

Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (exp. 6/30/2005)

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies)/Execution Date(s):**

Examination Management Services, Inc.

- Individual(s)
- General Partnership
- Corporation-State NV
- Other \_\_\_\_\_

- Association
- Limited Partnership

Citizenship (see guidelines) \_\_\_\_\_

Execution Date(s) January 18, 2005

Additional names of conveying parties attached?  Yes  No

**3. Nature of conveyance:**

- Assignment
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

**2. Name and address of receiving party(ies)**

Additional names, addresses, or citizenship attached?  Yes  No

Name: as Collateral Agent

Internal Address: Attn: Trust and Securities Services

Street Address: 60 Wall Street, 27th Floor

City: New York

State: NY

Country: USA Zip: 10005

- Association Citizenship \_\_\_\_\_
- General Partnership Citizenship \_\_\_\_\_
- Limited Partnership Citizenship \_\_\_\_\_
- Corporation Citizenship New York
- Other \_\_\_\_\_ Citizenship USA

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

**4. Application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s)

See Attached

B. Trademark Registration No.(s)

See Attached

Additional sheet(s) attached?  Yes  No

**C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):**

See Attached

**5. Name & address of party to whom correspondence concerning document should be mailed:**

Name: Michelle Walters Fournier, RP, Senior Paralegal

Internal Address: Bingham McCutchen LLP

Street Address: One State Street

City: Hartford

State: CT Zip: 06103

Phone Number: 860-240-2935

Fax Number: 860-240-2513

Email Address: michelle.fournier@bingham.com

**6. Total number of applications and registrations involved:**

6

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$** 165.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

**8. Payment Information:**

a. Credit Card Last 4 Numbers 8930  
Expiration Date 10/07

b. Deposit Account Number \_\_\_\_\_  
Authorized User Name \_\_\_\_\_

**9. Signature:**

Signature

January 21, 2005

Date

Michelle Walters Fournier, RP, Senior Paralegal

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 26

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

**TRADEMARK**  
REEL: 003017 FRAME: 0331

**CREDIT CARD PAYMENT FORM ATTACHMENT****Trademark Registrations**

<u>Trademark or Service Mark</u>	Registrations -- United States Patent and Trademark Office	
	<u>Registration No.</u>	<u>Registration Date</u>
TELEPRO	1,981,280	06/18/96
EMSI logo	2,043,466	03/11/97
OHT Occupational Health Testing logo	2,092,944	09/02/97
e electronic services logo	2,110,591	11/04/97
Via Solutions Group logo	2,501,748	10/30/01

**Trademark Applications**

<u>Trademark or Service Mark</u>	Pending Applications -- United States Patent and Trademark Office	
	<u>Serial No.</u>	<u>Filing Date</u>
ECHO logo	76/590449	05/04/04

TRADEMARK COLLATERAL  
SECURITY AND PLEDGE AGREEMENT

Dated as of January 18, 2005

between

Examination Management Services, Inc.

and

Deutsche Bank Trust Company Americas, as Collateral Agent

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EXECUTION COPY

**TRADEMARK COLLATERAL  
SECURITY AND PLEDGE AGREEMENT**

This **TRADEMARK COLLATERAL SECURITY AND PLEDGE AGREEMENT** dated as of January 18, 2005, is by and between **EXAMINATION MANAGEMENT SERVICES, INC.**, a Nevada corporation (the "**Assignor**"), and **DEUTSCHE BANK TRUST COMPANY AMERICAS**, a New York banking corporation, as collateral agent (in such capacity, the "**Collateral Agent**") pursuant to and for the benefit of the Senior Noteholders (as defined below) which are or may become parties to a certain Collateral Agency Agreement dated as of even date herewith (as amended and in effect from time to time, the "**Collateral Agency Agreement**") among the Senior Noteholders and the Collateral Agent.

**WHEREAS**, the Assignor is concurrently herewith entering into that certain Securities Exchange Agreement, dated as of the date hereof (as amended, restated, modified or supplemented from time to time, the "**Exchange Agreement**") among the Assignor, the other Issuers (as such term is defined in the Exchange Agreement) party thereto, and each of the persons identified on Schedule A thereto (such persons, together with each other holder from time to time of Notes (defined below), collectively the "**Senior Noteholders**"), pursuant to which the Issuers have issued to the Senior Noteholders, among other things, \$40,000,000 in aggregate principal amount of the Issuers' 9.00% Senior Secured Notes due January 18, 2011 (all such notes, whether initially issued, or issued in exchange or substitution for any such note, in each case in accordance with the Exchange Agreement, and as such notes may be amended from time to time in accordance with the Exchange Agreement, the "**Notes**");

**WHEREAS**, it is a condition precedent to the purchase by the Senior Noteholders of the Notes from the Assignor and the other Issuers under the Exchange Agreement that the Assignor execute and deliver to the Collateral Agent, for the benefit of the Senior Noteholders, a trademark agreement in substantially the form hereof;

**WHEREAS**, the Assignor and the other Issuers have executed and delivered to the Collateral Agent the Security Agreement (as defined in the Exchange Agreement), pursuant to which, among other things, the Assignor has granted to the Collateral Agent, for the benefit of the Senior Noteholders and the Collateral Agent, a security interest in all of the Assignor's personal property and fixture assets, including without limitation the trademarks, service marks, trademark and service mark registrations, and trademark and service mark registration applications listed on Schedule A attached hereto, all to secure the payment and performance of the Obligations (as defined in the Security Agreement); and

WHEREAS, this Trademark Agreement is supplemental to the provisions contained in the Security Agreement;

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

## 1. DEFINITIONS.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Exchange Agreement; any capitalized term used herein and not otherwise defined herein or in the Exchange Agreement shall have the meaning provided therefore in the Security Agreement. In addition, the following terms shall have the meanings set forth in this Section 1 or elsewhere in this Trademark Agreement referred to below:

Assignment of Marks. See Section 2.1.

Associated Goodwill. All goodwill of the Assignor and its business, products and services appurtenant to, associated with or symbolized by the Trademarks and the use thereof.

Pledged Trademarks. All of the Assignor's right, title and interest in and to all of the Trademarks, the Trademark Registrations, the Trademark License Rights, the Trademark Rights, the Associated Goodwill, the Related Assets, and all accessions to, substitutions for, replacements of, and all products and proceeds of any and all of the foregoing.

PTO. The United States Patent and Trademark Office.

Related Assets. All assets, rights and interests of the Assignor that uniquely reflect or embody the Associated Goodwill, including the following:

(a) all patents, inventions, copyrights, trade secrets, confidential information, formulae, methods or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision and sale of goods or services under or in association with any of the Trademarks; and

(b) the following documents and things in the possession or under the control of the Assignor, or subject to its demand for possession or control, related to the production, delivery, provision and sale by the Assignor, or any affiliate, franchisee, licensee or contractor, of products or services sold by or under the

authority of the Assignor in connection with the Trademarks or Trademark Rights, whether prior to, on or subsequent to the date hereof:

(i) all lists, contracts, ancillary documents and other information that identify, describe or provide information with respect to any customers, dealers or distributors of the Assignor, its affiliates or franchisees or licensees or contractors, for products or services sold under or in connection with the Trademarks or Trademark Rights, including all lists and documents containing information regarding each customer's, dealer's or distributor's name and address, credit, payment, discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity;

(ii) all agreements (including franchise agreements), product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision and sale of products or services under or in connection with the Trademarks or Trademark Rights;

(iii) all documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery and sale of products or services under or in connection with the Trademarks or Trademark Rights; and

(iv) all agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by the Assignor (or any of its affiliates, franchisees, licensees or contractors) of products or services sold under or in connection with the Trademarks or Trademark Rights.

Trademark Agreement. This Trademark Collateral Security and Pledge Agreement, as amended and in effect from time to time.

Trademark License Rights. Any and all past, present or future rights and interests of the Assignor pursuant to any and all past, present and future franchising or licensing agreements in favor of the Assignor, or to which the Assignor is a party, pertaining to any Trademarks, Trademark Registrations, or Trademark Rights owned or used by third parties in the past, present or future, including the right (but not the obligation) in the name of the Assignor, the Collateral Agent or any Senior Noteholder to enforce, and sue and recover for, any breach or violation of any such agreement to which the Assignor is a party.

Trademark Registrations. All past, present or future federal, state, local and foreign registrations of the Trademarks, all past, present and future applications for any such registrations (and any such registrations thereof upon approval of such applications),



together with the right (but not the obligation) to apply for such registrations (and prosecute such applications) in the name of the Assignor, the Collateral Agent or any Senior Noteholder, and to take any and all actions necessary or appropriate to maintain such registrations in effect and renew and extend such registrations.

**Trademark Rights.** Any and all past, present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law or otherwise, including the following: all such rights arising out of or associated with the Trademark Registrations; the right (but not the obligation) to register claims under any state, federal or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of the Assignor, the Collateral Agent or any Senior Noteholder for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the Trademark Rights, or the Associated Goodwill, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury; and the Trademark License Rights.

**Trademarks.** All of the trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, elements of package or trade dress, and other source and product or service identifiers, used or associated with or appurtenant to the products, services and businesses of the Assignor, including all goodwill associated with any of the foregoing, that (i) are set forth on Schedule A hereto, or (ii) have been adopted, acquired, owned, held or used by the Assignor or are now owned, held or used by the Assignor, in the Assignor's business, or with the Assignor's products and services, or in which the Assignor has any right, title or interest, or (iii) are in the future adopted, acquired, owned, held and used by the Assignor in the Assignor's business or with the Assignor's products and services, or in which the Assignor in the future acquires any right, title or interest.

**use.** With respect to any Trademark, all uses of such Trademark by, for or in connection with the Assignor or its business or for the direct or indirect benefit of the Assignor or its business, including all such uses by the Assignor itself, by any of the affiliates of the Assignor, or by any franchisee, licensee or contractor of the Assignor.

## **2. GRANT OF SECURITY INTEREST.**

**2.1. Security Interest; Assignment of Marks.** As collateral security for the payment and performance in full of all of the Obligations, the Assignor hereby unconditionally grants to the Collateral Agent, for the benefit of the Collateral Agent and the Senior Noteholders, a continuing security interest in and first priority lien on, and a conditional assignment of, the Pledged Trademarks, and pledges and mortgages (but does not transfer title to) the Pledged Trademarks to the Collateral Agent for the benefit of the Collateral Agent and the Senior Noteholders. In addition, the Assignor has executed in blank and delivered to the Collateral Agent an assignment of federally registered trademarks in substantially the form of Exhibit 1 hereto (the "Assignment of Marks").

The Assignor hereby authorizes the Collateral Agent to complete as assignee and record with the PTO the Assignment of Marks upon the occurrence and during the continuance of an Event of Default and the proper exercise of the Collateral Agent's remedies under this Trademark Agreement, the Security Agreement and the other Security Documents.

**2.2. Conditional Assignment.** In addition to, and not by way of limitation of, the grant, pledge and mortgage of the Pledged Trademarks provided in Section 2.1, the Assignor grants, assigns, transfers, conveys and sets over to the Collateral Agent, for the benefit of the Senior Noteholders, the Assignor's entire right, title and interest in and to the Pledged Trademarks; provided that such grant, assignment, transfer and conveyance shall be and become of force and effect only (i) upon or after the occurrence and during the continuance of an Event of Default and (ii) either (A) upon the written demand of the Collateral Agent at any time during such continuance or (B) immediately and automatically (without notice or action of any kind by the Collateral Agent) upon an Event of Default for which acceleration of the Notes or the Obligations is automatic under the Exchange Agreement or upon the sale or other disposition of or foreclosure upon the Collateral pursuant to the Security Agreement and applicable law (including the transfer or other disposition of the Collateral by the Assignor to the Collateral Agent or its nominee in lieu of foreclosure).

**2.3. Supplemental to Security Agreement.** Pursuant to the Security Agreement the Assignor has granted to the Collateral Agent, for the benefit of the Collateral Agent and the Senior Noteholders, a continuing security interest in and lien on the Collateral (including the Pledged Trademarks). The Security Agreement, and all rights and interests of the Collateral Agent and the Senior Noteholders in and to the Collateral (including the Pledged Trademarks) thereunder, are hereby ratified and confirmed in all respects. In no event shall this Trademark Agreement, the grant, assignment, transfer and conveyance of the Pledged Trademarks hereunder, or the recordation of this Trademark Agreement (or any document hereunder) with the PTO, adversely affect or impair, in any way or to any extent, the Security Agreement, the security interest of the Collateral Agent in the Collateral (including the Pledged Trademarks) pursuant to the Security Agreement and this Trademark Agreement, the attachment and perfection of such security interest under the Uniform Commercial Code (including the security interest in the Pledged Trademarks), or any present or future rights and interests of the Collateral Agent or the Senior Noteholders in and to the Collateral under or in connection with the Security Agreement, this Trademark Agreement or the Uniform Commercial Code. Any and all rights and interests of the Collateral Agent in and to the Pledged Trademarks (and any and all obligations of the Assignor with respect to the Pledged Trademarks) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of the Collateral Agent (and the obligations of the Assignor) in, to or with respect to the Collateral (including the Pledged Trademarks) provided in or arising under or in connection with the Security Agreement and shall not be in derogation thereof.

### **3. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

The Assignor represents, warrants and covenants that: (i) Schedule A sets forth a true and complete list of all Trademarks and Trademark Registrations now owned, licensed, controlled or used by the Assignor; (ii) the Trademarks and Trademark Registrations are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of the Trademarks or Trademark Registrations; (iii) to the Assignor's knowledge, each of the Trademarks and Trademark Registrations is valid and enforceable; (iv) to the Assignor's knowledge, there is no infringement by others of the Trademarks, Trademark Registrations or Trademark Rights; (v) no claim has been made that the use of any of the Trademarks does or may violate the rights of any third person, and to the best of the Assignor's knowledge, there is no infringement by the Assignor of the trademark rights of others; (vi) the Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks (other than ownership and other rights reserved by third party owners with respect to Trademarks that the Assignor is licensed to use), free and clear of any liens, charges, encumbrances and adverse claims, including pledges, assignments, licenses, registered user agreements and covenants by the Assignor not to sue third persons, other than the security interest and assignment created by the Security Agreement, this Trademark Agreement and other Liens permitted by the Exchange Agreement; (vii) the Assignor has the unqualified right to enter into this Trademark Agreement and to perform its terms; (viii) the Assignor has used, and will continue to use, proper statutory and other appropriate proprietary notices in connection with its use of the Trademarks, in each case as it deems appropriate for its business in its reasonable discretion; (ix) the Assignor has used, and will continue to use for the duration of this Trademark Agreement, consistent standards of quality in its provision of services sold or provided under the Trademarks; (x) this Trademark Agreement, together with the Security Agreement, will create in favor of the Collateral Agent, for the benefit of the Collateral Agent and the Senior Noteholders, a valid and perfected first priority security interest in the Pledged Trademarks upon making the filings referred to in clause (xi) of this Section 3; and (xi) except for the filing of financing statements with the Secretary of State for the State of Nevada under the Uniform Commercial Code and the recording of this Trademark Agreement with the PTO, no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (A) for the grant by the Assignor or the effectiveness of the security interest and assignment granted hereby or for the execution, delivery and performance of this Trademark Agreement by the Assignor, or (B) for the perfection of or the exercise by the Collateral Agent of any of its rights and remedies hereunder.

### **4. NO TRANSFER OR INCONSISTENT AGREEMENTS.**

Except as permitted by the Exchange Agreement or hereunder, without the Collateral Agent's prior written consent, the Assignor will not (i) mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Pledged Trademarks, or (ii) enter into any agreement (for example, a license agreement)

that is inconsistent with the Assignor's obligations under this Trademark Agreement or the Security Agreement.

## 5. AFTER-ACQUIRED TRADEMARKS, ETC.

5.1. After-acquired Trademarks. If, before the Obligations shall have been finally paid and satisfied in full, the Assignor shall obtain any right, title or interest in or to any other or new federally registered Trademarks, Trademark Registrations or Trademark Rights in each case relating to such federally registered Trademarks, the provisions of this Trademark Agreement shall automatically apply thereto and the Assignor shall promptly provide to the Collateral Agent notice thereof in writing and execute and deliver to the Collateral Agent such documents or instruments as the Collateral Agent or the Senior Noteholders may request further to implement, preserve or evidence the Collateral Agent's and the Senior Noteholders' interest therein.

5.2. Amendment to Schedule. The Assignor authorizes the Collateral Agent to modify this Trademark Agreement and the Assignment of Marks, without the necessity of the Assignor's further approval or signature, by amending Exhibit A hereto and the Annex to the Assignment of Marks to include any future or other Trademarks, Trademark Registrations or Trademark Rights under Section 2 or Section 5.

## 6. TRADEMARK PROSECUTION.

6.1. Assignor Responsible. The Assignor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the Pledged Trademarks, and shall hold the Collateral Agent and the Senior Noteholders harmless from any and all costs, damages, liabilities and expenses that may be incurred by the Collateral Agent or the Senior Noteholders in connection with the Collateral Agent's and the Senior Noteholders' interest in the Pledged Trademarks or any other action or failure to act in connection with this Trademark Agreement or the transactions contemplated hereby.

6.2. Assignor's Duties, etc. The Assignor shall have the right and the duty to prosecute diligently any trademark registration applications of the Trademarks pending as of the date of this Trademark Agreement or thereafter, to preserve and maintain all rights in the Trademarks and Trademark Registrations, including the filing of appropriate renewal applications and other instruments to maintain in effect the Trademark Registrations and the payment when due of all registration renewal fees and other fees, taxes and other expenses that shall be incurred or that shall accrue with respect to any of the Trademarks or Trademark Registrations in each case as it deems necessary and appropriate for its business in its reasonable discretion. Any expenses incurred in connection with such applications and actions shall be borne by the Assignor. The Assignor shall not abandon any filed trademark registration application, or any Trademark Registration or Trademark, without the consent of the Collateral Agent and the Senior Noteholders.

**6.3. Assignor's Enforcement Rights.** The Assignor shall have the right and the duty to bring suit or other action in the Assignor's own name to maintain and enforce the Trademarks, the Trademark Registrations and the Trademark Rights in each case as it deems necessary and appropriate for its business in its reasonable discretion. The Assignor may require the Collateral Agent to join in such suit or action as necessary to assure the Assignor's ability to bring and maintain any such suit or action in any proper forum if (but only if) the Collateral Agent and the Senior Noteholders are completely satisfied that such joinder will not subject the Collateral Agent or the Senior Noteholders to any risk of liability. The Assignor shall promptly, upon demand, reimburse and indemnify the Collateral Agent and the Senior Noteholders for all damages, costs and expenses, including legal fees, incurred by the Collateral Agent and the Senior Noteholders pursuant to this Section 6.3.

**6.4. Protection of Trademarks, etc.** In general, the Assignor shall take any and all such actions (including institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate for its business, in its reasonable discretion, to properly maintain, protect, preserve, care for and enforce the Pledged Trademarks. The Assignor shall not take or fail to take any action, nor permit any action to be taken or not taken by others under its control, that in its reasonable discretion would adversely affect the validity, grant or enforcement of the Pledged Trademarks. After the occurrence and during the continuance of an Event of Default, the Assignor shall take any and all such actions (including institution and maintenance of suits, proceedings or actions) as the Collateral Agent may direct the Assignor to take to maintain, protect, preserve, care for and enforce the Pledged Trademarks.

**6.5. Notification by Assignor.** Promptly upon obtaining knowledge thereof, the Assignor will notify the Collateral Agent in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Trademarks or Trademark Registrations or the Assignor's rights, title or interests in and to the Pledged Trademarks, and of any event that has or could materially adversely affect the value of any of the Pledged Trademarks, the ability of the Assignor or the Collateral Agent to dispose of any of the Pledged Trademarks or the rights and remedies of the Collateral Agent in relation thereto (including but not limited to the levy of any legal process against any of the Pledged Trademarks).

## **7. REMEDIES.**

Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have, in addition to all other rights and remedies given it by this Trademark Agreement (including, without limitation, those set forth in Section 2.2), the Exchange Agreement, the Security Agreement and the other Security Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the State of New York, and, without limiting the generality of the foregoing, the Collateral Agent may immediately, without demand of performance and without other notice (except as set forth below) or demand whatsoever

to the Assignor, all of which are hereby expressly waived, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Pledged Trademarks, or any interest that the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Pledged Trademarks all expenses incurred by the Collateral Agent or any Senior Noteholder in attempting to enforce this Trademark Agreement (including all expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in or by reference in the Security Agreement. Notice of any sale, license or other disposition of the Pledged Trademarks shall be given to the Assignor at least ten (10) days before the time that any intended public sale or other public disposition of the Pledged Trademarks is to be made or after which any private sale or other private disposition of the Pledged Trademarks may be made, which the Assignor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, the Collateral Agent or any Senior Noteholder may, to the extent permitted under applicable law, purchase or license the whole or any part of the Pledged Trademarks or interests therein sold, licensed or otherwise disposed of.

## **8. COLLATERAL PROTECTION.**

**8.1. Expenses Incurred by the Collateral Agent.** At any time after the occurrence and during the continuance of an Event of Default, the Collateral Agent, in its own name or that of the Assignor (in the sole discretion of the Collateral Agent), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and the Assignor agrees promptly to reimburse the Collateral Agent (or the Senior Noteholders, to the extent the Collateral Agent has been reimbursed by them) for any cost or expense incurred by the Collateral Agent in so doing.

### **8.2. The Collateral Agent's Obligations and Duties.**

(a) Any and all rights granted to the Collateral Agent under this Agreement are to be held and exercised by the Collateral Agent as agent for the benefit of the Senior Noteholders pursuant to the provisions of the Collateral Agency Agreement. Each of the Senior Noteholders shall be a beneficiary of the terms of this Agreement. Any and all obligations under this Agreement of the parties to this Agreement, and the rights and indemnities granted to the Collateral Agent under this Agreement, are created and granted subject to, and in furtherance (and not in limitation) of, the terms of the Collateral Agency Agreement and the rights and indemnities of the Senior Noteholders contained therein shall apply equally to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any Person other than the Assignor, the Senior Noteholders and the Collateral Agent any legal or equitable right, remedy, or claim under or in respect of this Agreement or any covenant, condition, or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Assignor, the Senior Noteholders and the Collateral Agent. Notwithstanding anything

herein to the contrary, the Collateral Agent shall exercise its rights and powers subject to the direction and indemnity of the Senior Noteholders as provided in the Collateral Agency Agreement.

(b) Anything herein to the contrary notwithstanding, the Assignor shall remain obligated and liable under each contract or agreement comprised in the Pledged Trademarks to be observed or performed by the Assignor thereunder. Neither the Collateral Agent nor the Senior Noteholders shall have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Collateral Agent or the Senior Noteholders of any payment relating to any of the Pledged Trademarks, nor shall the Collateral Agent or the Senior Noteholders be obligated in any manner to perform any of the obligations of the Assignor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Collateral Agent or the Senior Noteholders in respect of the Pledged Trademarks or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Collateral Agent or to which the Collateral Agent or the Senior Noteholders may be entitled at any time.

#### **9. POWER OF ATTORNEY.**

If any Event of Default shall have occurred and be continuing, the Assignor does hereby make, constitute and appoint the Collateral Agent (and any officer or agent of the Collateral Agent as the Collateral Agent may select in its exclusive discretion) as the Assignor's true and lawful attorney-in-fact, with full power of substitution and with the power to endorse the Assignor's name on all applications, documents, papers and instruments necessary for the Collateral Agent to use the Pledged Trademarks, or to grant or issue any exclusive or nonexclusive license of any of the Pledged Trademarks to any third person, or to take any and all actions necessary for the Collateral Agent to assign, pledge, convey or otherwise transfer title in or dispose of any of the Pledged Trademarks or any interest of the Assignor therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts that the Assignor is obligated to execute and do hereunder. The Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and releases the Collateral Agent and the Senior Noteholders from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by the Collateral Agent under this power of attorney (except for the Collateral Agent's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction). This power of attorney is coupled with an interest and shall be irrevocable for the duration of this Trademark Agreement.

#### **10. FURTHER ASSURANCES.**

The Assignor shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary or appropriate with

governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as the Collateral Agent may request or as may be necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Trademark Agreement, or to assure and confirm to the Collateral Agent the grant, perfection and priority of the Collateral Agent's security interest in the Pledged Trademarks.

#### **11. TERMINATION.**

At such time as all of the Obligations have been finally paid and satisfied in full, this Trademark Agreement shall terminate and the Collateral Agent shall, upon the written request and at the expense of the Assignor, execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to reassign and reconvey to and re-vest in the Assignor the entire right, title and interest to the Pledged Trademarks previously granted, assigned, transferred and conveyed to the Collateral Agent by the Assignor pursuant to this Trademark Agreement, as fully as if this Trademark Agreement had not been made, subject to any disposition of all or any part thereof that may have been made by the Collateral Agent pursuant hereto or the Security Agreement.

#### **12. COURSE OF DEALING.**

No course of dealing between the Assignor and the Collateral Agent or the Senior Noteholders, nor any failure to exercise, nor any delay in exercising, on the part of the Collateral Agent or the Senior Noteholders, any right, power or privilege hereunder or under the Security Agreement or any other agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

#### **13. EXPENSES.**

Any and all fees, costs and expenses, of whatever kind or nature, including the attorneys' fees and expenses incurred by the Collateral Agent or the Senior Noteholders in connection with the preparation of this Trademark Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance or renewal fees, encumbrances, or otherwise protecting, maintaining or preserving the Pledged Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Pledged Trademarks, shall be borne and paid by the Assignor.



**14. OVERDUE AMOUNTS.**

Until paid, all amounts due and payable by the Assignor hereunder shall be a debt secured by the Pledged Trademarks and other Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Exchange Agreement.

**15. NO ASSUMPTION OF LIABILITY; INDEMNIFICATION.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COLLATERAL AGENT AND THE SENIOR NOTEHOLDERS ASSUME NO LIABILITIES OF THE ASSIGNOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING THE ASSIGNOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE PLEDGED TRADEMARKS OR ANY USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY THE RESPONSIBILITY OF THE ASSIGNOR, AND THE ASSIGNOR SHALL INDEMNIFY THE COLLATERAL AGENT AND THE SENIOR NOTEHOLDERS FOR ANY AND ALL COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING LEGAL FEES, INCURRED BY THE COLLATERAL AGENT AND THE SENIOR NOTEHOLDERS WITH RESPECT TO SUCH LIABILITIES.

**16. NOTICES.**

All notices and other communications made or required to be given pursuant to this Trademark Agreement shall be in writing and shall be made or given in the same manner as set forth in Section 18 of the Exchange Agreement, or at such other address for notice as the Assignor shall last have furnished in writing to the person giving the notice. Any such notice or demand shall be deemed to have been duly given or made and to have become effective as set forth in Section 10.1 of the Collateral Agency Agreement.

**17. AMENDMENT AND WAIVER.**

This Trademark Agreement is subject to modification only by a writing signed by the Collateral Agent (with the consent of the Required Holders) and the Assignor, except as provided in Section 5.2. The Collateral Agent shall not be deemed to have waived any right hereunder unless such waiver shall be in writing and signed by the Collateral Agency Agent. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

**18. GOVERNING LAW; CONSENT TO JURISDICTION.**

THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE

**GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE.**

**19. JURISDICTION AND PROCESS; WAIVER OF JURY TRIAL.**

**19.1. Jurisdiction.** The Assignor irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Trademark Agreement. To the fullest extent permitted by applicable law, the Assignor irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

**19.2. Service of Process.** The Assignor consents to process being served by or on behalf of any Senior Noteholder in any suit, action or proceeding of the nature referred to in Section 19.1 by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to it at its address specified in Section 18 of the Exchange Agreement or at such other address of which such Senior Noteholder shall then have been notified pursuant to said Section. The Assignor agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

**19.3. No Waiver.** Nothing in this Section 19 shall affect the right of any Senior Noteholder to serve process in any manner permitted by law, or limit any right that any Senior Noteholder may have to bring proceedings against the Assignor in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

**19.4. Waiver of Jury Trial.** **THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS TRADEMARK AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.** Except as prohibited by law, the Assignor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Assignor (i) certifies that neither the Collateral Agent, the Senior Noteholders, nor any representative, agent or attorney of the any of them has represented, expressly or otherwise, that any of them would not, in the

event of litigation, seek to enforce the foregoing waivers, and (ii) acknowledges that, in entering into the Exchange Agreement and the other Operative Documents to which any of them is a party, the Collateral Agent and the Senior Noteholders are relying upon, among other things, the waivers and certifications contained in this Section 19.4.

## **20. MISCELLANEOUS.**

The headings of each section of this Trademark Agreement are for convenience only and shall not define or limit the provisions thereof. This Trademark Agreement and all rights and obligations hereunder shall be binding upon the Assignor and its respective successors and assigns, and shall inure to the benefit of the Collateral Agent and the Senior Noteholders and their successors and assigns. In the event of any irreconcilable conflict between the provisions of this Trademark Agreement and the Exchange Agreement, or between this Trademark Agreement and the Security Agreement, the provisions of the Exchange Agreement or the Security Agreement, as the case may be, shall control. If any term of this Trademark Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Trademark Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Assignor acknowledges receipt of a copy of this Trademark Agreement.

## **21. Counterparts.**

This Trademark Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

*[Remainder of page intentionally left blank; next page is signature page.]*

IN WITNESS WHEREOF, this Trademark Agreement has been executed as of the day and year first above written.

EXAMINATION MANAGEMENT SERVICES, INC.

By: [Signature]

Name: Mark S. Davis

Title: President and CEO

STATE OF Texas )

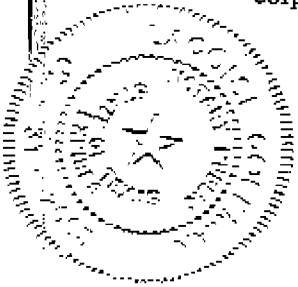
COUNTY OF Dallas ) SS.

On this the 18<sup>th</sup> day of January, 2005, before me appeared Mark S. Davis, the person who signed this instrument, who acknowledged that ~~(s)~~he is the President + CEO of Examination Management Services, Inc. and that being duly authorized (s)he signed such instrument as a free act on behalf of said corporation.

[Signature]  
Notary Public

[Seal]

My commission expires: July 31, 2005



**DEUTSCHE BANK TRUST COMPANY  
AMERICAS**, not in its individual capacity  
but solely as Collateral Agent

By: Wanda Camacho  
Name: Wanda Camacho  
Title: Vice President

**SCHEDULE A****Trademarks and Trademark Registrations**

<u>Trademark or Service Mark</u>	<u>Registrations -- United States Patent and Trademark Office Registration No.</u>	<u>Registration Date</u>
TELEPRO	1,981,280	06/18/96
EMSI logo	2,043,466	03/11/97
OHT Occupational Health Testing logo	2,092,944	09/02/97
e electronic services logo	2,110,591	11/04/97
Via Solutions Group logo	2,501,748	10/30/01

<u>Trademark or Service Mark</u>	<u>Pending Applications -- United States Patent and Trademark Office Serial No.</u>	<u>Filing Date</u>
ECHO logo	76/590449	05/04/04

**EXHIBIT 1****ASSIGNMENT OF TRADEMARKS AND SERVICE MARKS (U.S.)**

WHEREAS, **EXAMINATION MANAGEMENT SERVICES, INC.**, a corporation organized and existing under the laws of the State of Nevada, having a place of business at 3050 Regent Blvd., Suite 400, Irving, Texas 75063 (the "Assignor"), has adopted and used and is using the trademarks and service marks (the "Marks") identified on the Annex hereto, and is the owner of the registrations of and pending registration applications for such Marks in the United States Patent and Trademark Office identified on such Annex; and

WHEREAS, \_\_\_\_\_, (the "Assignee"), is desirous of acquiring the Marks and the registrations thereof and registration applications therefor;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Assignor does hereby assign, sell and transfer unto the Assignee all right, title and interest in and to the Marks, together with (i) the registrations of and registration applications for the Marks, (ii) the goodwill of the business symbolized by and associated with the Marks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Marks or the registrations thereof or such associated goodwill.

This Assignment of Trademarks and Service Marks (U.S.) is intended to and shall take effect as a sealed instrument at such time as the Assignee shall complete this instrument by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Trademarks and Service Marks (U.S.) below.

*[Remainder of page intentionally left blank; next page is signature page.]*

IN WITNESS WHEREOF, the Assignor, by its duly authorized officer, has executed this assignment, as an instrument under seal, on this \_\_\_ day of \_\_\_\_\_.

**EXAMINATION MANAGEMENT SERVICES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On this the \_\_\_ day of January, 2005, before me appeared \_\_\_\_\_, the person who signed this instrument, who acknowledged that (s)he is the \_\_\_\_\_ of Examination Management Services, Inc. and that being duly authorized (s)he signed such instrument as a free act on behalf of said corporation.

\_\_\_\_\_  
Notary Public

[Seal]

My commission expires:



The foregoing assignment of the Marks and the registrations thereof and registration applications therefor by the Assignor to the Assignee is hereby accepted as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[ \_\_\_\_\_ ]

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

Name:

Title:

ANNEX

Trademark  
or  
Service Mark

Registrations --  
United States Patent and Trademark Office  
Registration No.                      Registration Date

TELEPRO                                      1,981,280                                      06/18/96

EMSI logo                                      2,043,466                                      03/11/97

OHT Occupational Health  
Testing logo                                      2,092,944                                      09/02/97

e electronic services logo                                      2,110,591                                      11/04/97

Via Solutions Group logo                                      2,501,748                                      10/30/01

Trademark  
or  
Service Mark

Pending Applications --  
United States Patent and Trademark Office  
Serial No.                                      Filing Date

ECHO logo                                      76/590449                                      05/04/04

**ITEM 4B & 4C CONTINUED****Trademark Registrations**

<u>Trademark or Service Mark</u>	Registrations -- United States Patent and Trademark Office	
	<u>Registration No.</u>	<u>Registration Date</u>
TELEPRO	1,981,280	06/18/96
EMSI logo	2,043,466	03/11/97
OHT Occupational Health Testing logo	2,092,944	09/02/97
e electronic services logo	2,110,591	11/04/97
Via Solutions Group logo	2,501,748	10/30/01

**ITEM 4A & 4C CONTINUED****Trademark Applications**

<u>Trademark or Service Mark</u>	Pending Applications -- United States Patent and Trademark Office	
	<u>Serial No.</u>	<u>Filing Date</u>
ECHO logo	76/590449	05/04/04