epiq shall perform its duties until a complete transition with the Clerk's Office or any successor notice/claims/balloting agent occurs, provided, however, that the provision of such services shall be subject to the terms of the Engagement Agreement, including with respect to payment.

15. Epiq will comply with all requests of the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

#### **INDEMNIFICATION**

16. The Engagement Agreement further provides that the Debtors will indemnify and hold harmless Epiq, its affiliates and each of their respective officers, members, directors, agents, consultants and employees (collectively, the "**Indemnified Persons**") under certain circumstances set forth in the Engagement Agreement (such indemnification obligations, as modified by the proposed retention order annexed hereto, the "**Indemnification Provisions**"). Notwithstanding anything to the contrary set forth in the Engagement Agreement, Epiq has agreed that the Indemnification Provisions shall be limited as follows:

- a. Subject to the provisions of subparagraphs (b) and (c) below, the Debtors shall be authorized to indemnify the Indemnified Persons, in accordance with the Engagement Agreement, for any claim arising from, related to or in connection with their performance of the services described in the Engagement Agreement; provided, however, that the Indemnified Persons shall not be indemnified for any claim arising from services other than the services provided under the Engagement Agreement, unless such services

and the indemnification, contribution or reimbursement therefore are approved by the Court;

- b. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence or willful misconduct, (ii) for a contractual dispute in which the Debtors allege breach of Epiq's obligations under the Engagement Agreement, or (iii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by any order granting this Application; and
- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these cases, Epiq believes that it is entitled to payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by any order granting this Application), including without limitation the advancement of defense costs, Epiq shall file an application before this Court, and the Debtors will not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the court shall have jurisdiction over any request for fees and expenses for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Epiq.

17. The Indemnification Provisions are standard provisions, both in chapter 11 cases and outside bankruptcy, and reflect the qualifications and limits on indemnification provisions that are customary in Delaware and other jurisdictions. See, e.g., In re RathGibson, Inc., No. 09-12452 (CSS) (Bankr. D. Del. July 14, 2009) (authorizing indemnification of Garden City Group by debtor); In re Tropicana Entertainment, LLC, No. 08-10856 (KJC) (Bankr. D. Del. May 30, 2008) (authorizing indemnification of Lazard Freres & Co. LLC by debtors); In re New Century TRS Holdings, Inc., No. 07-10416 (KJC) (Bankr. D. Del. Apr. 26, 2007) (same); see also In re Comdisco, Inc., No 02-C-1174 (N.D. Ill. Sep. 23, 2002) (affirming order

authorizing indemnification of Lazard Freres & Co. LLC and Rothschild, Inc. by debtors and official committee of unsecured creditors); In re United Artists Theatre Company, No. 00-3514 (SLR) (Bankr. D. Del. Nov. 14, 2000) (authorizing indemnification of Houlihan Lokey by debtors); In re Joan & David Halpern, Inc., 248 B.R. 43 (Bankr. S.D.N.Y. 2000) (overruling U.S. Trustee's objection to indemnity provision).

### **BASIS FOR RELIEF**

18. Bankruptcy Rule 2002 generally regulates what notices must be provided to creditors and other parties in interest in bankruptcy cases. Under Bankruptcy Rule 2002(f), the Court may direct that some person, other than the Clerk of the Court, give notice of the various matters described herein. Pursuant to Local Rule 2002-1(f), in cases with more than 200 creditors, a debtor is required to file with the court an application to retain a notice and/or claims clerk pursuant to 28 U.S.C. § 156(c).<sup>3</sup>

19. Although the Debtors have not yet filed their schedules of assets and liabilities, the Debtors believe that there are hundreds of parties-in-interest in these cases, many of whom are expected to file proofs of claim. As such, the Debtors respectfully submit that noticing and receiving, docketing, and maintaining proofs of claim would impose heavy administrative and other burdens upon the Court and the Clerk's Office. The Debtors propose to retain Epiq to relieve the Court and the Clerk's Office of these burdens.

20. The Debtors believe that Epiq is well-qualified to perform the services set forth in the Engagement Agreement and herein, as well as to provide its expertise, consultation

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<sup>3</sup> Section 156(c) of title 28 of the United States Code provides in relevant part that "[a]ny court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provision of title 11, United States Code, where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States."

and assistance to the Debtors. Epiq has substantial experience in the matters upon which it is to be engaged, and has acted as official notice, claims and balloting agent in numerous large, recent chapter 11 cases in this district. See e.g., In re Champion Enterprises, Inc., Case No. 09-14019 (KG) (Bankr. D. Del. Nov. 17, 2009); In re CCS Medical, Inc., Case No. 09-12390 (CSS) (Bankr. D. Del. July 9, 2009); In re AbitibiBowater Inc., No. 09-11296 (KJC) (Bankr. D. Del. April 17, 2009); In re The Fairchild Corporation, Case No. 09-10899 (CSS) (Bankr. D. Del. March 20, 2009); In re Nortel Networks Inc., Case No. 09-10138 (Bankr. D. Del. Jan. 15, 2009); In re KB Toys, Inc., Case No. 08-13269 (Bankr. D. Del. Dec. 12, 2008); In re Tribune Company, Case No. 08-13141 (Bankr. D. Del. Dec. 10, 2008); In re Buffets Holdings, Inc., Case No. 08-10141 (MFW) (Bankr. D. Del. Jan. 23, 2008).

21. By retaining Epiq as the notice, claims and balloting agent in these cases, the Debtors, their estates and creditors and other parties-in-interest will benefit from Epiq's experience as a notice, claims and balloting agent and the efficient and cost-effective methods that Epiq has developed.

22. For the foregoing reasons, the Debtors believe that their retention of Epiq as Claims Agent is appropriate and in the best interest of the Debtors, their estates, creditors and equity security holders and other parties-in-interest.

#### **NOTICE**

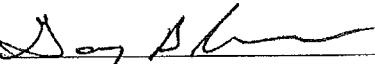
23. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' prepetition secured lenders; and (c) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis. The Debtors will serve copies of the Motion pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit C: (i) approving the Engagement Agreement; (ii) authorizing the Debtors' retention of Epiq as Claims Agent in these chapter 11 cases; and (iii) granting such other and further relief as may be just or proper.

Dated: Wilmington, Delaware  
January ~~22~~ 2010

Telogy, LLC  
e-Cycle, LLC

By:   
\_\_\_\_\_  
Gary B. Phillips  
Chief Executive Officer

**EXHIBIT A**  
**Engagement Agreement**



## EPIQ BANKRUPTCY SOLUTIONS, LLC

### STANDARD BANKRUPTCY SERVICES AGREEMENT

Between Epiq Bankruptcy Solutions, LLC (formerly known as Bankruptcy Services LLC), a New York limited liability company ("Epiq"), and Telogy LLC (the "Customer" or "Debtor"), dated as of January 6, 2010.

In consideration of the premises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### General Terms and Conditions

##### 1. Services.

In accordance with the charges, terms and conditions contained in this Agreement and in the schedule attached hereto (the "Agreement"), Epiq agrees to furnish Customer with computerized bankruptcy support services and bankruptcy administrative services according to the pricing schedule annexed hereto (the "Schedule"). This Schedule sets forth individual unit pricing for services provided by Epiq. The price listed for each service represents a bona fide proposal for that service and the Customer may accept separate Service components or may accept the Services listed in their entirety. Services will be provided when requested by the Customer. Services are mutually exclusive and are deemed delivered and accepted when provided by Epiq.

##### 2. Term.

This Agreement shall become effective on the later of (i) the date of its acceptance by Epiq and (ii) the date of entry of an order by the Bankruptcy Court approving this Agreement (or such earlier date set by the Bankruptcy Court). **The Agreement shall remain in effect until terminated by the Customer on one (1) month's prior written notice received by Epiq and entry of an order of the Court discharging Epiq as claims agent or by Epiq upon three (3) month's prior written notice received by the Customer and entry of an order of the Court discharging Epiq as claims agent.**

##### 3. Charges.

3.1 For services and materials furnished by Epiq under this Agreement, Customer shall pay the charges set forth in the schedule annexed hereto attached hereto and made a part of this Agreement. Epiq will bill Customer monthly. All invoices shall be due and payable upon receipt.

3.2 Epiq reserves the right to reasonably increase its prices, charges and rates annually on January 2nd of each year. However, if such increases exceed 10%, Epiq will be required to give sixty (60) days prior written notice to Customer.

3.3 Customer agrees to pay Epiq for all materials necessary for Epiq's performance under this Agreement, other than computer hardware and software, and any reasonable out of pocket expenses including, without limitation, transportation, long distance communications, printing, postage and related items.

3.4 In addition to all charges for services and materials hereunder, Customer shall pay to Epiq all taxes, however designated, levied or based that are applicable to this Agreement or are measured directly by payments made under this Agreement and are required to be collected by Epiq or paid by Epiq to taxing authorities. This provision, includes but is not limited to, sales, use and excise taxes, but does not include personal property taxes or taxes based on net income.



3.5 In addition to all other charges for services and materials hereunder, Customer shall pay to Epiq any actual charges related to, arising out of or as a result of any Customer error or omission, as mutually agreed by Epiq and Customer. Such charges shall include but not be limited to re-runs and any additional clerical work billed at the Epiq then prevailing standard rates, supplies, long distance phone calls, travel expenses and overtime expenses for work chargeable at the rates set forth on the schedule annexed hereto.

3.6 [Intentionally Left Blank.]

3.7 In the event of termination due to Customer's default, Customer shall be liable for all amounts then owing.

3.8 Customer shall pay Epiq a retainer in the amount of \$5,000 to be applied immediately in satisfaction of obligations incurred pursuant to this agreement.

#### 4. Confidentiality.

All of Customer's data given to Epiq will be safeguarded by Epiq to the same extent that Epiq safeguards data relating to its own business; provided, however, that if data is publicly available, was already in Epiq's possession or known to it, or was rightfully obtained by Epiq from a third party, Epiq shall bear no responsibility for disclosure. Customer agrees that Epiq shall not be liable for damages or losses of any nature whatsoever arising out of the unauthorized acquisition or use of any material supplied by Customer to Epiq in the performance of this Agreement to the extent Epiq is entitled to indemnification for such damages or losses pursuant to section 7.4 hereof.

#### 5. Title to Property.

Epiq reserves all property rights in and to all materials, concepts, know-how, techniques, programs, systems and other information, including, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals and documentation furnished or developed by Epiq for itself or for use by the Customer ("Property"). Charges paid by Customer do not vest in Customer any rights to the Property, it being expressly understood that the Property is made available to Customer under this Agreement solely for Customer's use during and in connection with each use of the Epiq equipment and services. Customer agrees not to copy or permit others to copy any of the Property.

#### 6. Disposition of Data.

Any data, programs, storage media or other materials furnished by the Customer to Epiq in connection with this Agreement may be retained by Epiq until the services provided herein are paid for, or until this Agreement is terminated with the services provided herein having been paid for in full. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by Epiq. Epiq shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay Epiq for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, Epiq reserves the right to dispose of data or media maintained by Epiq for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to Epiq.

#### 7. Limitation of Liability, Warranty and Indemnity.

7.1 [Intentionally Left Blank.]

7.2 Customer is responsible for the accuracy of the programs and data it submits for processing to Epiq and for the output. Customer agrees to initiate and maintain backup files that would allow Customer to regenerate or duplicate all programs and data submitted by Customer to Epiq.

7.3 Customer agrees that Epiq makes no representations or warranties, express or implied, including but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or



use, quality, productiveness or capacity.

7.4 The Customer shall indemnify and hold Epiq, its affiliates and each of their respective officers, members, directors, agents, consultants and employees (each an "Indemnified Person") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and attorneys' fees) and expenses as incurred (collectively, "Losses"), to which any Indemnified Person may become subject or involved in any capacity arising out of or relating to this Agreement or Epiq's rendering of services pursuant hereto, regardless of whether any of such Indemnified Persons is a party thereto, other than Losses resulting from Epiq's gross negligence or willful misconduct. Without limiting the generality of the foregoing, "Losses" includes any liabilities resulting from claims by third persons against any Indemnified Person. The Customer shall notify Epiq in writing promptly of the commencement, institution, threat, or assertion of any claim, action or proceeding of which the Customer is aware with respect to the services provided by Epiq under this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Customer and shall survive the termination of this Agreement until the expiration of all applicable statutes of limitation with respect to Epiq's liabilities.

#### 8. Bank Accounts

[Intentionally Left Blank]

#### 9. Confidential On-Line Workspace

Upon request of the Customer, Epiq shall be authorized to: (a) establish a confidential on-line workspace with an outside vendor in connection with the provision of its services to the Customer pursuant to this Agreement; and (b) with the consent of the Customer and/or its designees, publish documents and other information to such confidential workspace. By publishing documents and other information to this confidential workspace in accordance with the foregoing, Epiq shall not be considered in violation of any of the provisions of this Agreement, including, but not limited to, Section 4 (Confidentiality).

#### 10. General

10.1 No waiver, alteration, amendment or modification of any of the provisions of this Agreement shall be binding upon either party unless signed in writing by a duly authorized representative of both parties.

10.2 This Agreement may not be assigned by Customer without the express written consent of Epiq, which consent shall not be unreasonably withheld. The services provided under this Agreement are for the sole benefit and use of Customer, and shall not be made available to any other persons.

10.3 This Agreement shall be governed by the laws of the State of New York, without regard to that state's provisions for choice of law.

10.4 The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.



10.5 Notices to be given or submitted by either party to the other, pursuant to this Agreement, shall be sufficiently given or made if given or made in writing and sent by certified mail, postage prepaid, and addressed as follows:

If to Epiq:

Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, Third Floor  
New York, New York 10017  
Attn: Ron Jacobs

If to Customer:

Telogy LLC  
3200 Whipple Road  
Union City, CA 94587  
Attn: Mark Brandt

With a copy to:

Shaunna D. Jones, Esq.  
Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019-6099



10.6 This Agreement shall be subject to approval of the United States Bankruptcy Court for the District of Delaware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

EPIQ BANKRUPTCY SOLUTIONS, LLC

A handwritten signature in black ink, appearing to read "Daniel C. McElhinney", with a horizontal line extending to the right from the end of the signature.

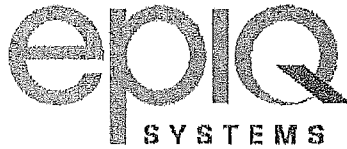
Name: Daniel C. McElhinney  
Title: Executive Director

[DEBTORS]

By: Mark L Brandt

Name: Mark L Brandt

Title: CFO



# Pricing

## Case Management Services:

| <u>Title</u>              | <u>Rate Range</u>      | <u>Average Rate</u> |
|---------------------------|------------------------|---------------------|
| Clerk                     | \$36 - \$54 per hour   | \$ 45.00            |
| Case Manager (Level 1)    | \$112 - \$157 per hour | \$128.25            |
| IT Programming Consultant | \$126 - \$171 per hour | \$148.50            |
| Case Manager (Level 2)    | \$166 - \$198 per hour | \$182.25            |
| Senior Case Manager       | \$202 - \$247 per hour | \$222.75            |
| Senior Consultant         | TBD                    | TBD*                |

The level of Senior Consultant activity will vary by engagement. If such services are required, the usual average rate is \$265 per hour. Please note that any additional professional services not specifically covered by this proposal will be charged at hourly rates, including any outsourced data input services performed under our supervision and control. Outside vendors may charge a premium for weekend and overtime work.

## Claims Management Services:

|   |                                    |
|---|------------------------------------|
| Database and System Access<br>(No restriction on number of users) | \$ .10 per record per month        |
| Data Transfer   | \$ .10 per creditor                |
| Manual Claims Input   | \$ .35 per claim plus hourly rates |
| Document Storage  | Waived                             |





## Pricing

### Printing, Mailing and Noticing:

|                                |  |
|--------------------------------|--|
| Set up                         | Waived   |
| Printing                       | \$ .10 per image (plus page including envelope face) |
| Collate, fold and/or insert    | \$ .10 each piece                                    |
| Postage and overnight delivery | At cost  |
| Electronic noticing            | \$ .02 per page                                      |
| Legal notice publishing        | Quote prior to publishing                            |
| Claim acknowledgement card     | \$ .25 per notice                                    |
| Fax                            | \$ .20 per page                                      |

### Document Management/Imaging:

|  |                          |
|--|--------------------------|
| Electronic imaging (scanning/bar coding) | \$ .30 per image         |
| Additional OCR capture                   | \$ .10 per image         |
| CD burning (mass document storage)       | Varies upon requirements |
| Stand Alone Case Website Construction    | \$150.00 per hour        |
| Hosting Case Specific Site               | \$200.00 per month       |
| Case Data Web Traffic                    | Waived                   |

### Confidential Document Management:

|   |                              |
|---|------------------------------|
| Standard Confidential on-line workspace | \$1.30 per page per 9 months |
|---|------------------------------|

### Call Center Services:

|  |                  |
|--|------------------|
| Standard Call Center Setup               | \$2,500          |
| Call Center Operator                     | \$75 per hour    |
| Voice Recorded Message                   | \$.19 per minute |
| Standard Call Center Support/Maintenance | \$200 per month  |

Additional call center services not specifically covered by this proposal will be charged at hourly rates or at a unit price to be determined. Specifically, such tasks as reviewing and managing traffic reports, assigning and supervising staff, call auditing, quality control testing, training and the like will be billed at the applicable hourly rate.



## Pricing

### Voting Tabulation and Reports:

|  |  |
|--|--|
| Set-up, tabulation and vote verification                   | Applicable consulting fees only                        |
| Printing and mailing of ballots                            | Subject to unit pricing for mailing and noticing above |
| Solicitation and Notification of Public Securities Holders | Varies upon requirements                               |

Please note that Epiq will coordinate outside services for notice publication, printing and scanning upon request. Reimbursable expenses including travel, envelopes and courier services are billed at cost. Postage is payable in advance of any mailings.

### Disbursements:

#### Transaction fees:

|                              |             |
|------------------------------|-------------|
| Per check or Form 1099       | \$1.50 each |
| Per record to transfer agent | \$ .25 each |

**EXHIBIT B**

**McElhinney Affidavit**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
Telogy, LLC, et al., : Case No. 10-10206 ( )  
: :  
Debtors. : Joint Administration Pending  
: :  
----- X

**AFFIDAVIT OF DANIEL C. MCELHINNEY IN SUPPORT OF  
TO APPOINT EPIQ BANKRUPTCY SOLUTIONS, LLC,  
AS NOTICE, CLAIMS AND BALLOTING AGENT TO THE DEBTORS  
AND DEBTORS IN POSSESSION AND APPROVING RELATED AGREEMENT**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

I, Daniel C. McElhinney, pursuant to 28 U.S.C. § 1746, declare:

1. I am Executive Director of Epiq Bankruptcy Solutions, LLC (“**Epiq**”), a claims management company specializing in the administration of large bankruptcy cases, with offices located at 757 Third Avenue, Third Floor, New York, New York 10017. I submit this declaration in support of the application (the “**Application**”)<sup>1</sup> of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”)<sup>2</sup> for entry of an order approving the Debtors’ retention of Epiq as claims, notice and balloting agent of the Bankruptcy Court in these cases (the “**Claims Agent**”).

2. Epiq is one of the country’s leading chapter 11 claims management companies with expertise in noticing, claims processing, claims reconciliation, balloting and

<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Application.

<sup>2</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors’ executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

distribution. Epiq is well-qualified to provide experienced services as notice, claims and balloting agent, among other services, in connection with these chapter 11 cases.

3. The services Epiq proposes to render as Claims Agent are described in the Application and set forth in the agreement between the Debtors and Epiq, dated as of January 6, 2010 (the “**Engagement Agreement**”), attached to the Application as Exhibit A and incorporated herein by reference.

4. As compensation for its services, Epiq will charge the rates set forth in the Engagement Agreement. These rates are at least as favorable as those charged by Epiq to other chapter 11 debtors for similar services. Prior to the Petition Date, the Debtors paid Epiq a retainer in the amount of \$5,000.

5. Epiq will maintain records of all services, which, at a minimum, will show dates, categories of services, fees charged, and expenses incurred.

6. Epiq will only seek payment of fees and expenses through the submission of monthly invoices, summarizing, in reasonable detail, the services for which compensation is sought.

7. To the best of my knowledge and belief, neither I nor Epiq hold or represent any interest adverse to the Debtors’ estates, and Epiq will not represent any other entity in connection with these chapter 11 cases.

8. Based on the information available to me, I believe that Epiq is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code and holds no interest adverse to the Debtors or their estates for the matters for which Epiq is to be employed.

9. I was previously employed by Willkie Farr & Gallagher LLP (“**WF&G**”), the Debtors’ proposed co-counsel, as an associate in their Business Reorganization & Restructuring Department from 1999 through 2006. Also, I currently serve-- in my individual capacity -- as Special Advisor to Mario M. Cuomo, Of Counsel to WF&G, in an unrelated matter arising in the Johns-Manville Corporation chapter 11 cases.

10. The Debtors’ bankruptcy co-counsel, WF&G, has represented Epiq Systems, Inc. (“**Epiq Systems**”), the parent company of Epiq. Such representation of Epiq Systems did not relate to the Debtors or their chapter 11 cases.

11. I am not related or connected to and, to the best of my knowledge, no other professional of Epiq is related or connected to, any United States Bankruptcy Judge for the District of Delaware or the United States Trustee for the District of Delaware or to any employee in the offices thereof.

12. To the best of my knowledge and belief, and except as described herein, neither I nor Epiq, nor any officer or director of Epiq, has any connection or relationship with the Debtors, their creditors, or any other parties in interest in these cases (or their attorneys or accountants) that would conflict with the scope of Epiq’s retention or would create any interest adverse to the Debtors’ estates, any statutorily appointed committee or any other party in interest. Notwithstanding the foregoing, Epiq has and will continue to represent clients in matters unrelated to these cases and has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest in connection with matters unrelated to these cases. Epiq also may have relationships with certain of the Debtors’ creditors in connection with cases in which Epiq serves or has served in a neutral

capacity as notice, claims and/or balloting agent for another chapter 11 debtor. To the best of my knowledge, such relationships are completely unrelated to these chapter 11 cases.

13. Epiq represents, among other things, that:
  - (a) It will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Claims Agent;
  - (b) By accepting employment in this bankruptcy case, Epiq waives any right to receive compensation from the United States government;
  - (c) In its capacity as Claims Agent, Epiq will not be an agent of the United States and will not act on behalf of the United States; and
  - (d) Epiq will not employ any past or present employees of the Debtors in connection with its work as Claims Agent.

14. There is no agreement or understanding between Epiq and any other person or entity for sharing compensation received or to be received for services rendered by Epiq in connection with these chapter 11 cases other than Epiq's own affiliates, partners, vendors and employees.

15. Epiq will comply with all requests of the Clerk's Office and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of section 156(c) of title 28 of the United States Code.

16. If appointed as Claims Agent, Epiq will not (i) cease providing services to the Debtors for any reason, including non-payment, or (ii) undertake any legal representation of the Debtors, nor provide any advice of a legal nature, outside the scope of the duties outlined in the Application without prior order from this Court authorizing Epiq to do so.

17. To the extent that any information disclosed herein requires amendment or modification upon Epiq's completion of further analysis or as additional party in interest information becomes available to me, I will submit supplemental declarations to the Court.

I certify under penalty of perjury that, based upon my knowledge, information and belief as set forth in this Affidavit, the foregoing is true and correct.

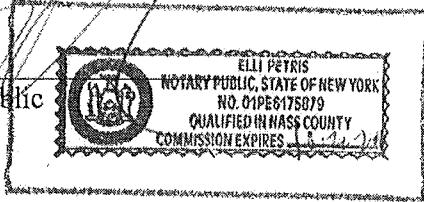
Dated: January 21, 2010



Daniel C. McElhinney  
Executive Director  
Epiq Bankruptcy Solutions, LLC

Sworn to before me on this  
the 21 day of January 2010

Notary Public



**EXHIBIT C**

**Proposed Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
Telogy, LLC, et al., : Case No. 10-10206 ( )  
: :  
Debtors. : Jointly Administered  
: :  
----- X Ref. Docket No. \_\_\_\_\_

**ORDER AUTHORIZING THE APPOINTMENT  
OF EPIQ BANKRUPTCY SOLUTIONS, LLC  
AS NOTICE, CLAIMS AND BALLOTING AGENT TO THE  
DEBTORS IN POSSESSION AND APPROVING RELATED AGREEMENT**

This matter having come before the Court upon consideration of the application (the “**Application**”)<sup>1</sup> of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”)<sup>2</sup> requesting entry of an order pursuant to 28 U.S.C. § 156(c), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), approving the Debtors’ retention of Epiq Bankruptcy Solutions, LLC (“**Epiq**”) as claims, notice and balloting agent in these chapter 11 cases; and upon the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings; and upon the Affidavit of Daniel C. McElhinney, a copy of which is attached to the Application as Exhibit B; and the Court being satisfied that Epiq is a “disinterested person” as such term is defined under section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code; and

<sup>1</sup> All capitalized terms used and not defined herein have the meanings ascribed to such terms in the Application.

<sup>2</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors’ executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of these estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Application is granted.
2. The Debtors are hereby authorized to retain and employ Epiq as the Claims Agent in these chapter 11 cases, pursuant to the terms of the Engagement Agreement annexed to the Application as Exhibit A, for the purposes set forth in the Application and the Engagement Agreement, effective as of the Petition Date.
3. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Epiq incurred pursuant to the Engagement Agreement shall be treated as an administrative expense of the Debtors' chapter 11 estates, and shall be paid by the Debtors in the ordinary course of business after the submission of an invoice in reasonable detail describing the basis for the fees and expenses requested to be paid to Epiq.
4. Epiq shall not cease providing services to the Debtors pursuant to the terms of the Engagement Letter for any reason, including nonpayment, without prior order of this Court authorizing Epiq to do so; provided, however, that Epiq shall be permitted to seek such an order on an expedited basis by filing a request for termination with the Court and providing notice of such request to counsel for the Debtors, counsel for any official committee of creditors appointed in these cases, and the Office of the United States Trustee by e-mail, facsimile or overnight delivery.

5. If Epiq's services are terminated, Epiq shall perform its duties until a complete transition with the Clerk's Office or any successor notice/claims/balloting agent occurs, provided, however, that the provision of such services shall be subject to the terms of the Engagement Agreement, including with respect to payment.

6. The Indemnification Provisions of the Engagement Agreement are approved, subject to the following modifications:

- a. Subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify the Indemnified Persons, in accordance with the Engagement Agreement, for any claim arising from, related to or in connection with their performance of the services described in the Engagement Agreement; provided, however, that the Indemnified Persons shall not be indemnified for any claim arising from services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;
- b. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence or willful misconduct, (ii) for a contractual dispute in which the Debtors allege breach of Epiq's obligations under the Engagement Agreement, or (iii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order; and
- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these cases, Epiq believes that it is entitled to payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including without limitation the advancement of defense costs, Epiq must file an application before this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the court shall have jurisdiction over any

request for fees and expenses for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Epiq.

7. The Debtors and Epiq are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

8. The Court shall retain jurisdiction over any matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware  
January \_\_\_\_, 2010

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UNITED STATES BANKRUPTCY JUDGE