

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

PROOF OF CLAIM



In re:  
**TAYLOR, BEAN & WHITAKER MORTGAGE CORP.**

Case Number:  
**3:09-bk-07047-JAF**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name of Creditor and Address: the person or other entity to whom the debtor owes money or property  
If necessary, please cross out pre-printed address and write in change of address.

21836930021885  
SUCCESSFACTORS  
1500 FASHION ISLAND BLVD  
SUITE 300  
SAN MATEO, CA 94404

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

**THIS SPACE IS FOR COURT USE ONLY**

Creditor Telephone Number (650) 645-2000  Check box if address is where Notice is to be sent.

Name and address where payment should be sent (if different from above):

Check this box if you are the debtor or trustee in this case.

Check this box to indicate that this claim amends a previously filed claim.

CLAIM NUMBER (if known):  
**CLAIM FILED**  
JACKSONVILLE, FLORIDA

Filed on:

Payment Telephone Number (650) 645-2000

1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ 92,000.00

**MAR 08 2010**

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  
If all or part of your claim is entitled to priority, complete item 5.

CLERK, U. S. BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA

Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. BASIS FOR CLAIM:

(See instructions #2 and #3a on reverse side.)

3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:

3a. Debtor may have scheduled account as:

4. SECURED CLAIM (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information

Secured Claim Amount: \$ \_\_\_\_\_

**DO NOT** include the priority portion of your claim here.

Nature of property or right of setoff:

Unsecured Claim Amount: \$ \_\_\_\_\_

Describe:

Amount of arrearage and other charges as of time case filed included in secured claim,

Real Estate  Motor Vehicle  Other \_\_\_\_\_

Value of Property: \$ \_\_\_\_\_ Annual Interest Rate: \_\_\_\_\_ % if any: \$ \_\_\_\_\_ Basis for Perfection: \_\_\_\_\_

5. PRIORITY CLAIM

Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Unsecured Priority Claim Amount: \$ \_\_\_\_\_ Include **ONLY** the priority portion of your unsecured claim here.

You **MUST** specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries, or commissions (up to \$10,950\*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

- Up to \$2,425\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a) ( \_\_\_\_\_ ).

\* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. SUPPORTING DOCUMENTS: Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See definition of "redacted" on reverse side.) If the documents are not available, please explain.

DATE-STAMPED COPY To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

The original of this completed proof of claim form must be sent by mail, hand, courier or overnight delivery (facsimile, telecopy or other electronic means NOT accepted), so that it is actually received on or before 5:00 p.m. prevailing Eastern Time on June 15, 2010, the Bar Date (as defined in the Bar Date Notice).

**THIS SPACE FOR COURT USE ONLY**

By Regular Mail to:  
BMC Group, Inc.  
Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Processing  
PO Box 3020  
Chanhassen, MN 55317-3020

By Hand, Courier, Or Overnight Delivery to:  
BMC Group, Inc.  
Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Processing  
18750 Lake Drive East  
Chanhassen, MN 55317

T, B & W Mortgage Corp.



DATE

SIGNATURE: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Sagi Solomon, Assistant General Counsel

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.*

### ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

**Court, Name of Debtor, and Case Number:**

Use this proof of claim form only if you are asserting a claim against the Debtor, Taylor, Bean & Whitaker Mortgage Corp. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.

DEBTOR	CASE NO	PETITION DATE
Taylor, Bean & Whitaker Mortgage Corp.	3:09-bk-07047-JAF	8/24/2009

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount (in lawful US currency) owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete item 4. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**4. Secured Claim:**

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.)

State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Supporting Documents:**

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary if documentation is voluminous or an explanation if documentation is not available. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

**Date and Signature:**

The person filing this proof of claim must sign and date it. FRBP 9011. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

**Date-Stamped Copy:**

**Return claim form and attachments. If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.**

**Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true.**

Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."

### DEFINITIONS

**DEBTOR**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**CREDITOR**

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

**CLAIM**

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**PROOF OF CLAIM**

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page

**SECURED CLAIM Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors.

The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**UNSECURED NONPRIORITY CLAIM**

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

**UNSECURED PRIORITY CLAIM Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other

### INFORMATION

document showing that the lien has been filed or recorded.

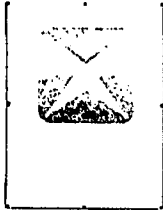
**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(c), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

**ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING [www.bmcgroup.com/tbw mortgage](http://www.bmcgroup.com/tbw mortgage)**



**SUBSCRIPTION AGREEMENT**

Sales Representative: Kevin Donovan  
Customer Name: Taylor, Bean & Whitaker Mortgage Corporation  
Address: 315 NE 14th Street

City/State/Country: Ocala, FL., USA  
Zip/Postal Code: 34470

Initial invoice amount under initial Schedule A: \$78,000

Initial subscription term: 3 years

**TERMS AND CONDITIONS.** Customer's purchase and use of the SuccessFactors products and services specified in each Schedule A mutually entered into hereunder are subject to all terms and conditions in this subscription agreement, including all schedules and attachments hereto (collectively, "Agreement"). This Agreement represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

**FEES.** The first year's subscription and implementation fees specified in each Schedule A hereunder will be invoiced upon execution of such Schedule A, and are due and payable upon receipt of such invoice. Subsequent years' fees under such Schedule A are due and payable annually in advance. Except as otherwise provided, all amounts are in U.S. dollars. all payments shall be made in U.S. dollars, all purchases hereunder are non-cancelable, and all fees are non-refundable.

IN WITNESS WHEREOF, the parties' duly authorized officers or representatives have executed this Agreement as of the Effective Date:

**CUSTOMER**  
Signature: [Signature]  
Name: STUART SCOTT  
Title: COO  
Date: 11/25/08

**SUCCESSFACTORS, INC.**  
Signature: [Signature]  
Name: PAUL HENDERSON  
Title: REVENUE CONTROLLER  
Date: NOV 25 2008

**NOTICE INFORMATION:**

To: \_\_\_\_\_  
Address: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

To: General Counsel  
Address: 1500 Fashion Island Blvd., Suite 300, San Mateo, CA 94404  
Fax: (650) 645-2377  
Phone: (650) 645-2000  
Email: [contracts@successfactors.com](mailto:contracts@successfactors.com)

**CUSTOMER BILLING INFORMATION:**

Contact/Title: Robb Young/Director of Purchasing  
Address: 315 NE 14<sup>th</sup> Street  
Fax:  
Phone: 352-351-1109  
Email: [ryoung@taylorbean.com](mailto:ryoung@taylorbean.com)

Schedule A - Pricing and Purchases

Unless this schedule and the subscription agreement are executed by each date, this pricing will expire on: 11/25/08

Performance & Talent Management Solutions	Year One Cost			Year Three Cost			Services			
	Users	Price Per User	Subscription Total	Users	Price Per User	Subscription Total	Users	Price Per User	Subscription Total	Services
SuccessPractices Core: Part Mgmt, Goal Mgmt, & Employee Profile	2,500	\$12.00	\$30,000	2,500	\$12.00	\$30,000	2,500	\$12.00	\$30,000	Included
SuccessPractices Performance Management Solution	0	\$0.00	\$0	0	\$0.00	\$0	0	\$0.00	\$0	Included
SuccessPractices Goal Management Solution	0	\$0.00	\$0	0	\$0.00	\$0	0	\$0.00	\$0	Included
SuccessPractices Compensation Management Solution	2,500	\$3.00	\$7,500	2,500	\$3.00	\$7,500	2,500	\$3.00	\$7,500	Included
SuccessPractices 360 Degree Review / Multi-Rater Rotation	2,500	N/C	N/C	2,500	N/C	N/C	2,500	N/C	N/C	N/C
SuccessPractices Talent Tracker	2,500	\$3.40	\$8,500	2,500	\$3.40	\$8,500	2,500	\$3.40	\$8,500	Included
SuccessPractices Employee Profile	0	\$0.00	\$0	0	\$0.00	\$0	0	\$0.00	\$0	Included
SuccessPractices Career & Development Planning Solution	0	\$0.00	\$0	0	\$0.00	\$0	0	\$0.00	\$0	Included
SuccessFactors Performance & Talent Management Platform										Included
Integrated Help										Included
Analytics & Reporting										Included
SuccessLink Universal Connectivity										Included
Additional Products and Services										Included
Standard Support Services		\$0	\$0		\$0	\$0		\$0	\$0	Included
Platinum Support Services		\$0	\$0		\$0	\$0		\$0	\$0	Included
Platinum Support Services + SuccessAdmin		\$0	\$0		\$0	\$0		\$0	\$0	Included
End User Training		\$0	\$0		\$0	\$0		\$0	\$0	Included
Success at Your Pace - Base Service Fee		\$0	\$0		\$0	\$0		\$0	\$0	Included
Customer Success Healthcheck		\$0	\$0		\$0	\$0		\$0	\$0	Included
SSO Implementation		\$0	\$0		\$0	\$0		\$0	\$0	Included
Additional SuccessFactors Language Packs (Describe)		\$0	\$0		\$0	\$0		\$0	\$0	Included
SuccessFactors Content Packs (Describe)		\$0	\$0		\$0	\$0		\$0	\$0	Included
Application Hosting and IT Services										Included
Secure Hosting Facilities										Included
Data Center Management										Included
Hardware Maintenance										Included
Software Infrastructure (Operating System, RDBMS, etc.)										Included
Application Management										Included
Partner Provided IT Solutions										Included
Longer Competency Library		\$0	\$0		\$0	\$0		\$0	\$0	Included
DBI Competency Library		\$0	\$0		\$0	\$0		\$0	\$0	Included
Additional Business Consulting Services										Included
Integration of Third Party Solutions with SuccessFactors										Included
Additional Incentives										Included
Net 45 Invoice										Included
Year 1: 17 for 12 Months										Included
Year 2: 17 for 12 Months										Included
Year 3: 17 for 12 Months										Included
Net (Year 1) Cost:		\$79,000			\$79,000			\$79,000		
Net (Year 2) Cost:		\$46,000			\$46,000			\$46,000		
Net (Year 3) Cost:		\$46,000			\$46,000			\$46,000		

Note: This Schedule A is subject to the terms and conditions of the Subscription Agreement between the parties.

Customer: Taylor, Ben and Whitaker

SuccessFactors ID: 84-338443

Name & Title: *Paul Henderson*  
PAUL HENDERSON  
REVENUE CONTROLLER

Date: 11/25/08

- Fill in the quote expiration date, the customer name, and the customer contact name and title before taking the next step.
- Rows 36 and 37 in the Year 1, Year 2, and Year 3 columns are editable. You can use these rows to describe any discounts that you are providing to the customer.
- Use the "Create Quote Document" button at the top of the page to create a separate Excel spreadsheet that can be sent directly to the customer or print this worksheet to PDF format.

## SCHEDULE B TERMS AND CONDITIONS

### 1. DEFINITIONS.

"Affiliate" means, with respect to a party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such party.

"Control" means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

"Customer Contact" means an internal Customer resource who is knowledgeable about Customer's use of the Hosted Service and authorized by Customer to communicate with SuccessFactors support.

"Customer Data" means all data stored by Customer in the Hosted Service.

"Documentation" means the online help documentation for the Hosted Service.

"Effective Date" means the date Customer executes this Agreement.

"Emergency Maintenance" means downtime of the Hosted Service outside of Scheduled Downtime hours due to the application of urgent patches or fixes, or other urgent maintenance, recommended by SuccessFactors' vendors to be applied as soon as possible.

"Hosted Service" means the hosted, on-demand, Web-based performance and talent management service offered by SuccessFactors, including updates thereto from time to time.

"Initial Access Date" means the date Customer is provisioned access to the Hosted Service.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Scheduled Downtime" means downtime of the Hosted Service during the hours of (i) midnight (Friday-Saturday) to 7:00 a.m. Saturday U.S. Eastern Time; or (ii) midnight (Saturday-Sunday) to 7:00 a.m. Sunday U.S. Eastern Time.

"System Availability" means the percentage of total time during which the Hosted Service is available to Customer, excluding Scheduled Downtime and Emergency Maintenance.

"Taxes" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

"Users" means Customer's and its Affiliates' employees, agents, contractors, consultants or other individuals who are authorized by Customer to use the Hosted Service and/or whose information is stored on the Hosted Service.

"Work Product" means all work product developed or created by SuccessFactors during the course of providing support, implementation, consulting, training or other professional services to Customer. Work Product does not include any Customer Data or Customer Confidential Information.

**2. PROVISION OF HOSTED SERVICE; CUSTOMER AFFILIATES.** SuccessFactors shall make the Hosted Service available to Customer and its Users in accordance with this Agreement and each applicable Schedule A mutually entered into from time to time hereunder. In addition, Customer Affiliates may, if they so desire, separately purchase User subscriptions under this Agreement for their own separate instances, subject to the terms of this Agreement as if such Affiliate is the "Customer" hereunder, by executing a separate Schedule A under this Agreement. Unless otherwise specified, purchases by Customer Affiliates are separate transactions, involving separate obligations, from those of Customer.

**3. USE OF HOSTED SERVICE.** Customer is responsible for all activities conducted under its User logins and for its Users' compliance with this Agreement. Customer shall use the Hosted Service solely for its internal business purposes, in compliance with applicable law, and shall not: (i) resell, sublicense, lease, time-share or otherwise make the Hosted Service available to any third party; (ii) send or store infringing or unlawful material; (iii) send or store Malicious Code; (iv) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Hosted

Service or the data contained therein; (v) modify, copy or create derivative works based on the Hosted Service; (vi) reverse engineer the Hosted Service; (vii) access the Hosted Service for the purpose of building a competitive product or service or copying its features or user interface; (viii) use the Hosted Service, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without SuccessFactors' prior written consent; or (ix) permit access to the Hosted Service by a direct competitor of SuccessFactors.

**4. OWNERSHIP; LICENSES.** As between the parties, SuccessFactors shall retain all ownership rights in the Hosted Service and the Work Product, and Customer shall retain all ownership rights in the Customer Data and Customer Confidential Information. Customer may export its Customer Data from the Hosted Service at any time during its subscription term. SuccessFactors hereby grants Customer a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable (only to a successor in interest by way of merger, reorganization or sale of all or substantially all assets or equity), sublicensable license to use, copy, modify or distribute the Work Product solely for its internal business purposes.

4.1 SuccessFactors shall have a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable (only to a successor in interest by way of merger, reorganization or sale of all or substantially all assets or equity), sublicensable license to use, copy, modify, or distribute, including by incorporating into the Hosted Service, any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Hosted Service.

**5. FEES; RENEWAL.** Except as otherwise provided, the fees stated in each Schedule A hereunder shall be effective during the subscription term specified in that Schedule A, including for purchases of additional Users. Following such subscription term, Customer may, if it chooses to continue service, execute a new Schedule A. SuccessFactors may modify its fees for any renewal term upon 30 days prior written notice; provided, that any increase in fees noticed during a renewal term shall not take effect until the beginning of the next renewal term. Fees for renewal terms will be invoiced annually in advance (which invoice shall serve as notice of such automatic renewal), approximately 60 days prior to the applicable anniversary date. Customer may choose to renew service at any time by executing a new Schedule A with SuccessFactors.

5.1 Except as otherwise provided, undisputed invoices are due within 30 days of receipt. Any payment not received from Customer by the due date (except for amounts then under reasonable and good faith dispute) may accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and may result in suspension of Customer's ability to access the Hosted Service until payment is made. Customer shall reimburse SuccessFactors for all reasonable, actual costs incurred by SuccessFactors in collection of delinquent amounts not subject to a reasonable and good faith dispute.

5.2 Unless otherwise provided, SuccessFactors' fees do not include any Taxes, and Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding Taxes based on SuccessFactors' net income or property.

5.3 Customer shall reimburse SuccessFactors for all reasonable, pre-approved and appropriately documented travel and related expenses incurred by SuccessFactors in performing implementation, support, training or other professional services for Customer.

5.4 Customer is responsible for monitoring its User count. If Customer's use of the Hosted Service is found to be greater than that contracted for, Customer will be invoiced for the additional Users for the period of use through the remainder of the then current subscription term.

6. **SUPPORT.** Second level standard support, as described in Schedule C, is included in the subscription fees for the Hosted Service. Customer is responsible for first level support of its Users, which at a minimum shall include telephone support during Customer's normal business hours. If Customer's first level support cannot resolve an issue, then a Customer Contact may contact SuccessFactors support for second level support.

7. **SERVICE LEVEL WARRANTY.** SuccessFactors warrants at least 99% System Availability over any calendar month. Should SuccessFactors fail to achieve 99% System Availability over a calendar month, Customer shall have the right to receive a credit equal to 2% of its subscription fees for the Hosted Service for that month, for each 1% (or portion thereof) by which SuccessFactors fails to achieve such level, up to 100% of the fees for such month. In addition, should SuccessFactors fail to achieve 99% System Availability in each of two consecutive calendar months, Customer shall have the right to terminate this Agreement for cause, in which case SuccessFactors will refund to Customer any prepaid fees for the remainder of its subscription term after the date of termination. Claims under this service level warranty must be made in good faith and by submitting a support case within 10 business days after the end of the relevant period.

8. **OTHER WARRANTIES.** Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; (ii) it has collected and shall maintain and handle all personal data in compliance with all applicable data privacy and protection laws; and (iii) it shall comply with all other applicable laws in its performance hereunder.

8.1 SuccessFactors represents and warrants that (i) it will provide the Hosted Service and the implementation services in a professional and workmanlike manner consistent with good industry standards and practices; (ii) the Hosted Service shall conform in all material respects to the Documentation; (iii) the functionality of the Hosted Service will not be materially decreased during a subscription term; (iv) the implementation services and Work Product will conform to the applicable statement of work; (v) the Hosted Service and Work Product will not contain or transmit to Customer any Malicious Code (except for possibly any Malicious Code originating from Users); (vi) it owns or otherwise has sufficient rights in the Hosted Service and Work Product to grant to Customer the rights granted herein; (vii) the Hosted Service and Work Product do not infringe any intellectual property rights of any third party; and (viii) except as required by applicable law, it will not disclose Customer Data to any third party for any purpose other than to provide the Hosted Service or implementation services to Customer, provided that SuccessFactors shall be responsible for the breach of this Agreement by any of SuccessFactors' subcontractors.

8.2 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. **CONFIDENTIALITY.** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in Schedule A's hereunder), the Customer Data, the Hosted Service, business and marketing plans, technology and technical

information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

9.1 Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent or as otherwise required by law. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

9.2 If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

9.3 If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of confidentiality protections hereunder, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.

9.4 Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request, return to the Disclosing Party or destroy (at the Disclosing Party's election) all materials containing such Confidential Information.

**10. INDEMNIFICATION BY SUCCESSFACTORS.** SuccessFactors shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that (i) the use of the Hosted Service as contemplated hereunder infringes the intellectual property rights of, or has otherwise harmed, such third party; or (ii) SuccessFactors' breach of its confidentiality obligations relating to Customer Data harmed such third party; provided, that Customer (a) promptly gives written notice of the Claim to SuccessFactors; (b) gives SuccessFactors sole control of the defense and settlement of the Claim (provided that SuccessFactors may not settle or defend any Claim unless it unconditionally releases Customer of all liability and makes no admission of liability on the part of Customer); and (c) provides to SuccessFactors, at SuccessFactors' cost, all reasonable assistance.

10.1 SuccessFactors may, at its sole option and expense: (i) procure for Customer the right to continue using the Hosted Service under the terms of this Agreement; (ii) replace or modify the Hosted Service to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate this Agreement and refund Customer all prepaid fees for the remainder of its subscription term after the date of termination. This section 10 represents Customer's sole and exclusive remedy for SuccessFactors' breach of its non-infringement warranty.

**11. INDEMNIFICATION BY CUSTOMER.** Customer shall defend, indemnify and hold SuccessFactors harmless against any loss, damage or costs (including reasonable attorneys' fees)

incurred in connection with Claims made or brought against SuccessFactors by a third party alleging that the Customer Data, or Customer's use of the Hosted Service in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, such third party; provided, that SuccessFactors (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases SuccessFactors of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

**12. LIMITATION OF LIABILITY. EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER OVER THE 15 MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY (OR OVER THE FIRST 15 MONTHS IF SUCH INCIDENT ARISES DURING THE FIRST 15 MONTHS).**

**12.1 IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**13. TERM AND TERMINATION.** This Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated. User subscriptions commence on the Initial Access Date and continue for the subscription term specified in the applicable Schedule A. User subscriptions shall renew for additional one year renewal terms if both parties execute a new Schedule A.

**13.1** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; (iii) if either party undergoes a change of control in favor of a direct competitor of the other party; or (iv) as otherwise provided herein. Upon any termination for cause by Customer, SuccessFactors shall refund Customer any prepaid fees for the remainder of its subscription term after the date of termination.

**13.2** Customer shall have the ability to export or retrieve its Customer Data from the Hosted Service at any time during its subscription term and within 45 days after the effective date of termination. After 45 days after termination, SuccessFactors has no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

#### **14. MISCELLANEOUS.**

**14.1** If Customer is a federal government entity, SuccessFactors provides the Hosted Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Hosted Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

**14.2** Either party may include the other's name in customer or vendor lists, provided that such name is displayed no more prominently than other names in such list. In addition, Customer agrees to serve as a reference upon reasonable request. Upon mutual agreement and reasonable notice, Customer may agree to host onsite reference visits, and collaborate on case studies and marketing collateral as Customer realizes a return on investment following successful deployment.

**14.3** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

**14.4** Notices shall be in writing (email permitted) and effective upon receipt.

**14.5** No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the amendment or waiver is to be asserted. To the extent of any conflict between this Schedule B and any other schedule or attachment, this Schedule B shall prevail unless expressly stated otherwise. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than a Schedule A, statement of work, or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void.

**14.6** No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

**14.7** Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks.

**14.8** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, (i) either party may assign this Agreement in its entirety (including all Schedule A's hereunder) to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party; and (ii) SuccessFactors may assign its rights and obligations relating to implementation of the Hosted Service to an Affiliate or partner. Any attempted assignment in breach of this section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.9** This Agreement shall be governed exclusively by the internal laws of the State of Delaware, without regard to its conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**14.10** This Agreement may be executed by facsimile and in counterparts.

## SCHEDULE C SUPPORT TERMS

### 1. CONTACTING SUPPORT

- 1.1 Customer may designate up to two primary Customer Contacts. Customer may also designate one backup Customer Contact for each primary Customer Contact. Customer shall provide SuccessFactors a list of its Customer Contacts as well as updates to that list as appropriate.
- 1.2 Customer Contacts can communicate with SuccessFactors support as follows:
- Phone: 800-846-6503 (U.S.) or 650-645-2078 (outside U.S.)  
 Customer Portal: [http://www.successfactors.com/support/sf-support\\_login.asp](http://www.successfactors.com/support/sf-support_login.asp)
- 1.3 Support is available 8:00 a.m. to 6:00 p.m. Customer's time zone, Monday through Friday, excluding SuccessFactors holidays.

### 2. RESPONSE LEVELS. SuccessFactors will respond to submitted cases as follows:

Priority	Definition	Response Level
P1	<b>Urgent:</b> The Hosted Service on the production system is not accessible or operational.	Initial response within 1 business hour of case being submitted. The designated Customer Contact will be updated twice daily during business days regarding progress. Actions to resolve will commence within 1 business hour.
P2	<b>Important:</b> (1) The Hosted Service on the production system is operational but experiencing a major functional loss that impedes transactions from being completed; or (2) the development/test system is not accessible or operational.	Initial response within 2 business hours of case being submitted. The designated Customer Contact will be updated daily during business days regarding progress. Actions to resolve will commence within 4 business hours.
P3	<b>Necessary:</b> (1) The Hosted Service on the production system is experiencing a functional loss that does not significantly impede transactions from being completed but that affects performance or user quality; or (2) the development/test system is experiencing a major functional loss that impedes transactions from being completed.	Initial response within 4 business hours of case being submitted. The designated Customer Contact will be updated weekly regarding progress. Actions to resolve will commence within 2 business days.
P4	<b>Minor:</b> (1) The Hosted Service has a cosmetic or other minor error that does not affect its performance or functionality; or (2) Customer questions regarding use of the Hosted Service.	Initial response within 1 business day of case being submitted. The designated Customer Contact will be updated upon request.
P5	<b>Enhancement Request:</b> Request for a new feature that does not currently exist in the Hosted Service.	Requests will be logged and evaluated in SuccessFactors' sole discretion for inclusion in a future release. The designated Customer Contact will be updated upon request.

### 3. CUSTOMER RESPONSIBILITIES.

- 3.1 Customer shall cooperate with SuccessFactors and provide relevant information to enable SuccessFactors to reproduce, troubleshoot and resolve the experienced error.
- 3.2 Customer shall designate at least one primary IT contact and one backup IT contact, who shall be the primary IT contacts for SuccessFactors and Customer Users with regard to Customer IT issues across all Customer sites. Customer IT issues include issues relating to Customer's hardware, software, desktop setup, network, ISP and all other technical issues for which Customer is responsible that may affect Customer's ability to access and use the Hosted Service.



1500 Fashion Island Blvd  
 Suite 300  
 San Mateo CA 94404  
 United States

Date 11/25/2008  
 Order # SO0013580  
 Terms Net 30  
 Subsidiary 01-SF US  
 PO #  
 Ship Via  
 Ship Date 11/25/2008  
 Tracking #  
 Project  
 Shipping Code (2)

**Bill To**  
 Robb Young  
 Taylor Bean & Whitaker Mortgage ...  
 315 NE 14th St  
 Ocala FL 34470  
 United States

**Ship To**  
 Taylor, Bean & Whitaker Mortgage ...  
 315 NE 14th St  
 Ocala FL 34470  
 United States

Item	Quantity	Description	Unit Price	Tax ...	Amount	Tax ...
SUB-SPrac-C ore	2500	Subscription renewal fee for 2500 users of SuccessPractices Core for 12 month coverage period from 05/08/10 - 05/07/11	12.00	AVA...	30,000.00	0.0%
SUB-SPrac-C omp	2500	Subscription renewal fee for 2500 users of SuccessPractices Compensation Module for 12 month coverage period from 05/08/10 - 05/07/11	3.00	AVA...	7,500.00	0.0%
SUB-SPrac-36 0	2500	Subscription renewal fee for 2500 users of SuccessPractices 360 Multi-Rater Module for 12 month coverage period from 05/08/10 - 05/07/11	0.00	AVA...	0.00	0.0%
SUB-SPrac-TT	2500	Subscription renewal fee for 2500 users of SuccessPractices Talent Tracker Module for 12 month coverage period from 05/08/10 - 05/07/11	3.40	AVA...	8,500.00	0.0%

**Total** \$46,000.00

**Sales Order**

1500 Fashion Island Blvd  
 Suite 300  
 San Mateo CA 94404  
 United States

Date 11/25/2008  
 Order # SO0013581  
 Terms Net 30  
 Subsidiary 01-SF US  
 PO #  
 Ship Via  
 Ship Date 11/25/2008  
 Tracking #  
 Project  
 Shipping Code (2)

**Bill To**  
 Robb Young  
 Taylor Bean & Whitaker Mortgage ...  
 315 NE 14th St  
 Ocala FL 34470  
 United States

**Ship To**  
 Taylor, Bean & Whitaker Mortgage ...  
 315 NE 14th St  
 Ocala FL 34470  
 United States

Item	Quantity	Description	Unit Price	Tax ...	Amount	Tax ...
SUB-SPrac-Core	2500	Subscription renewal fee for 2500 users of SuccessPractices Core for 12 month coverage period from 05/08/11 - 05/07/12	12.00	AVA...	30,000.00	0.0%
SUB-SPrac-Comp	2500	Subscription renewal fee for 2500 users of SuccessPractices Compensation Module for 12 month coverage period from 05/08/11 - 05/07/12	3.00	AVA...	7,500.00	0.0%
SUB-SPrac-360	2500	Subscription renewal fee for 2500 users of SuccessPractices 360 Multi-Rater Module for 12 month coverage period from 05/08/11 - 05/07/12	0.00	AVA...	0.00	0.0%
SUB-SPrac-TT	2500	Subscription renewal fee for 2500 users of SuccessPractices Talent Tracker Module for 12 month coverage period from 05/08/11 - 05/07/12	3.40	AVA...	8,500.00	0.0%

**Total** \$46,000.00