

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

In re:

EXCEL STAFFING SERVICES, INC.<sup>1</sup>

Debtor

Case No.

16-35795-KLP

Chapter

11

**DEBTOR'S MOTION TO AUTHORIZE USE OF CASH  
COLLATERAL AND ADEQUATE PROTECTION  
AND MEMORANDUM IN SUPPORT THEREOF**

The above-captioned debtor and debtor-in-possession (the "Debtor") hereby moves the Court for the entry of an order pursuant to 11 U.S.C. §§ 361 and 363, and Rule 4001 of the Federal Rules of Bankruptcy Procedure, authorizing the Debtor's use of cash collateral and granting of certain adequate protection, and, in support hereof, respectfully represents as follows:

**Background**

1. On November 28, 2016 (the "Petition Date"), the Debtor commenced its reorganization case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101, *et. seq.* (the "Bankruptcy Code").

2. The Debtor is continuing in possession of its property and is operating and managing its business, as debtor-in-possession, pursuant to §§ 1107 and 1108 of the Bankruptcy

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<sup>1</sup> The Debtor's principal place of business is 200 East Cary Street, Richmond, VA 23219 and the Debtor's EIN is 31-1676369.

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Lynn Lewis Tavenner, Esquire (Va. Bar No. 30083)  
Paula S. Beran, Esquire (Va. Bar No. 34679)  
David N. Tabakin, Esquire (Va. Bar No. 82709)  
Tavenner & Beran, PLC  
20 North Eighth Street, Second Floor  
Richmond, Virginia 23219  
Telephone: (804) 783-8300  
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Code.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

**The Debtor's Business**

4. EXCEL Staffing Services, Inc., dba EXCEL Management Services, Inc. (EXCEL), is a Virginia Corporation, located at 200 East Cary Street, Richmond, Virginia 23219. The Debtor's stock is owned 100% by Ms. Billie D. Brown ("Ms. Brown"), President of EXCEL. Ms. Brown is also responsible for the day to day management of the Debtor.

5. EXCEL is a temporary staffing agency servicing the Northeastern Region of the United States. EXCEL is certified as a WMBE through the Virginia the Virginia Department of Minority Business Enterprise and the City of Richmond. EXCEL was also certified by the Small Business Administration as a socially and economically disadvantage small business under the 8(a) program.

**Cash Collateral**

6. The Debtor is indebted to the Internal Revenue Service ("IRS") pursuant to a certain federal tax lien in the purported amount of \$84,573.38 (the "FTL"). The Debtor does not believe that it owes \$84,573.38 and is currently working with the IRS to resolve amounts owed.

7. Pursuant to the terms of a section 6321, 6322, and 6323 of the Internal Revenue Code, there is a lien in favor of the United States on all property and rights to property belonging to the Debtor (collectively, the "Collateral") for the amount of taxes owed, and additional penalties, interest, and costs

8. Based upon its preliminary analysis, it appears that the IRS has a perfected lien in the Collateral. The factual allegations in this Motion are for purposes of setting forth the apparent collateral position of the IRS and are made without prejudice to the Debtor's and creditor's rights to contest the validity of the debt or Collateral position of the IRS.

9. In addition, the Economic Development Authority of the City of Richmond (the "EDA") has a potential security interest in the Collateral pursuant to a filed and recorded financing statement. The factual allegations in this Motion are for purposes of setting forth the apparent Collateral position of the EDA and are made without prejudice to the Debtor's and creditor's rights to contest the validity of the debt or Collateral position of the EDA.

10. To the best of the Debtor's information and belief, the IRS and the EDA are the only creditors of the Debtor with potential liens upon the Collateral.<sup>2</sup>

11. As of the Petition Date, the value of the Debtor's accounts receivable was approximately \$100,000.00.

### **Relief Requested**

12. In order to remain in possession of its property and continue its business activity in an effort to achieve successful reorganization, the Debtor must use its cash collateral (as said term is defined in § 363 of the Bankruptcy Code) (hereafter, the "Cash Collateral") in its ordinary business operations.

13. The Debtor seeks entry of an order pursuant to §§ 361 and 363 of the Bankruptcy Code authorizing, on an interim basis, the: (i) use of Cash Collateral; (ii) granting of certain

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<sup>2</sup> Knight Capital Funding has a recorded UCC-1 financing statement with the State Corporation Commission of the Commonwealth of Virginia (the "SCC"). The Debtor does not owe any money to Knight Capital Funding. In addition, Corporation Service Company, As Representative, has a recorded UCC-1 financing statement with the SCC. The Debtor is unaware of any obligations it could have due and owing to Corporation Service Company, As Representative.

adequate protection, if necessary, to the IRS, the EDA, and any other secured creditor in connection with such use; and (iii) granting of such other and further relief as the Court may deem proper.

14. Specifically, as provided in the Cash Budget attached hereto as Exhibit A, the Debtor seeks authority to use Cash Collateral to fund the operation of its business for the next month as provided in the Cash Budget plus 10% (plus the appropriate amount of fees collected by the Office of the United States Trustee for said amount).

15. The Debtor requires the use of such Cash Collateral to operate its business; specifically, the Debtor requires the continued use of such cash or cash equivalents to permit it to pay vendors, meet its payroll, satisfy current payment obligations to lessors and utilities, maintain in effect its insurance policies, preserve and protect its assets, and to generally and otherwise pay obligations critical to continuing the operation of its business.

16. In an effort to adequately protect the interests of the IRS and the EDA in the Cash Collateral, to the extent that the IRS and the EDA has a lien in the Cash Collateral, the Debtor will provide the IRS and the EDA a replacement lien in the Debtor's post-petition assets, in the same extent of its pre-petition liens. Specifically, the Debtor proposes to grant to the IRS and the EDA, to the extent of the use of the Cash Collateral, a post-petition replacement lien on the Debtor's accounts receivable and other assets, which replacement lien will be of the same validity, priority and enforceability as the pre-petition lien of the IRS and the EDA in such type of assets. To the extent the IRS and the EDA has a valid pre-petition lien on any type of asset and the Debtor uses such collateral post-petition, the IRS and the EDA shall also secure a replacement lien in said type of post-petition asset.

17. If the Debtor is not authorized to use Cash Collateral, the Debtor will be unable to maintain its current business operations and propose a plan of reorganization as contemplated by the Bankruptcy Code. Without the immediate use of the Cash Collateral, the Debtor will be seriously and irreparably harmed, resulting in significant losses to the Debtor's estate and its creditors. Specifically, the Debtor must meet its payroll obligations otherwise there is a serious likelihood that its employees will not report to work. Given the nature of the Debtor's business, if its employees do not report to work, there is no chance for a successful reorganization.

18. The Debtor is without sufficient funds to enable it to operate without the use of Cash Collateral. The Debtor requires the immediate use of Cash Collateral for the payment of certain business expenses necessary for the Debtor to continue to operate its business including those expenses detailed on the Budget, which expressly contemplates the payment by the Debtor of wages, utilities, and taxes accrued but not yet payable on the Petition Date. The Debtor also is aware and anticipates that certain of its vendors and/or service providers may require the payment of cash in advance of any delivery of goods or services. Failure to pay for such items on a timely basis will require the Debtor to close down all of its operations entirely, which may result in irreparable injury to the Debtor and eliminate its ability effectively to reorganize.

#### **Legal Authority**

19. The Debtor provides temporary services to clients and generates accounts receivable in the ordinary course of its business. *See In re WRB West Assocs.*, 106 B.R. 215, 219 (Bankr. D. Mont. 1989).

20. The Court may approve the Debtor's use of the cash generated from the collection of its accounts receivable in the ordinary course of the Debtor's business over a lien holder's

objection if said lien holder is adequately protected. *Id.*; *see also* 11 U.S.C. § 363 (a) and (c)(2).

As § 363 of the Bankruptcy Code provides:

The trustee may not use, sell or lease cash collateral under paragraph (1) of this subsection unless –

- (A) each entity that has an interest in such cash collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions in this section.

11 U.S.C. § 363(b)(2).

21. Section 361 of the Bankruptcy Code provides:

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by –

...

- (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity's interest in such property; or

11 U.S.C. § 361.

22. As noted above, § 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as the granting of replacement liens. However, it is for the Court to determine what constitutes sufficient adequate protection. *See, e.g., In re Satcon Tech. Corp.*, No. 12-12869, 2012 WL 6091160, at \*6 (Bankr. D. Del. Dec. 7, 2012). At the same time, it is well-recognized that “adequate protection” is not equivalent to “absolute protection.” *In re Beker Indus., Inc.*, 58 B.R. 725, 741 (Bankr. S.D.N.Y. 1986) (“Adequate protection, not absolute protection, is the statutory standard.”).

23. The lien holders at issue in this Motion, specifically the IRS and the EDA, are adequately protected as provided herein.

24. As indicated, the Debtor requires the use of such Cash Collateral to pay vendors, meet its payroll to its employees, satisfy payment obligations to lessors and utilities, maintain in effect its insurance policies, preserve and protect its assets, and to generally and otherwise pay obligations critical to continuing the operation of its business.

**Notice**

25. No trustee, examiner, or creditors' committee has been appointed in this Chapter 11 case.

26. Notice of this Motion has been given to: (a) the Office of the United States Trustee; (b) the Debtor's unsecured creditors, as identified in its Chapter 11 petition; (c) the Debtor's known secured creditors; and (d) any known legal counsel for the Debtor's secured creditors. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that the Court enter an interim order substantially in the form attached hereto as Exhibit B and thereafter a final order: (i) authorizing the use of Cash Collateral; (ii) granting of certain adequate protection for said use; and (iii) granting such other and further relief, as the Court may deem proper.

Respectfully submitted,

EXCEL STAFFING SERVICES, INC.

Dated: November 30, 2016  
Richmond, Virginia

By: /s/ Paula S. Beran  
Lynn L. Tavenner, Esquire (VSB No. 30083)  
Paula S. Beran, Esquire (VSB No. 34679)  
David N. Tabakin, Esquire (VSB No. 82709)  
Tavenner & Beran, PLC  
20 North 8<sup>th</sup> Street  
Richmond, Virginia 23219  
Telephone: (804) 783-8300  
Telecopier: (804) 783-0178

*Proposed Counsel for the Debtor*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of November, 2016, a true and correct copy of the *Debtor's Motion to Authorize Use of Cash Collateral and Adequate Protection and Memorandum in Support Thereof* was served via electronic delivery and/or overnight delivery (next business day) and/or facsimile, to the Office of the United States Trustee, the Debtor's unsecured creditors as identified in its Chapter 11 petition, the Debtor's known secured creditors, any known legal counsel for the Debtor's secured creditors, Knight Capital Funding, Corporation Service Company, As Representative, and all parties requesting service of pleadings in this case (all as listed on Schedule A attached hereto).

/s/ Paula S. Beran  
Proposed Counsel



## Exhibit A

	EXCEL Management Services, Inc. - Thirteen Week Budget						
	Week 1-Dec 2	Week 2- Dec 9	Week 3-Dec 16	Week 4-Dec 23	Week 5-Dec 30	Week 6-Jan 6	Week 7-Jan 13
<b>Income:</b>							
In Bank	\$ 13,255.00	\$ 94.00	\$ 3,230.00	\$ 6,689.00	\$ 18,689.00	\$ 16,189.00	\$ 25,726.00
Geo			\$ 6,252.00		\$ 6,000.00		\$ 6,000.00
COR		\$ 13,972.00		\$ 10,000.00		\$ 10,000.00	
RPS	\$ 3,000.00		\$ 2,500.00		\$ 2,500.00		\$ 2,500.00
Masis		\$ 13,800.00	\$ 13,707.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00
Maximus			\$ 4,000.00			\$ 4,000.00	
<b>Total Income:</b>	<b><u>\$ 16,255.00</u></b>	<b><u>\$ 27,866.00</u></b>	<b><u>\$ 29,689.00</u></b>	<b><u>\$ 28,689.00</u></b>	<b><u>\$ 39,189.00</u></b>	<b><u>\$ 42,189.00</u></b>	<b><u>\$ 46,226.00</u></b>
<b>Expenses:</b>							
Payrolls:							
Weekly	\$ 6,352.00	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00
Bi-Weekly	\$ 9,660.00		\$ 11,000.00		\$ 11,000.00		\$ 11,000.00
Payroll taxes		\$ 8,000.00	\$ 3,000.00	\$ 1,000.00	\$ 3,000.00	\$ 1,000.00	\$ 3,000.00
Workers Comp		\$ 4,000.00				\$ 4,000.00	
Quickbooks upgrade		\$ 722.00					
Quill-Office Supplies		\$ 200.00				\$ 200.00	
Dominion		\$ 500.00				\$ 500.00	
AARP Insur		\$ 124.00				\$ 124.00	
Alfa		\$ 140.00				\$ 140.00	
Comcast		\$ 204.00				\$ 204.00	
IPFS		\$ 540.00				\$ 540.00	
Uhaul		\$ 184.00				\$ 184.00	
Public Util		\$ 200.00				\$ 200.00	
Verizon Wireless		\$ 222.00				\$ 222.00	
Business taxes		\$ 600.00					
Stat to Star	\$ 149.00					\$ 149.00	
<b>Total Expenses:</b>	<b><u>\$ 16,161.00</u></b>	<b><u>\$ 24,636.00</u></b>	<b><u>\$ 23,000.00</u></b>	<b><u>\$ 10,000.00</u></b>	<b><u>\$ 23,000.00</u></b>	<b><u>\$ 16,463.00</u></b>	<b><u>\$ 23,000.00</u></b>
<b>Balance</b>	<b>\$ 94.00</b>	<b>\$ 3,230.00</b>	<b>\$ 6,689.00</b>	<b>\$ 18,689.00</b>	<b>\$ 16,189.00</b>	<b>\$ 25,726.00</b>	<b>\$ 23,226.00</b>

Week 8-Jan 20	Week 9-Jan 27	Week 10-Feb 3	Week 11-Feb 10	Week 12-Feb 17	Week 13-Feb 24	
\$ 23,226.00	\$ 35,226.00	\$ 36,726.00	\$ 35,263.00	\$ 24,263.00	\$ 35,263.00	
	\$ 6,000.00			\$ 6,000.00		
\$ 10,000.00		\$ 3,000.00		\$ 3,000.00		
	\$ 2,500.00					
\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	
	\$ 4,000.00					
<b><u>\$ 45,226.00</u></b>	<b><u>\$ 59,726.00</u></b>	<b><u>\$ 51,726.00</u></b>	<b><u>\$ 47,263.00</u></b>	<b><u>\$ 45,263.00</u></b>	<b><u>\$ 47,263.00</u></b>	
\$ 9,000.00	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00	
	\$ 11,000.00		\$ 11,000.00		\$ 11,000.00	
\$ 1,000.00	\$ 3,000.00	\$ 1,000.00	\$ 3,000.00	\$ 1,000.00	\$ 3,000.00	
		\$ 4,000.00				
		\$ 200.00				
		\$ 500.00				
		\$ 124.00				
		\$ 140.00				
		\$ 204.00				
		\$ 540.00				
		\$ 184.00				
		\$ 200.00				
		\$ 222.00				
		\$ 149.00				
<b><u>\$ 10,000.00</u></b>	<b><u>\$ 23,000.00</u></b>	<b><u>\$ 16,463.00</u></b>	<b><u>\$ 23,000.00</u></b>	<b><u>\$ 10,000.00</u></b>	<b><u>\$ 23,000.00</u></b>	
\$ 35,226.00	\$ 36,726.00	\$ 35,263.00	\$ 24,263.00	\$ 35,263.00	\$ 24,263.00	

**EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

In re:	Case No.
EXCEL STAFFING SERVICES, INC. <sup>1</sup>	16-35795-KLP
Debtor	Chapter
	11

This matter came before the Court upon the Debtor's Motion to Authorize Use of Cash Collateral and Adequate Protection and Memorandum in Support Thereof (the "Motion"). The Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested in the Motion at a hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and (c) notice of this Motion and the Hearing was sufficient under the circumstances; and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; it is hereby

ORDERED as follows:

1. The Motion is hereby GRANTED.

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<sup>1</sup> The Debtor's principal place of business is 200 East Cary Street, Richmond, VA 23219 and the Debtor's EIN is 31-1676369.

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Lynn Lewis Tavenner, Esquire (Va. Bar No. 30083)  
Paula S. Beran, Esquire (Va. Bar No. 34679)  
David N. Tabakin, Esquire (Va. Bar No. 82709)  
Tavenner & Beran, PLC  
20 North Eighth Street, Second Floor  
Richmond, Virginia 23219  
Telephone: (804) 783-8300  
Telecopy: (804) 783-0178

2. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

3. Without the interim use of Cash Collateral, the estate will suffer immediate and irreparable harm.

4. Accordingly, the Debtor is authorized to utilize Cash Collateral in a manner consistent with the Motion and Budget attached hereto as Exhibit A.

5. To the extent that the IRS and the EDA has an interest in any of the Cash Collateral, it is hereby granted a replacement lien in the collateral type against which it maintains a valid, pre-petition lien. The replacement lien will be of the same validity, priority, and enforceability as the pre-petition lien of the IRS and the EDA in such type of assets. the IRS and the EDA's adequate protection liens granted herein shall be deemed perfected without any further execution, delivery or filing of security agreements, financing statements or other instruments by any party. The Debtor is hereby authorized to execute and deliver to the IRS and the EDA any instruments, agreements and documents related to the perfection of the adequate protection lien against the affected estate assets.

6. Upon entry this Order shall be served (by first class mail, postage prepaid or overnight delivery) upon: the Office of the United States Trustee, the Debtor's unsecured creditors as identified in its Chapter 11 petition, the Debtor's known secured creditors and any known legal counsel for the secured creditors.

7. Any party having any objection to any of the relief provided herein shall, prior to \_\_\_\_\_: (a) file a written objection with the Clerk of this Court; (b) serve copies of such written objection on (i) Tavenner & Beran, PLC, (ii) the Office of the United States Trustee, (iii)

the Debtor's unsecured creditors as identified in its Chapter 11 petition, (iv) the Debtor's known secured creditors and (v) any known legal counsel for the secured creditors; and (c) attend the hearing scheduled below to consider the objection(s).

8. In the event that an objection to this Order is filed and served timely, a hearing to consider such objection(s) will be held at \_\_:\_\_ p.m./a.m. on \_\_\_\_\_, 2016, at the United States Bankruptcy Judge, in Room 5\_00, of the United States Courthouse, 701 E. Broad Street Richmond, Virginia 23219. Absent the filing and serving of an objection as provided herein, this Order shall become final on \_\_\_\_\_, without any further notice or hearing, or other action by the Debtor or the Court.

Enter:

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

I ask for this:

\_\_\_\_\_  
Lynn L. Tavenner, Esquire (Va. Bar No. 30083)  
Paula S. Beran, Esquire (Va. Bar No. 34679)  
David N. Tabakin, Esquire (Va. Bar No. 82709)  
Tavenner & Beran, PLC  
20 North Eighth Street, Second Floor  
Richmond, Virginia 23219  
Telephone: (804) 783-8300  
Telecopy: (804) 783-0178

*Proposed Counsel to the Debtor*

Seen and not objected to:

\_\_\_\_\_  
Robert B. Van Arsdale, Esquire  
Office of the United States Trustee  
701 East Broad Street, Suite 4304  
Richmond, Virginia 23219  
(804) 771-8004

*Assistant United States Trustee*

**CERTIFICATION OF ENDORSEMENT  
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

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Paula S. Beran (Va. Bar No. 34679)  
*Proposed Counsel to the Debtor*

## Schedule A



A.G. Reese & Associates, PC  
621 North 3rd Street  
PO Box 12172  
Richmond, VA 23241-0000

AARP Life Insurance  
PO Box 31092  
Tampa, FL 33631-3092

Capital Region Workforce  
Partnership  
1001 North Laburnum Avenue  
Suite B  
Richmond, VA 23223-0000

Verizon Wireless  
P.O. Box 17120  
Tucson, AZ 85732-7120

City of Richmond  
Economic Development Authority  
501 East Franklin Street  
Richmond, VA 23219-0000

City of Richmond  
Dept. of Public Utilities  
PO Box 26060  
Richmond, VA 23274-0001

Comcast  
676 Island Pond Rd  
Manchester NH 03109-4840

Virginia Department of Taxation  
P O Box 2156  
Richmond, VA 23218-2156

Corporation Service Company  
P.O. Box 2576  
Springfield, IL 62708-0000

Dominion Virginia Power  
PO Box 26666  
18th Floor  
Richmond, VA 23261-6666

Granite State Insurance  
c/o Eliades Law Firm  
14000 North Enon Church Road  
Chester, VA 23836-0000

Internal Revenue Service  
Centralized Insolvency Unit  
PO Box 7346  
Philadelphia, PA 19101-7346

U-Haul Storage  
2930 North Boulevard  
Richmond, VA 23230-0000

United States Department of Labor  
Wage & Hour Division  
2 Hopkins Plaza, Suite 701  
Baltimore, MD 21201-0000

IPFS Corporation  
P.O. Box 412086  
Kansas City, MO 64141-2086

James River A/C Co., Inc.  
c/o William Young, Esq.  
8041 Forest Hill Avenue  
Richmond, VA 23225-0000

James River Air Conditioning, Co.  
1905 Westmoreland Street  
Richmond, VA 23230-0000

Knight Capital Funding  
c/o Amanda Barton  
9 East Lockerman Street  
Dover, DE 19901-0000

Quill Corporation  
PO Box 37600  
Philadelphia, PA 19101-0600

Tyrus Bingham  
110 Epsilon Road  
Richmond, VA 23235-0000

ReavesColey, PLLC  
c/o Beth McMahon  
505 Independence Parkway  
Suite 103  
Richmond, VA 23230-0000

Star2Star Communications  
600 Tallevast Road, Suite 202  
Sarasota, FL 34243-0000

Trion Solutions, II, Inc.  
340 E. Big Beaver Road  
Suite 160  
Troy, MI 48083-0000