

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K/A  
(Amendment No. 1 to Form 10-K)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the Fiscal Year Ended December 31, 2003

Commission File Number: 000-28063

**DELTATHREE, INC.**

(Exact name of registrant as specified in charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**13-4006766**

(I.R.S. employer  
identification no.)

**75 Broad Street, 31st Floor**

**New York, New York 10004**

(Address of principal executive offices)

**10004**

(Zip code)

Registrant's telephone number, including area code: (212) 500-4850

**Securities registered pursuant to Section 12(b) of the Act:**

None.

**Securities registered pursuant to Section 12(g) of the Act:**

**Title of Each Class**

Class A Common Stock, par value \$0.001 per share

**Name of Each Exchange on Which the  
Securities are Registered**

Nasdaq SmallCap Market

Indicate by a check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of the Class A common stock held by non-affiliates of the Registrant based upon the closing price of the Class A common stock as reported by The Nasdaq Stock Market on June 30, 2003 was \$5,377,878. Solely for purposes of this calculation, shares beneficially owned by directors and officers of the Registrant and persons owning 5% or more of the Registrant's Class A common stock have been excluded, in that such persons may be deemed to be affiliates of the Registrant. Such exclusion should not be deemed a determination or admission by the Registrant that such individuals or entities are, in fact, affiliates of the Registrant.

The number of shares outstanding of the Registrant's capital stock as of April 28, 2004 is as follows:

**Title of Each Class**

Class A Common Stock, \$0.001 par value

**Number of Shares Outstanding  
at April 28, 2003**

29,576,157

## **EXPLANATORY NOTE**

deltathree, Inc. (the "Company") hereby amends the following items of its Annual Report on Form 10-K for the year ended December 31, 2003 (the "Original Filing") filed with the Securities and Exchange Commission on March 30, 2004. Each of the below referenced Items in Part III and IV are hereby amended by deleting the Items in their entirety and replacing them with the Items set forth herein. Any Item in the Original Filing not expressly changed hereby shall be as set forth in the Original Filing.

## PART III

### ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

#### The Board of Directors

Our Amended and Restated Certificate of Incorporation provides that a director shall hold office until the annual meeting for the year in which his or her term expires except in the case of elections to fill vacancies or newly created directorships. Each director is elected for a one-year term. Each of the nominees is now serving as director on our Board. Set forth below are the name, age and the positions and offices held by each of our directors, his principal occupation and business experience during at least the past five years and the names of other publicly-held companies of which he serves as a director.

**Noam Bardin**, 33 - Chairman of the Board. Mr. Bardin co-founded deltathree and served as Chief Executive Officer and President from July 2000 through June 2002. Mr. Bardin has served as Chairman of the Board since April 2002. Mr. Bardin served as Vice President of Technology and Chief Technology Officer of deltathree since June 1997 before being named President and Chief Executive Officer in April 2000. He served as Global Network Director from November 1996 to May 1997. Prior to founding deltathree, he served as Director of Operations at Ambient Corporation. Mr. Bardin graduated from the Hebrew University (Jerusalem) with a BA in Economics and an MPA from Harvard University Kennedy School in Public Administration.

**Ilan Biran**, 57 – Director. Mr. Biran has served as a director of deltathree since December 2003. Mr. Biran brings a wealth of business and management experience from the telecom and defense industries. Most recently, from 1999 to 2003, Mr. Biran served as the President and CEO of Bezeq Ltd. - the Israeli PTT, with annual sales of over \$2 billion and approximately 16,000 employees. Mr. Biran holds the rank of Major General (res.) in the Israeli Defense Force where, as Commander of the IDF's Central Command, he played an active role in reaching the peace agreements with Jordan and the Palestinian Authority. From 1996 to 1999, he served as the Director General of the Israeli Ministry of Defense, and prior to that command, he held a wide variety of senior-level positions in other Israeli units, since 1964. Mr. Biran holds a B.A. in Economics and Business Administration from Bar-Ilan University, and holds an Associate Diploma in Strategy and Political Economic Research from Georgetown University. He is also a graduate of the U.S. Marine Corps Command and Staff College. In addition, Mr. Biran's public activities include: serving as the Israeli Prime Minister's Special Coordinator for POWs and MIAs; is a member of the Board of Trustees of Haifa University; is a member of the Shevach-Mofet High School Executive Committee and; since 1996, has served as the Chairman of the Board of Directors of the Israeli Oil Refineries, Ltd.

**Ehud Erez**, 48 - Director. Mr. Erez has served as a director of deltathree since February 2002. Mr. Erez has served as the Chief Executive Officer of Atarey and President and Chief Financial Officer of El-Ad Group (Canada) since July 2001. Prior to July 2001, Mr. Erez was Auditor, Accountant and Partner of several accounting firms, including KPMG and Arthur Andersen. Prior to January 1985 Mr. Erez was a Revenue Inspector/Auditor for the Treasury Department in Jerusalem. Mr. Erez was an active member of the Auditing Standards Board of the Institute of Certified Public Accountants. He is a graduate of Hebrew University with a BA in Economics and Accounting and holds a CPA.

**Amir Gera**, 43 - Director. Mr. Gera has served as a director of deltathree since June 2001. Since January 2002, Mr. Gera has served as the Chief Executive Officer of Green Venture Capital Ltd., an investment holding company which engages primarily in acquiring holdings in venture capital funds, where he had previously served as the Assistant Director General since January 2001. In addition, Mr. Gera is also the Chief Executive Officer of Commutech Holding & Investments Ltd and has served in this capacity since March 2001. From 1993 through 2000, Mr. Gera was the Assistant Director General of Emet Neveh Savion Ltd., which owns and manages real estate assets.

**Joshua Maor**, 68 - Director. Mr. Maor has served as a director of deltathree since June 2001. Mr. Maor has served as the Chairman of Commutech Holding & Investments Ltd., an investment holding company which engages primarily in investments in high tech companies, since January 2002, and as the Chairman of the board of Mofet Venture Capital since 2001. Mr. Maor served as both the Chairman and Chief Executive Officer Green Venture Capital Ltd from 1997 to January 2002. From 1996 through 1997, Mr. Maor was the Chairman of I.B.M. Israel Ltd., which distributes and provides services for I.B.M. products, and I.B.M. Science and Technology Ltd., a research and development company. Mr. Maor served as a member of our Advisory Board from 1997 through 1998.

**Lior Samuelson**, 55 - Director. Mr. Samuelson has served as a director of deltathree since August 2001. Since August 1999, Mr. Samuelson has served as a Co-Founder and Principal of Mercator Capital. His experience includes advising clients in the Technology, Communications and Consumer sectors on mergers, acquisitions and private placements. From March 1997 to August 1999, Mr. Samuelson was the President and CEO of PricewaterhouseCoopers Securities. Prior to that, he was the President and CEO of The Barents Group, a merchant bank specializing in advising and investing in companies in emerging markets. Mr. Samuelson was also the Co-Chairman of Peloton Holdings, a Private Equity management company. Before that, he was a managing partner with KPMG and a senior consultant at Booz, Allen & Hamilton. Mr. Samuelson earned B.S. and M.S. degrees in Economics from Virginia Polytechnic University.

**Shimmy Zimels**, 38 - President and Chief Executive Officer and Director. Mr. Zimels has served as Chief Executive Office and President since June 2002, and served as Vice President of Operations and Chief Operating Officer of deltathree since June 1997, before being named President and Chief Executive Officer in June 2002. Prior to joining deltathree, Mr. Zimels was the Controller and Vice President of Finance at Net Media Ltd., a leading Israel-based Internet Service Provider, from June 1995 to June 1997. From April 1991 to May 1995, Mr. Zimels was a senior tax auditor for the Income Tax Bureau of the State of Israel. Mr. Zimels graduated with distinction from Hebrew University with a degree in Economics and Accounting and holds a Masters in Economics from Hebrew University.

Our Board has determined that the following members of the Board qualify as independent under the definition promulgated by the Nasdaq Stock Market: Ilan Biran, Ehud Erez, Amir Gera, Joshua Maor and Lior Samuelson.

### **Executive Officers**

Set forth below is a brief description of the present and past business experience of each of the persons who serve as our executive officers or key employees who are not also serving as directors.

**Paul C. White**, 41 - Chief Financial Officer and Secretary. Mr. White has served as our Chief Financial Officer since September 2000 and is responsible for corporate finance and all financial aspects of our operations, including accounting, tax, treasury, financial analysis, billing, internal audit, investor relations, real estate and procurement functions. Mr. White brings a vast array of experience in both the telecommunications and Internet industries having served as President and Chief Executive Officer of TelecomRFQ, Inc., a business-to-business start-up designed to facilitate telecommunications procurement between business buyers and major suppliers. Mr. White cultivated his expertise in both telecommunications and the Internet with senior level positions at Buyersedge.com, where he served as Vice President of Operations & Finance, and at Southern New England Telecommunications (SNET), the SBC Communications, Inc. subsidiary, where he served as Director of IT Strategy & Finance, Director of Corporate Development and Director of Finance & Business Development between 1995 and 1999. Mr. White has also worked in senior level positions at Ernst & Young, LLP and Arthur Andersen, LLP. Mr. White has a BBA and an MBA from Hofstra University, as well as a CPA.

### **Board of Directors and Committees of the Board**

Our Amended and Restated Certificate of Incorporation provides that the number of members of our Board shall be not less than three and not more than thirteen. There are currently seven directors on the Board. At each annual meeting of stockholders, directors will be elected to hold office for a term of one year and until their respective successors are elected and qualified. All of the officers identified above under "Executive Officers" serve at the discretion of our Board.

The Board had seven regular and no special meetings during the fiscal year ended December 31, 2003. During the fiscal year ended December 31, 2003, each member of the Board participated in at least 75% of all Board and applicable committee meetings held during the period for which he was a director. One of our directors attended our annual meeting of stockholders held in 2003. The Board has established an executive committee, a compensation committee and an audit committee to devote attention to specific subjects and to assist the Board in the discharge of its responsibilities. The functions of these committees and their current members are set forth below.

The Executive Committee is empowered to act on any matter except those matters specifically reserved to the full Board by applicable law. The Executive Committee had no meetings during 2003. Amir Gera and Joshua Maor are the current members of the Executive Committee.

The Compensation Committee is responsible for evaluating our compensation policies, determining our executive compensation policies and guidelines and administering our stock option and compensation plans. The Compensation Committee is responsible for the determination of the compensation of our Chief Executive Officer, and shall conduct its decision making process with respect to that issue without the Chief Executive Officer present. All members of the Compensation Committee qualify as

independent under the definition promulgated by the Nasdaq Stock Market. The Compensation Committee had one meeting during 2003. Amir Gera and Joshua Maor are the current members of the Compensation Committee. Please see also the report of the Compensation Committee set forth elsewhere in this report.

The Nominating and Governance Committee is responsible for assisting identifying and recommending qualified candidates for director nominees to the Board, and leading the Board in its annual review of the Board's performance. All members of the Nominating Committee qualify as independent under the definition promulgated by the Nasdaq Stock Market. There was no standing Nominating and Governance Committee during 2003. On March 16, 2004 Amir Gera and Joshua Maor were named as members of the Nominating and Governance Committee.

The Audit Committee recommends to the Board the appointment of the firm selected to serve as our independent auditors and our subsidiaries and monitors the performance of such firm; reviews and approves the scope of the annual audit and evaluates with the independent auditors our annual audit and annual financial statements; reviews with management the status of internal accounting controls; evaluates issues having a potential financial impact on us which may be brought to the Audit Committee's attention by management, the independent auditors or the Board; evaluates our public financial reporting documents; reviews the non-audit services to be performed by the independent auditors, if any; and considers the effect of such performance on the auditor's independence. Ilan Biran, Ehud Erez and Lior Samuelson are the current members of the Audit Committee. During the year ended December 31, 2003, the Board examined the composition of the Audit Committee in light of the adoption of new rules by the Nasdaq Stock Market and Securities and Exchange Commission in connection with the Sarbanes-Oxley Act of 2002. Under these rules, while Messrs. Biran and Samuelson meet the required criteria for audit committee member independence, Mr. Erez does not meet the required criteria due to his position with Atarey, an affiliate of the Company. The SEC has stated that listed issuers will be required to comply with the new listing rules by the earlier of the date of their first annual meeting of shareholders after January 15, 2004 or October 31, 2004, and the Company intends to replace Mr. Erez on the Audit Committee with a new member who meets the criteria for audit committee independence prior to such date. The Board has determined that each of Mr. Biran, Mr. Erez and Mr. Samuelson are "audit committee financial experts," as the Securities and Exchange Commission has defined that term in Item 401 of Regulation S-K. The Audit Committee had five meetings during 2003.

#### **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Securities Exchange Act of 1934 requires our directors and executive officers and persons who own more than 10% of a registered class of our equity securities, to file with the Securities and Exchange Commission initial reports of ownership and reports of changes in beneficial ownership of Common Stock and other equity securities of us. Directors, officers and greater than 10% stockholders are required by SEC regulations to furnish us with all Section 16(a) forms they file.

To our knowledge, based solely upon our review of the copies of such reports furnished to us, we believe that all of our directors, officers and greater than 10% stockholders have complied with the applicable Section 16(a) reporting requirements except that: an initial report of ownership was filed late by Ilan Biran; three reports of change in beneficial ownership, covering an aggregate of sixteen transactions, were filed late by Noam Bardin; two reports of change in beneficial ownership, covering an aggregate of two transactions, were filed late by Shimmy Zimels; two reports of change in beneficial ownership, covering an aggregate of two transactions, were filed late by Paul White; and one report of change in beneficial ownership, covering one transaction, was filed late by Lior Samuelson.

#### **Code of Conduct and Ethics**

On March 25, 2004, we adopted a Corporate Code of Conduct and Ethics applicable to all employees and directors of deltathree, including our principal executive officer, principal financial and accounting officer and controller. A copy of the Code of Conduct and Ethics is attached as an exhibit to this Annual Report. We intend to post on our website any amendments to, or waivers from, our Code of Conduct and Ethics that apply to our principal executive officer, principal financial and accounting officer and controller.

## ITEM 11. EXECUTIVE COMPENSATION

### Summary Compensation Table

The following table sets forth certain summary information concerning the compensation paid or awarded for services rendered during each of our last three fiscal years to our chief executive officer and each of our other most highly compensated executive officers in 2001, 2002 and 2003 whose total salary and bonus exceeded \$100,000. These two executive officers are referred to in this report as “named executive officers”.

<b>Name and Principal Position</b>	<b>Year</b>	<b>Annual Compensation</b>		<b>Long-Term Compensation</b>	
		<b>Salary (\$)</b>	<b>Bonus (\$)</b>	<b>Securities Underlying Options (#)</b>	<b>All Other Compensation</b>
Shimmy Zimels (1)					
President and Chief Executive Officer and former Chief Operating Officer .....	2003	180,000	—	85,000	—
	2002	182,335	—	100,000	—
	2001	214,395	—	80,000	—
	2003	180,000	—	65,000	—
Paul C. White					
Chief Financial Officer .....	2002	182,335	—	100,000	—
	2001	201,391	—	—	—

### Option Grants During 2003

The following table sets forth information regarding each stock option granted during fiscal year 2003 to each of the named executive officers.

<b>Name</b>	<b>Individual Grants</b>					
	<b>Shares of Common Stock Underlying Options Granted (#)(1)</b>	<b>% of Total Options Granted to Employees in Fiscal Year</b>	<b>Exercise Price Per Share (\$/Sh)</b>	<b>Expiration Date</b>	<b>Potential Realizable Value at Assumed Rates of Stock Price Appreciation for Option Term (2)</b>	
					<b>5%</b>	<b>10%</b>
Shimmy Zimels .....	85,000	24.7%	1.75	11/04/10	\$60,556	\$141,122
Paul C. White.....	65,000	18.9%	1.75	11/04/10	\$46,308	\$107,917

(1) The options were granted pursuant to the Company’s 1999 Stock Incentive Plan (the “Plan”). The options granted to the named executive officers are non-qualified stock options and vest annually in three equal installments commencing one year from the date of grant.

(2) The amounts shown in this table represent hypothetical gains that could be achieved for the respective options if exercised at the end of the option term. These gains are based on assumed rates of stock appreciation of 5% and 10% compounded annually from the date the respective options were granted to their expiration date. The gains shown are net of the option exercise price, but do not include deductions for taxes or other expenses associated with the exercise. Actual gains, if any, on stock option exercises will depend on the future performance of the Common Stock, the optionee’s continued employment through the option period and the date on which the options are exercised.

## Option Exercises in Fiscal 2003 and Year-End Option Values

The following table sets forth information for the named executive officers with respect to option exercises during 2003 and the value as of December 31, 2003 of unexercised in-the-money options held by each of the named executive officers.

Name	Shares Acquired On Exercise (#)	Value Realized (\$)	Number of Securities underlying Unexercised Options at Year End (#) Exercisable /Unexercisable	Value of Unexercised In-The-Money Options at Year-End (\$) Exercisable /Unexercisable
Shimmy Zimels.....	—	—	417,271/151,667	407,783/226,117
Paul C. White.....	—	—	193,333/131,667	310,553/202,717

## Compensation Committee Interlocks and Insider Participation

Executive compensation decisions in 2003 were made by the Compensation Committee. During 2003, no interlocking relationship existed between our Board and the board of directors or compensation committee of any other company.

## Director Compensation

At our Annual Meeting on December 8, 2003, each of our outside directors (Noam Bardin, Ilan Biran, and Lior Samuelson) became eligible to receive \$10,000 for their services as directors, through the next Annual meeting date. We anticipate paying \$10,000 to each outside director in 2004.

Directors are reimbursed for the expenses they incur in attending meetings of the Board and Board committees. Under our 1999 Directors' Plan, each "new" director (i.e., a director that was not on the board in the previous year) who is not our employee receives options to purchase 24,848 shares of Common Stock on the date such director is initially elected to the Board. In addition, under our 1999 Directors' Plan, each "existing" non-employee director (i.e., a director that was on the board in the previous year) will be eligible to receive on an annual basis options to purchase 10,000 shares of Common Stock on the date such director is re-elected to the Board. In all cases, the exercise price is equal to the fair market value on the date of grant at the time of our Annual Meeting.

## 1999 Directors' Plan

The purposes of the 1999 Directors' Plan are to enable us to attract, maintain and motivate qualified directors and to enhance a long-term mutuality of interest between our directors and stockholders of our Common Stock by granting our directors options to purchase our shares.

Under the Directors' Plan, on the first business day following each annual meeting of our stockholders during the term of the Directors' Plan, each existing director who is not our employee will be granted options to acquire 10,000 shares of our Common Stock with an exercise price per share equal to the fair market value of a share of our Common Stock on the date of grant. These options will have a seven-year term and will become exercisable on the first anniversary of the date of grant. In addition, each director who was not our employee on the date of the completion of our initial public offering was granted options to acquire 24,848 shares of our Common Stock with an exercise price per share equal to the initial public offering price. Each individual who becomes a new director will be granted options to acquire 24,848 shares of our Common Stock with an exercise price per share equal to the fair market value on the date of grant. These options will have a seven-year term and will be immediately exercisable. The maximum number of shares that may be issued under the Directors' Plan is 600,000 shares of Common Stock. The plan will terminate December 31, 2009, unless sooner terminated by our stockholders.

## Employment Agreements, Termination of Employment and Change-in-Control Arrangements

We currently have employment agreements in place with Messrs. Zimels and White, each with the following principal terms:

- The agreements, dated as of April 26, 2004, and are effective until August 31, 2006, and March 31, 2007, for Messrs. Zimels and White, respectively, and shall thereafter be automatically extended for the same duration on the expiration

date and on each expiration date thereafter unless either party provides the other party with written notice of non-renewal at least 90 days prior to expiration of a term, provided that the executive provides notice of renewal to the Compensation Committee six (6) months prior to expiration of the term.

- Pursuant to the agreements, Mr. Zimels and Mr. White are entitled to receive a base salary of \$239,000 and \$226,000, respectively. Such base salary shall be increased on each January 1, commencing January 1, 2005, by an amount equal to his base salary then in effect, multiplied by the applicable cost of living index during the prior year. The employee's base salary, as adjusted for cost of living increases, may be further increased at the option and in the discretion of the Board.
- The employee's options are immediately exercisable in full upon a change of control. The employee's options, following any termination of the employee's employment, other than for cause, remain exercisable for the lesser of two years and the remaining term of his options.
- If employee's employment is terminated by us without cause or by the employee for good reason (which includes, without limitation, a reduction in salary and/or bonus opportunity, a change of control and a material reduction in duties and responsibilities), the employee is entitled to receive previously earned, but unpaid salary, vested benefits and a payment equal to his base salary as in effect immediately prior to the termination date.
- If employee dies or is unable to perform his duties, he or his representative, estate or beneficiary will be paid, in addition to any previously earned but unpaid salary and vested benefits, 12 months' total base salary reduced, in the case of disability, by any disability benefits he receives.

On March 31, 2002, Messrs. White and Zimels each took a voluntary pay reduction for an unspecified time, from their then current salaries of \$213,210, and \$213,210, respectively, to \$180,000 each. Messrs. Zimels' and White's have kept their voluntary pay reduction in effect at \$180,000 each, whereas their current contractual salaries had increased to \$232,650 and \$220,242, respectively, for 2003, due to a cost-of-living increase clause included in their respective contracts.

### **Compensation Committee Report on Executive Compensation**

The Compensation Committee is responsible for recommending to the Board of Directors the overall executive compensation strategy of the Company and for the ongoing monitoring of the compensation strategy's implementation. In addition to recommending and reviewing the compensation of the executive officers, it is the responsibility of the Compensation Committee to recommend new incentive compensation plans and to implement changes and improvements to existing compensation plans, including the 1999 Stock Incentive Plan, the 1999 Performance Incentive Plan, the 1999 Employee Stock Purchase Plan and the 1999 Directors' Plan. The Compensation Committee makes its compensation determinations based upon its own analysis of information it compiles and the business experience of its members.

#### *Overall Policy*

The Compensation Committee believes that the stability of the Company's management team, as well as the Company's ability to continue to incentivize management and to attract and retain highly qualified executives for its expanding operations, will be a contributing factor to the Company's continued growth and success. In order to promote stability, growth and performance, and to attract new executives, the Company's strategy is to compensate its executives with an overall package that the Company believes is competitive with those offered by similarly situated companies and which consists of (i) a stable base salary set at a sufficiently high level to retain and motivate these officers but generally targeted to be in the lower half of its peer group comparables, (ii) an annual bonus linked to the Company's overall performance each year and to the individual executive's performance each year and (iii) equity-related compensation which aligns the financial interests of the Company's executive officers with those of the Company's stockholders by promoting stock ownership and stock performance through the grant of stock options and stock appreciation rights, restricted stock and other equity and equity-based interests under the Company's various plans.

Executive officers are also entitled to customary benefits generally available to all employees of the Company, including group medical and life insurance. Base salary, bonuses and benefits are paid by the Company and its subsidiaries.

#### *Federal Income Tax Deductibility of Executive Compensation*

Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"), limits the amount of compensation a publicly held corporation may deduct as a business expense for Federal income tax purposes. The limit, which applies to a company's chief executive officer and the four other most highly compensated executive officers, is \$1 million (the "Deductibility

Limit”), subject to certain exceptions. The exceptions include the general exclusion of performance-based compensation from the calculation of an executive officer’s compensation for purposes of determining whether his or her compensation exceeds the Deductibility Limit. The Compensation Committee has determined that compensation payable to the executive officers should generally meet the conditions required for full deductibility under section 162(m) of the Code. While the Company does not expect to pay its executive officers compensation in excess of the Deductibility Limit, the Compensation Committee also recognizes that in certain instances it may be in the best interest of the Company to provide compensation that is not fully deductible.

#### *Base Salary*

The base salaries for the named executive officers are based upon employment agreements between the Company and such officers.

#### *Annual Incentive Bonuses*

The Board of Directors approved the 1999 Performance Incentive Plan established by RSL COM. The Company established the Performance Incentive Plan to enable the Company and its subsidiaries to attract, retain, motivate and reward the best qualified executive officers and key employees by providing them with the opportunity to earn competitive compensation directly linked to the Company’s performance. The Performance Incentive Plan is effective through and including the year 2005, unless extended or earlier terminated by the Board of Directors. As part of the Performance Incentive Plan, the Compensation Committee may determine that any bonus payable under the Performance Incentive Plan be paid in cash, in shares of Common Stock or in any combination thereof, provided that at least 50% of such bonus is required to be paid in cash. In addition, the Performance Incentive Plan permits a participant to elect to defer payment of his or her bonus on terms and conditions established by the Compensation Committee. No more than 400,000 shares of Common Stock may be issued under the Performance Incentive Plan.

Under the 1999 Performance Incentive Plan, bonuses may be payable if the Company meets any one or more of the following performance criteria, which are set annually by the Compensation Committee: (i) revenues; (ii) operating income; (iii) gross profit margin; (iv) net income; (v) earnings per share; (vi) maximum capital or marketing expenditures; or (vii) targeted levels of customers.

Under the 1999 Performance Incentive Plan, bonus amounts are determined as follows: if 100% of such targets are achieved, the bonus potentially payable to participants will generally equal 35% of their base salary for such year, if 80% of such targets are achieved, the bonus potentially payable to participants will generally equal 25% of their base salary for such year, and if less than 80% of such targets are achieved, the participants will generally not be entitled to receive any bonus for such year. To the extent the Company’s results exceed 80% of the targets but is less than 100% of the targets, the amount of the bonus payable to participants will be adjusted proportionately based on where such results fall within the ranges set forth above. Any such bonus will consist of two components. Fifty percent of the amount determined pursuant to the formula described above will be payable if the targets are achieved. Up to an additional 50% of such amount will be payable in the discretion of the Compensation Committee. In addition, the 1999 Performance Incentive Plan permits the Compensation Committee to grant discretionary bonuses to participants, notwithstanding that a bonus would not otherwise be payable under the 1999 Performance Incentive Plan, to recognize extraordinary individual performance.

With respect to 2003, there were no bonuses awarded to any executive officer, under the 1999 Performance Incentive Plan. Pursuant to the terms of the 1999 Performance Incentive Plan, any awards would have been paid in the current year, promptly following the completion of the audit of the Company’s 2003 financial statements.

#### *Long-Term Incentive Compensation*

The Company reinforces the importance of producing satisfactory returns to stockholders over the long term through the operation of the 1999 Stock Incentive Plan and the 1999 Directors’ Plan. For a discussion relating to the 1999 Directors’ Plan, refer to the section entitled “1999 Directors’ Plan” in this annual report. Grants of stock, stock options, stock unit awards and stock appreciation rights under such plans provide executives with the opportunity to acquire an equity interest in the Company and align the executive’s interest with that of the stockholders to create stockholder value as reflected in growth in the market price of the Common Stock.

#### *1999 Stock Incentive Plan*

The Board of Directors adopted the 1999 Stock Incentive Plan in conjunction with the Company’s initial public offering. The purposes of the 1999 Stock Incentive Plan are to foster and promote the long-term financial success of the Company and materially increase stockholder value by (i) motivating superior performance by means of performance-related incentives, (ii) encouraging and providing for the acquisition of an ownership interest in the Company by executive officers and other key

employees and (iii) enabling the Company to attract and retain the services of an outstanding management team upon whose judgment, interest and special effort the successful conduct of its operations is largely dependent.

Under the 1999 Stock Incentive Plan, the Compensation Committee is authorized to grant options for up to 4,000,000 shares of Common Stock. This represented, upon completion of the initial public offering, approximately 15% of the outstanding shares of the Company, on a fully diluted basis. Options granted under the 1999 Stock Incentive Plan are to be granted to certain officers of the Company and to other employees and consultants of the Company. Directors who are non-employees of the Company are prohibited from participating in the 1999 Stock Incentive Plan.

The 1999 Stock Incentive Plan is administered by the Compensation Committee and provides for the grant of (i) incentive and non-incentive stock options to purchase Common Stock; (ii) stock appreciation rights, which may be granted in tandem with or independently of stock options; (iii) restricted stock and restricted units; (iv) incentive stock and incentive units; (v) deferred stock units; and (vi) stock in lieu of cash. The maximum number of shares for which options or stock appreciation rights may be granted to any one participant in a calendar year is 600,000. As of December 31, 2003, the Company has granted options to acquire an aggregate of 2,822,311 shares of Common Stock.

*Chief Executive Officer's Fiscal 2003 Compensation*

Mr. Shimmy Zimels was our chief executive officer for all of 2003. Under the terms of his employment agreement, Mr. Zimels was entitled to receive an aggregate annual base salary of \$232,650. However, during 2003, Mr. Zimels received an aggregate annual base salary of \$180,000, due to his voluntary pay reduction, and his participation in the 1999 Performance Incentive Plan resulted in no bonus compensation for 2003.

Submitted by:

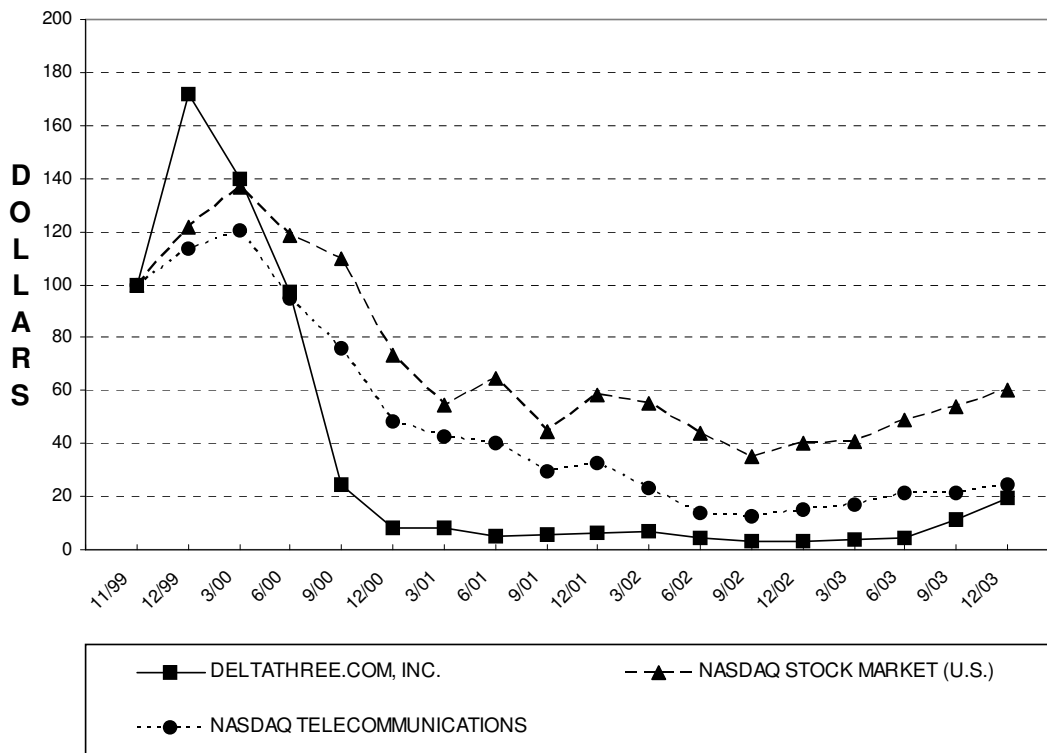
The Compensation Committee  
Amir Gera  
Joshua Maor

## STOCK PERFORMANCE CHART

The following chart compares the cumulative total stockholder return on our Common Stock from the date of our initial public offering (November 22, 1999) through December 31, 2003 with the cumulative total return on The Nasdaq Stock Market (U.S.) Index and the Nasdaq Telecommunications Index. For purposes of the chart, it is assumed that the value of the investment in our Common Stock and each index was \$100 on November 22, 1999. Shareholder returns over the indicated period should not be considered indicative of future shareholder returns.

### COMPARISON OF 50 MONTH CUMULATIVE TOTAL RETURN\*

AMONG DELTATHREE.COM, INC., THE NASDAQ STOCK MARKET (U.S.) INDEX  
AND THE NASDAQ TELECOMMUNICATIONS INDEX



\* \$100 invested on 11/23/99 in stock or index-  
including reinvestment of dividends.  
Fiscal year ending December 31.

	Cumulative Total Return								
	11/23/99	12/99	3/00	6/00	9/00	12/00	3/01	6/01	9/01
deltathree, Inc.	\$100.00	\$171.67	\$139.59	\$97.09	24.17	7.92	8.33	4.93	5.33
Nasdaq Stock Market (U.S.)	100.00	121.58	136.57	118.74	109.49	73.31	54.71	64.52	44.77
Nasdaq Telecommunications Market	100.00	113.28	120.35	94.98	75.76	48.24	42.51	40.28	29.34

	12/01	3/02	6/02	9/02	12/02	3/03	6/03	9/03	12/03
	deltathree, Inc.	6.00	7.13	4.14	3.20	3.17	3.67	4.33	11.00
Nasdaq Stock Market (U.S.)	58.19	55.14	43.95	35.26	40.23	40.47	48.80	53.73	60.15
Nasdaq Telecommunications Market	32.31	23.03	13.89	12.74	14.88	17.02	21.02	21.31	24.74

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The following table sets forth information with respect to the beneficial ownership of shares of our Common Stock as of April 28, 2004 by:

- each person who we know owns beneficially more than 5% of our Common Stock;
- each of our directors individually;
- each of our named executive officers individually; and
- all of our executive officers and directors as a group.

Unless otherwise indicated, to our knowledge, all persons listed below have sole voting and investment power with respect to their shares of Common Stock. Each person listed below disclaims beneficial ownership of their shares, except to the extent of their pecuniary interests therein. Shares of Common Stock that an individual or group has the right to acquire within 60 days of April 28, 2004 pursuant to the exercise of options are deemed to be outstanding for the purpose of computing the percentage ownership of such person or group, but are not deemed outstanding for the purpose of calculating the percentage owned by any other person listed.

	<u>Number</u>	<u>Percentage(1)</u>
	<u>Shares of deltathree Class A Common Stock Beneficially Owned</u>	
<b>Principal Stockholder:</b>		
Atarey Hasharon Chevra Lepituach Vehashkaot		
Benadlan (1991) Ltd. ....	14,783,752	50.0%
7 Giborey Israel St., P.O. Box 8468.		
South Netanya Industrial Zone 42504, Israel.		
<b>Executive Officers and Directors:</b>		
Noam Bardin(2)(3) .....	776,304	2.6%
Shimmy Zimels(2)(4) .....	633,407	2.1%
Paul C. White(2)(5).....	325,000	1.1%
Ilan Biran (2)(5) .....	24,848	*
Ehud Erez (2)(5)(6).....	10,000	*
Amir Gera (2)(5).....	24,848	*
Joshua Maor (2)(7).....	40,999	*
Lior Samuelson (2)(5).....	34,848	*
All Directors and Executive Officers as a group		
(8 persons)(8).....	1,870,254	6.3%

\* Less than 1%.

- (1) Percentage of beneficial ownership is based on 29,576,157 shares of Common Stock outstanding as of April 28, 2004.
- (2) The address for the director or executive officer listed is c/o the Company.
- (3) Includes (a) 187,366 shares of Common Stock and (b) options to purchase 588,938 shares of Common Stock.
- (4) Includes (a) 64,469 shares of Common Stock and (b) options to purchase 568,938 shares of Common Stock.
- (5) Represents options to purchase shares of Common Stock.
- (6) Excludes the 14,783,752 shares of Common Stock owned by Atarey. Mr. Erez is currently the Chief Executive Officer of Atarey.

- (7) Includes (a) 16,151 shares of Common Stock and (b) options to purchase 24,848 shares of Common Stock.  
(8) Includes (a) 267,986 shares of Common Stock and (b) options to purchase 1,602,116 shares of Common Stock.

### Equity Compensation Plan Information

The following table provides certain aggregate information with respect to all of our equity compensation plans in effect as of December 31, 2003:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in first column)
Equity Compensation Plans Approved by Security Holders (1)	2,753,130	\$2.55	1,515,846
Equity Compensation Plans not Approved by Security Holders	N/A	N/A	N/A
Total	2,753,130	\$2.55	1,515,846

(1) These plans consist of our 1999 Stock Incentive Plan, 1999 Directors' Plan, and 1999 Employee Stock Purchase Plan.

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

We are not, and have not been during the last two fiscal years, a party to any related-party agreements. All transactions between us and our officers, directors, principal stockholders and affiliates must be reviewed and approved in advance by the Audit Committee.

### ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The following table presents fees for professional audit services rendered by Brightman Almagor & Co. for the audit of the Company's annual financial statements for the years ended December 31, 2003, and December 31, 2002, and fees billed for other services rendered by Brightman Almagor & Co. during those periods.

	<b><u>2003</u></b>	<b><u>2002</u></b>
<b>Audit fees</b>	\$ 54,000	\$ 54,000
<b>Audit related fees</b>	4,000	4,000
<b>Tax fees</b>	-	-
<b>All Other Fees</b>	-	-
<b>Total</b>	<b>\$ 58,000</b>	<b>\$ 58,000</b>

In the above table, in accordance with the SEC's definitions and rules, "audit fees" are fees we paid Brightman Almagor & Co. for professional services for the audit of our annual financial statements and review of financial statements included in our quarterly reports filed with the SEC, as well as work generally only the independent auditor can reasonably be expected to provide, such as statutory audits and consultation regarding financial accounting and/or reporting standards; "audit-related fees" are fees billed by Brightman Almagor & Co. for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements, including due diligence related to a potential merger; "tax fees" are fees for tax compliance, tax advice and tax planning; and "all other fees" are fees billed by Brightman Almagor & Co. for any services not included in the first three categories.

### Policy on Audit Committee Pre-Approval of Audit and Permissible Non-audit Services of Independent Auditors

Consistent with SEC policies regarding auditor independence, the Audit Committee has responsibility for appointing, setting compensation and overseeing the work of the independent auditor. In recognition of this responsibility, the Audit Committee has established a policy to pre-approve all audit and permissible non-audit services provided by the independent auditor.

Prior to engagement of the independent auditor for the next year's audit, management will submit an aggregate of services expected to be rendered during that year for each of four categories of services to the Audit Committee for approval.

1. **Audit** services include audit work performed in the preparation of financial statements, as well as work that generally only the independent auditor can reasonably be expected to provide, including comfort letters, statutory audits, and attest services and consultation regarding financial accounting and/or reporting standards.

2. **Audit-Related** services are for assurance and related services that are traditionally performed by the independent auditor, including due diligence related to mergers and acquisitions, employee benefit plan audits, and special procedures required to meet certain regulatory requirements.

3. **Tax** services include all services performed by the independent auditor's tax personnel except those services specifically related to the audit of the financial statements, and includes fees in the areas of tax compliance, tax planning, and tax advice.

4. **Other Fees** are those associated with services not captured in the other categories. The Company generally does not request such services from the independent auditor.

Prior to engagement, the Audit Committee pre-approves these services by category of service. The fees are budgeted and the Audit Committee requires the independent auditor and management to report actual fees versus the budget periodically throughout the year by category of service. During the year, circumstances may arise when it may become necessary to engage the independent auditor for additional services not contemplated in the original pre-approval. In those instances, the Audit Committee requires specific pre-approval before engaging the independent auditor.

The Audit Committee may delegate pre-approval authority to one or more of its members. The member to whom such authority is delegated must report, for informational purposes only, any pre-approval decisions to the Audit Committee at its next scheduled meeting.

## PART IV

### ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a)(1) Financial Statements.

The Consolidated Financial Statements filed as part of this Annual Report on Form 10-K are identified in the Index to Consolidated Financial Statements on page F-1 hereto.

(a)(2) Financial Statement Schedules.

Financial Statement Schedules have been omitted because the information required to be set forth therein is not applicable or is shown on the financial statements or notes thereto.

(a)(3) Exhibits.

The following exhibits are filed herewith or are incorporated by reference to exhibits previously filed with the Securities and Exchange Commission.

<b>Exhibit Number</b>	<b>Description</b>
3.1.1*	Form of Restated Certificate of Incorporation of deltathree, Inc.
3.1.2***	Form of Amendment to Restated Certificate of Incorporation of deltathree, Inc.
3.2*	Form of Amended and Restated By-laws of deltathree, Inc.
4.1*	Specimen Certificate of Common Stock.
4.2*	Specimen Certificate of Class B Common Stock.
10.1*	Form of deltathree, Inc. 1999 Stock Incentive Plan.

- 10.2\* Form of deltathree, Inc. 1999 Employee Stock Purchase Plan.
- 10.3\* Form of deltathree, Inc. 1999 Performance Incentive Plan.
- 10.4\* Form of deltathree, Inc. 1999 Directors' Plan.
- 10.5\* Employment Agreement, effective as of April 1, 1999, between Noam Bardin and deltathree, Inc.
- 10.6\*\* Amendment No. 1 to Employment Agreement, effective as of June 1, 2000, between Noam Bardin and deltathree, Inc.
- 10.7 Employment Agreement, effective as of April 26, 2004, between Shimmy Zimels and deltathree, Inc.
- 10.8 Employment Agreement, effective as of April 26, 2004, between Paul White and deltathree, Inc.

- 14.1## deltathree, Inc. Corporate Code of Conduct and Ethics
- 23.1## Consent of Brightman Almagor & Co.
- 31.1 Certification of the Chief Executive Officer, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of the Chief Financial Officer, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32## Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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\* Incorporated by reference to the Company's registration statement on Form S-1 (Registration No. 333-86503).

\*\* Incorporated by reference to the Company's quarterly report on Form 10-Q filed on November 14, 2000.

\*\*\* Incorporated by reference to the Company's annual report on Form 10-K/A filed on April 30, 2001.

# Incorporated by reference to the Company's quarterly report on Form 10-Q filed on November 14, 2002.

## Incorporated by reference to the Company's annual report on Form 10-K filed on March 30, 2004.

(b) Reports on Form 8-K.

We furnished a report on Form 8-K dated November 6, 2003 reporting under Item 12 our press release regarding our earnings for the quarter ended September 30, 2003.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 to its Annual Report on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized, in New York, New York on April 28, 2004.

**DELTATHREE, INC.**

By: /s/ Paul C. White  
**Paul C. White, Chief Financial Officer**

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report has been signed by the following persons in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
* _____ Shimmy Zimels	Chief Executive Officer, President and Director (Principal Executive Officer)	March 26, 2004
<u>/s/ Paul C. White</u> Paul C. White	Chief Financial Officer (Principal Accounting and Financial Officer)	March <u>26</u> , 2004
<u>/s/ Noam Bardin</u> Noam Bardin	Chairman of the Board of Directors	March 26, 2004
* _____ Ilan Biran	Director	March 26, 2004
* _____ Ehud Erez	Director	March 26, 2004
* _____ Amir Gera	Director	March 26, 2004
* _____ Joshua Maor	Director	March 26, 2004
* _____ Lior Samuelson	Director	March 26, 2004

\* By: /s/ Paul C. White  
Paul C. White, Chief Financial Officer  
(Attorney-in-fact)

EXECUTIVE EMPLOYMENT AGREEMENT

**EXECUTIVE EMPLOYMENT AGREEMENT**, dated April 26, 2004, by and between deltathree, Inc., a Delaware corporation (the "Company"), and Shimmy Zimels ("Executive").

W I T N E S S E T H:

**WHEREAS**, the Company and Executive entered into an Executive Employment Agreement, dated April 1, 1999 (inclusive of the most recent extension dated September 1, 2002), and both parties wish to enter into a subsequent Executive Employment Agreement, effectively extending the executive's employment; and

**WHEREAS**, the Company desires to enter into an agreement, effective as of the date of this Agreement (the "Commencement Date") to set out the terms and conditions of Executive's employment by the Company from and after the Commencement Date; and

**WHEREAS**, the Executive desires to continue in the employment of the Company from and after the Commencement Date under those terms and conditions;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the Company and Executive hereby agree as follows:

**1. Employment.**

(a) Agreement to Employ. Upon the terms and subject to the conditions of this Agreement, the Company hereby employs Executive, and Executive hereby accepts continued employment by the Company.

(b) Term of Agreement. Unless earlier terminated pursuant to Section 5 hereof, the period of this Agreement and the Executive's continued employment hereunder (the "Agreement Term") shall commence as of the date hereof, (the "Effective Date"), and shall expire on August 31, 2006; provided, however, that the Agreement Term shall be automatically extended for the same duration on the expiration date and on each expiration date thereafter (each an "Extension Date"), unless written notice of non-extension is provided by either party to the other party at least three (3) months prior to such anniversary, provided that Executive provides notice of renewal six (6) months prior to the end of the Agreement Term to the Compensation Committee.

The period commencing on the Commencement Date and ending on the earlier of (i) the expiration of the Agreement, or (ii) the date of Executive's termination of employment pursuant to Section 5(a) shall be referred to as the "Employment Period".

**2. Position and Duties.**

(a) In general. Executive shall be employed as Chief Executive Officer and shall perform such duties and services, consistent with such position and their current duties and services for the Company, and as may be assigned to them from time to time by the Board of Directors. The duties of the Executive shall include serving as an officer or director or otherwise performing services for any "Affiliate" of the Company as requested by the Company. An "Affiliate" of the Company means any entity that controls, is controlled by or is under common control with the Company. Executive shall report to the Board of Directors.

(b) Full-time employment. During the Employment Period, Executive shall devote their full business time to the services required of them hereunder, except for time devoted to services required by them to be performed for any "Affiliate" of the Company, vacation time and reasonable periods of absence due to sickness, personal injury or other disability, and shall use their reasonable best efforts, judgment, skill and energy to perform such services in a manner consonant with the duties of their position and to improve and advance the business and interests of the Company. Executive shall not be engaged in any other business activity which, in the reasonable judgment of the Board of Directors, conflicts with the duties of the Executive under this Agreement. In such event, Executive shall receive five days' written notice to disengage from such business activity. Executive may serve on the Board of Directors or on advisory boards of other corporations which do not compete with the Company; provided, however, that, in such case, (i) Executive shall provide the Company with 5 days' written notice of any scheduled meeting of the Board of Directors of such company and (ii) Executive shall be charged with 1/2 vacation day for every four hours spent at such Board of Directors meeting during business hours. Executive shall travel to such location or locations as may be requested by the Company, or which Executive believes is necessary or advisable, in the performance by Executive of their duties hereunder or to the extent appropriate to improve and advance the interests of the Company and its Affiliates. There is no formal disciplinary procedure, but Executive is expected at all times to behave in a manner befitting their employment.

### 3. Compensation.

(a) **Base Salary.** During the Employment Period, the Company shall pay Executive a base salary at the annual rate of US\$239,000; provided that, Executive's annual base salary shall be increased as of January 1 of each year, by an amount equal to the base salary then in effect, multiplied by the percentage increase in the Cost of Living Index during the preceding year. The "Cost of Living Index" means the consumer price index for all urban consumers in the New York metropolitan area published by the Department of Labor, or if such index is no longer available, such other generally available index measuring changes in consumer purchasing power (in the New York metropolitan area or nationally) designated by the Board of Directors. Any delay in increase in Executive's annual base salary by reason of the unavailability of any such index at the time any such increase shall otherwise be due shall be made up by a lump sum payment promptly after the index becomes available. Executive's salary, as adjusted for any increase in the Cost of Living Index, may be further increased at the option and in the discretion of the Board of Directors (such salary, as the same may be increased from time to time, is referred to herein as the "Base Salary"). The Base Salary shall be payable in such installments (but not less frequent than monthly) as the salaries of other executives of the Company are paid.

(b) **Performance Incentive Plan.** During the Employment Period, Executive shall be eligible to participate in the Company's 1999 Performance Incentive Plan. The discretionary portion of the bonus shall be determined by the Compensation Committee. If the Company shall amend or terminate the 1999 Performance Incentive Plan in a manner that would reduce the opportunity of Executive to earn an incentive bonus as provided in the 1999 Performance Incentive Plan, the Company shall provide a substitute arrangement so that Executive's total bonus opportunity will not be materially reduced.

(c) **Stock Incentive Plan.** To the extent approved by the Compensation Committee and the Board (including, the number of options awarded and other specific terms of the award), Executive shall be granted stock option grants. Such grants will be commensurate with Executive's position with the Company and with stock options awarded to other senior executives of the Company (other than grants made to other executives in connection with their initial employment with the Company).

All Options shall become immediately exercisable in full in the event that Executive's employment with the Company is terminated: (i) by the Company other than for Cause, (ii) by Executive for Good Reason or (iii) by reason of the death or Disability of the Executive; **provided, however,** that if Executive's employment is terminated for any reason prior to the 18 month anniversary of the Commencement Date, only the exercisable portion of the Option, if any, shall remain exercisable and any unvested portion of the Option shall not be exercisable. The Option shall expire on the seven-year anniversary of the Commencement Date.

Additionally, all Options shall become immediately exercisable in full upon a Change in Control. The exercisable portion of the Option shall, following any termination of Executive's employment (other than for Cause), remain exercisable for the lesser of two years and the remaining term of the Option.

### 4. Benefits, Perquisites and Expenses.

(a) **Benefits.** During the Employment Period, Executive shall be eligible to participate in (i) each welfare benefit plan sponsored or maintained by the Company, including, without limitation, each group life, hospitalization, medical, dental, health, accident or disability insurance or similar plan or program of the Company, (ii) each pension, profit sharing, retirement, deferred compensation or savings plan sponsored or maintained by the Company, in each case, whether now existing or established hereafter, on the same basis as generally made available to other senior officers of the Company, (iii) all other benefits sponsored or maintained by the Company, in each case, whether now existing or established hereafter, on the same basis as generally made available to other management level employees of the Company.

(b) **Perquisites.** During the Employment Period, Executive shall be entitled to five weeks' paid vacation annually and shall also be entitled to receive such perquisites as are generally provided to other senior officers of the Company in accordance with the then current policies and practices of the Company. Executive shall not be entitled to receive remuneration for unused vacation and shall not be permitted to carry-over unused vacation to the following year, unless Executive receives the written consent from the CFO prior to September 30<sup>th</sup> of such year.

(c) **Business Expenses.** During the Employment Period, the Company shall pay or reimburse Executive for all reasonable expenses incurred or paid by Executive in the performance of Executive's duties hereunder, upon presentation of expense statements or vouchers and such other information as the Company may require and in accordance with the generally applicable policies and procedures of the Company.

(d) **Indemnification.** The Company shall indemnify Executive and hold Executive harmless from and against any claim, loss or cause of action arising from or out of Executive's performance as an officer, director or employee of the Company or any of its subsidiaries or affiliates or in any other capacity, including any fiduciary capacity, in which Executive serves at the request of the Company to the maximum extent permitted by applicable law and the Company's Certificate of Incorporation and Bylaws in effect on the date hereof. If any claim is asserted against Executive with respect to which Executive reasonably believes in good faith he is entitled to indemnification, the Company shall either defend Executive or, at its option, pay Executive's legal expenses (or cause such expenses to be paid) on a quarterly basis, provided that Executive shall reimburse the Company for such amounts, plus simple interest thereon at the 90-day United States Treasury Bill rate as in effect from time to time, compounded annually, if Executive shall be found by a court of competent jurisdiction not to have been entitled to indemnification.

## 5. Termination of Employment.

(a) Termination of the Employment Period. The Employment Period shall end upon the earliest to occur of (i) a termination of Executive's employment on account of Executive's death, (ii) a Termination due to Disability or Retirement, (iii) a Termination for Cause, (iv) a Termination Without Cause, (v) a Termination by Executive for Good Reason, (vi) a Termination by Executive other than for Good Reason, or (vii) the expiration of the Term. The Company or the Executive may initiate a termination in any manner permitted hereunder by giving the other party written notice thereof (the "Termination Notice"). The effective date (the "Termination Date") of any termination shall be deemed to be the later of (i) in the case of a Termination Notice from Executive, 45 days after the receipt by the Company of the Termination Notice, (ii) the date on which the Termination Notice is given, or (iii) the date specified in the Termination Notice; *provided, however*, that in the case of the Executive's death, the Termination Date shall be the date of death. Upon termination of their employment for any reason, Executive will immediately resign from all positions that he holds with the Company and its Affiliates.

(b) Payments Upon Certain Terminations.

(i) Termination Without Cause or Termination by Executive for Good Reason. In the event that Executive's employment is terminated by the Company Without Cause or by Executive for Good Reason, the Company shall pay Executive their Earned Salary, Vested Benefits and a Severance Benefit (as such terms are hereinafter defined). In addition, if Executive's employment terminates pursuant to this subsection (i), the Company shall continue to provide to Executive the welfare benefits (other than disability insurance) referred to in Section 4, or substantially comparable benefits, until the earlier of (x) the date on which Executive is eligible to obtain comparable benefits from other employment, (y) the expiration of the Term or (z) one year.

(ii) Termination due to Death. In the event of the termination of Executive's employment due to Executive's death, the Company shall pay Executive's estate Executive's Earned Salary, Vested Benefits and a lump sum payment equal to 12 months of Executive's Base Salary (at the rate in effect on the date of their death).

(iii) Termination due to Disability or Retirement. In the event of termination of Executive's employment by the Company due to Disability or a Termination due to Retirement, the Company shall pay Executive their Earned Salary and Vested Benefits, plus, in the event of termination due to Disability, to the Executive or their estate their Base Salary at the Termination Date on a monthly basis for 12 months following the month in which Executive's employment is terminated. In the event that Executive's employment with the Company is terminated due to Disability, Executive's benefits under this subsection (iii) shall be reduced by the amount of any Company sponsored (and paid for) disability benefits paid to Executive.

(iv) Termination by Executive Other Than for Good Reason. In the event of a Termination by Executive other than for Good Reason, the Company shall pay Executive their Earned Salary and Vested Benefits.

(v) Termination for Cause. In the event of a termination of Executive's employment by the Company for Cause, the Company shall pay Executive their Earned Salary and Vested Benefits.

(c) Timing of Payments. Earned Salary shall be paid in a single lump sum as soon as practicable, but in no event later than the earlier of 60 days following the end of the Employment Period or the day such Earned Salary would have been payable under the Company's normal payroll practices. Vested Benefits shall be payable in accordance with the terms of the plan, policy, practice, program, contract or agreement under which such benefits have accrued except as otherwise expressly modified by this Agreement. Severance Benefits shall be paid in a single lump sum 5 days prior to the Termination Date.

(d) Retention of monies owed. The Company may at any time during Executive's employment or upon their termination for any reason deduct and retain from any monies owed by it to Executive any sum properly paid by it or any Affiliate to, on behalf or at the request of Executive or due to it from Executive including, but not limited to, unauthorized expenses or excess vacation.

(e) Definitions. The following capitalized terms have the following meanings:

"Change in Control" means the occurrence of (i) a sale or other disposition of stock of the Company, such that the then current largest shareholder is no longer the largest shareholder, (ii) any merger, consolidation or reorganization following which those persons who are members of the Board of Directors of the Company immediately prior to the closing of such transaction constitute less than one half of the membership of the board of directors of the surviving entity immediately following the closing of such transaction, (iii) a transaction pursuant to which more than 50% of the total value of the assets of the Company and its consolidated subsidiaries are transferred and the transferee of such assets is not a subsidiary of the Company, or a company controlled by the Company, (iv) a complete liquidation of the Company, (v) the Company ceases to be publicly owned, i.e., its shares cease to be traded in any public market, or (vi) the Company announces a change in control to the SEC for a material change in the Company (and will specifically exclude treating the current majority shareholder owning less than 50% of the Company as a Change in Control, regardless of the SEC's current or future regulations defining this as a Change in Control).

"Earned Salary" means any Base Salary earned, but unpaid, for services rendered to the Company on or prior to the date on which the Employment Period ends.

"Normal Retirement Age" means the first day of the month following Executive attaining age 65.

"Severance Benefit" means an amount equal to Executive's annual Base Salary as in effect immediately prior to the Termination Date.

"Termination due to Disability" means a termination of Executive's employment by the Company because Executive has been incapable of substantially fulfilling the positions, duties, responsibilities and obligations set forth in this Agreement because of physical, mental or emotional incapacity resulting from injury, sickness or disease for a period of (i) at least six consecutive months or (ii) more than nine months in any twelve month period. Any question as to the existence, extent or potentiality of Executive's disability upon which Executive and the Company cannot agree shall be determined by a qualified, independent physician selected by the Company and reasonably acceptable to Executive. The determination of any such physician shall be final and conclusive for all purposes of this Agreement. Executive or their legal representative or any adult member of their immediate family shall have the right to present to such physician such information and arguments as to Executive's disability as he, she or they deem appropriate, including the opinion of Executive's personal physician.

"Termination due to Retirement" means termination of employment by Executive other than for Good Reason, or termination of Executive's employment by the Company other than a Termination for Cause, on or after Executive's Normal Retirement Age.

"Termination for Cause" means a termination of Executive's employment by the Company due to (i) Executive's conviction of a felony or the entering by Executive of a plea of nolo contendere with respect to a charged felony, (ii) Executive's gross negligence, recklessness, dishonesty, or fraud, willful malfeasance or willful misconduct in the performance of the services contained in this Agreement; (iii) a willful failure without reasonable justification to comply with a reasonable written order of the Board of Directors or the CEO; or (iv) a willful and material breach of Executive's duties or obligations under this Agreement, including, without limitation, Executive's failure to devote full business time to the Company in accordance with Section 2(b) of this Agreement. Notwithstanding the foregoing, a termination shall not be treated as a Termination for Cause unless the Company shall have delivered a written notice to Executive stating that it intends to terminate their employment for Cause and specifying the factual basis for such termination, and the event or events that form the basis for the notice, if capable of being cured, shall not have been cured within 30 days of the receipt of such notice.

"Termination Without Cause" means any termination by the Company of Executive's employment hereunder other than (i) a Termination due to Disability, (ii) a Termination due to Retirement or (iii) a Termination for Cause.

"Termination for Good Reason" means a termination of Executive's employment by Executive within 90 days following (i) a reduction in Executive's annual Base Salary and/or bonus opportunity; (ii) a material reduction in Executive's positions, duties, responsibilities or reporting lines from those described in Section 2 hereof; (iii) a material change in Executive's work location; (iv) a Change in Control; or (v) a material breach of this Agreement by the Company. Notwithstanding the foregoing, a termination shall not be treated as a Termination for Good Reason (x) if Executive shall have consented in writing to the occurrence of the event giving rise to the claim of Termination for Good Reason or (y) unless Executive shall have delivered a written notice to the Company within 30 days of their having actual knowledge of the occurrence of one of the events specified in clause (i), (ii) or (iii) above stating that he intends to terminate their employment for Good Reason and specifying the factual basis for such termination, and such event, if capable of being cured, shall not have been cured within 30 days of the receipt of such notice

"Termination Without Good Reason" means any termination by Executive of Executive's employment hereunder other than (i) a termination due to Executive's death, (ii) a Termination due to Retirement, (iii) a Termination for Good Reason, or (iv) a Termination due to Disability.

"Vested Benefits" means amounts which are vested or which Executive is otherwise entitled to receive under the terms of or in accordance with any plan, policy, practice or program of, or any contract or agreement with, the Company, including the Option (to the extent provided in Section 3(c)), at or subsequent to the date of their termination without regard to the performance by Executive of further services or the resolution of a contingency and expenses incurred prior to termination of employment that are reimbursable under Section 4(c).

(f) Full Discharge of Company Obligations. The amounts payable to Executive pursuant to this Section 5 following termination of their employment (including amounts payable with respect to Vested Benefits) shall be in full and complete satisfaction of Executive's rights under this Agreement and any other claims he may have in respect of their employment by the Company or any of its subsidiaries or Affiliates. Such amounts shall constitute liquidated damages with respect to any and all such rights and claims and, upon Executive's receipt of such amounts, the Company shall be released and discharged from any and all liability to Executive in connection with this Agreement or otherwise in connection with Executive's employment with the Company and its subsidiaries and Affiliates, other than Executive's rights to indemnification under Section 4(d).

## **6. Agreement Not to Compete With Company**

(a) During the Employment Period and for a period of twelve months thereafter (the "Applicable Period"), Executive shall not directly or indirectly own, manage, operate, finance, join, control, advise, consult, render services to, have an interest or future interest or participate in the ownership, management, operation, financing or control of, or be employed by or connected in any manner with any Competing Business (other than as a holder of common stock of the Company, and not in excess of 1% of the outstanding voting shares of any other publicly traded company). "Competing Business" means the business of internet telephony and web telephony communication services engaged in by the Company in any country where the Company or an Affiliate conducts such business at any time during the Term. Any opportunity directly or indirectly related to any business engaged in by the Company, its subsidiaries and Affiliates of which Executive becomes aware during the Term shall be deemed a corporate opportunity of the Company, and Executive shall promptly make such opportunity available to the Company.

(b) If, during the period of twelve months after expiration of the Employment Period, Executive proposes to engage directly or indirectly in what may be a Competing Business, Executive shall so notify the Company in a writing which shall fully set forth and describe in detail the nature of the activity which may be a competitive Business, the names of the companies or other entities with or for whom such activity

is proposed to be engaged in by Executive or by an Affiliate of Executive (the "Section 6 Notice"). If, within 30 days after receipt by the Company of a Section 6 Notice, the Company shall fail to notify Executive that it deems the proposed activity to be a Competitive Business, then Executive shall be free to engage in the activities described in the Section 6 Notice without violation of Section 6(a). If, however, the Company notifies Executive that the proposed activities constitute a Competitive Business, then (i) Executive shall not engage in such Competitive Business during the twelve month period following expiration of the Employment Period, and (ii) the Company shall pay Executive, during such twelve month period, in equal monthly installments, an amount equal to their highest Base Salary; *provided* that the amount payable under this Section 6(b) shall be reduced by the amount of Severance Benefit that Executive is receiving for such period.

## **7. Confidential Information**

(a) Without the prior written consent of the Company, Executive shall not disclose at any time during the Employment Period or any time thereafter any Confidential Information (as defined below) to any third person other than in the course of fulfilling Executive's responsibilities under this Agreement unless such Confidential Information has been previously disclosed to the public by the Company or an Affiliate or is in the public domain (other than by reason of Executive's breach of the provisions of this paragraph).

(b) "Confidential Information" is any non-public information pertaining to the Company or an Affiliate. "Confidential Information" includes not only information disclosed by the Company or an Affiliate to Executive, but non-public information developed, created or learned by Executive during the course of or as a result of Executive's employment with the Company. "Confidential Information" specifically includes non-public information and documents concerning the Company's and its Affiliates' methods of doing business; research, telecommunications technology, its actual and potential clients, transactions and suppliers (including the Company's or an Affiliate's terms, conditions and other business arrangements with them); client or potential client or transaction lists and billing; advertising, marketing and business plans and strategies (including prospective or pending licensing applications or investments in license holders or applicants); profit margins, goals, objectives and projections; compilations, analyses and projections regarding the Company, its Affiliates or any of its clients or potential clients or their businesses; trade secrets; salary, staffing, management organization or employment information; information relating to members of the Board of Directors and management of the Company or an Affiliate; files, drawings or designs; information regarding product development, marketing plans, sales plans or manufacturing plans; operating policies or manuals, business plans, financial records or packaging design; any other non-public financial, commercial, business or technical information relating to the Company, or an Affiliate may receive belonging to others who do business with any of them; or any non-public information pertaining to the Company or an Affiliate, any of their businesses or the business or personal affairs how any of them conducts its or their business or affairs.

(c) Nothing herein shall prevent the disclosure by Executive of any information required by an order of a court having competent jurisdiction or under subpoena from a government agency, *provided* that, if Executive receives a request for the disclosure of any Confidential Information pursuant to court process or by a government agency, Executive shall promptly (and at the latest within five business days but not less than three days prior to the date Executive is required to respond to the request) notify the Company of that request and cooperate to the maximum extent authorized by law with the Company in protecting the Company's and its Affiliates' interest in maintaining the confidentiality of any Confidential Information. The Company will reimburse Executive for reasonable out-of-pocket costs or expenses incurred by Executive in connection with their cooperation with the Company and its Affiliates hereunder.

## **8. No Disparaging Comments**

Each of the parties hereto agrees not to make disparaging or derogatory comments about the other party, members of the Board or Affiliates, or members of the Board of Affiliates, except to the extent required by law, and then only after consultation with the other party to the maximum extent possible in order to maintain goodwill for each of the parties.

## **9. Return of Company Property**

Promptly (and at the latest within ten business days) following Executive's termination of services, Executive shall:

- (i) return to the Company all documents, records, notebooks, computer diskettes and tapes and anything else containing the Company's Confidential Information (as defined above), and any other property or Confidential Information of the Company or its Affiliates, including all copies thereof in Executive's possession, custody or control, and
- (ii) delete from any computer or other electronic storage medium owned by Executive any of the proprietary or Confidential Information of the Company or its Affiliates.

## **10. No Soliciting or Hiring Company Employees**

During the Employment Period and for a one-year period thereafter, Executive shall not directly or indirectly induce any employee of the Company or any Affiliate, other than Executive's secretary or personal assistant, to terminate employment with such entity, and during the Employment Period and for a six-month period thereafter, shall not directly or indirectly, either individually or as owner, agent, employee, consultant or otherwise, employ or offer employment to any person who is or was employed by the Company or any Affiliate as an employee.

## 11. Continuing Obligations Following Termination

Executive agrees that their obligations and restrictions with respect to noncompetition, confidentiality, Company property, nondisparagement and nonsolicitation, and the Company obligations to indemnify Executive under Section 4(d), will continue to apply following the termination of Executive's relationship regardless of the manner in which their relationship with the Company is terminated, whether voluntarily, for Cause, for Good Reason, without Cause or otherwise.

## 12. Arbitration of All Disputes

(a) Any dispute, controversy or claim between the Executive and the Company or any of its officers, directors, employees or shareholders (who are expressly made third-party beneficiaries of this agreement) arising out of, relating to or in connection with this agreement, or the breach, termination or validity thereof, shall be finally resolved by binding and non-appealable arbitration, before a single arbitrator selected by the procedure set forth below, conducted in New York, New York.

(b) Either party may commence an arbitration proceeding by giving written notice to the other party of its desire to arbitrate.

(c) The single arbitrator (the "Arbitrator") shall be selected from among the New York City members of the New York Regional Panel of Distinguished Neutrals (the "Panel") of the Center for Public Resources ("CPR") by mutual agreement of the parties, or if the parties are unable to agree, by the following means:

(A) The Company, on one hand, and Executive on the other hand, shall simultaneously exchange lists each containing the names of five members of their choice of the Panel who have indicated a willingness to serve.

(B) If a single name appears on both lists, that individual shall be appointed.

(C) If more than one name appears on both parties' lists, the Arbitrator shall be selected from the common names by mutual agreement of the parties or by the toss of a coin.

(D) If the lists contain no names in common, each party shall strike four names from the other party's list and the Arbitrator shall be selected from the remaining two names by mutual agreement of the parties or by the toss of a coin.

(E) If the CPR ceases to have a Panel or it is otherwise impossible to select the Arbitrator from the Panel as contemplated by this Agreement, the Arbitrator shall be selected by the President of the CPR in the manner that the President deems closest to satisfying the purposes of this Section, or, if such person is unable to do so, by the President of the Association of the Bar of the City of New York.

(d) The Arbitrator, after appropriate consultation with the parties, shall (i) determine, in their sole discretion, the rules governing the arbitration proceeding, including whether and to what extent the parties shall have any right to pre-hearing discovery or other forms of disclosure, the manner of presentation of arguments and/or evidence before or at any hearing, whether and to what extent formal rules of evidence shall govern the proceeding and the parties' rights following the proceeding, and (ii) be governed in exercising such discretion by the goal of reaching a fair and reasonable decision in an expeditious and efficient manner while endeavoring to streamline the process and avoid undue litigation costs.

(e) The Arbitrator shall assess the costs of the proceeding (including the prevailing party's reasonable attorney's fees) on any unsuccessful party to the extent the Arbitrator concludes that such party is unsuccessful, unless he or she concludes that (i) matters of equity or important considerations of fairness dictate otherwise or (ii) in the case of Executive, the Arbitrator determined that Executive acted reasonably and in good faith in pursuing all of the claims asserted by them in such arbitration.

(f) The Arbitrator shall be required to state their decision in writing and may, but shall not be required to, elaborate on the reasons for such decision.

(g) The arbitrator(s) shall have the authority upon application by a party to direct specific performance, including preliminary or interim specific performance pending the final resolution of the arbitration, of any portion of this agreement. The parties expressly consent to the jurisdiction and power of any federal or state court in New York to enforce the terms of such a direction upon application by a party. If the arbitrator(s) have not yet been appointed, the parties may obtain injunctive or other appropriate relief from a court to enforce the terms of this agreement pending the appointment of the arbitrator(s) who shall thereafter have full power to continue, modify or vacate the terms of any injunctive relief ordered by the court.

(h) Notwithstanding the terms of this agreement that provide that New York law shall govern, the arbitration and the provisions in this agreement dealing with arbitration shall be governed exclusively by the United States (Federal) Arbitration Act, 9 U.S.C. §§ 1-16, and judgment on or enforcement of the award or any direction for specific performance rendered by the arbitrators may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or assets of such party.

(i) If, notwithstanding the parties' agreement to arbitrate, any issue is presented to a court for decision, the parties hereby waive any right to trial by jury.

(j) The parties agree that any dispute between the parties and the arbitration itself shall be kept confidential and that the existence of the arbitration and any element of it (including but not limited to any pleading, brief or other document submitted or exchanged, any testimony or other oral submission, and any award) shall not be disclosed except to the arbitrator(s), the CPR Institute for Dispute Resolution, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

### **13. No Punitive or Emotional Damages**

The parties hereto agree that neither the Executive nor the Company will be entitled to seek or obtain punitive, exemplary or similar damages of any kind from the other or, in the case of Executive, from the Company's officers, directors, employees or shareholders, or to seek or obtain damages or compensation for emotional distress, as a result of any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, or the performance, breach, termination or validity thereof. Nothing herein shall preclude an award of compensatory or punitive damages against any other third party.

### **14. Injunctive Relief to Avoid Irreparable Injury**

(a) Executive acknowledges and agrees that the individualized services and capabilities that he will provide to the Company under this Agreement are of a personal, special, unique, unusual, extraordinary and intellectual character.

(b) Executive acknowledges and agrees that because the internet telephony and web communications industry is globally integrated and that its constituent companies are dependent for their survival on protection of their confidential information which is highly advanced and technical and on carefully developed knowledge of customer systems and requirements, the restrictions in this agreement are reasonable to protect the Company's rights under this Agreement and to safeguard the Company's and its Affiliates' Confidential Information.

(c) Executive acknowledges and agrees that the covenants and obligations of Executive with respect to noncompetition, nonsolicitation, confidentiality and Company property relate to special, unique and extraordinary matters and that a violation of any of the terms of such covenants and obligations will cause the Company and its Affiliates irreparable injury for which adequate remedies are not available at law. Executive therefore agrees that the Company shall be entitled to an order of specific performance, injunction, restraining order or such other interim or permanent equitable relief (without the requirement to post bond) restraining Executive from committing any violation of the covenants and obligations contained in this Agreement. Executive acknowledges and agrees that if any one or more of any part of such restrictions shall be rendered or judged invalid or unenforceable, such restriction or part shall be deemed to be severed from this Agreement and such invalidity or unenforceability shall not in any way affect the validity of the remaining provisions.

(d) These injunctive remedies are cumulative and are in addition to any other rights and remedies the Company may have at law or in equity.

### **15. Automatic Amendment by Court Order and Interim Enforcement**

(a) If the Arbitrator(s) or a court determines that, but for the provisions of this paragraph, any part of this agreement is illegal, void as against public policy or otherwise unenforceable, the relevant part will automatically be amended to the extent necessary to make it sufficiently narrow in scope, time and geographic area to be legally enforceable. All other terms will remain in full force and effect.

(b) If the Executive raises any question as to the enforceability of any part or terms of this agreement, including, without limitation, the provisions relating to noncompetition, nonsolicitation, confidentiality and Company property, the Executive specifically agrees that he will comply fully with this Agreement unless and until the entry of an arbitral award to the contrary.

### **16. Notices**

All notices and other communications required or permitted hereunder shall be sufficiently given if (a) delivered personally, (b) sent by facsimile transmission (with confirmation received), (c) sent by a nationally-recognized air courier assuring overnight delivery, or (d) mailed (by registered or certified mail, return receipt requested and postage prepaid) as follows:

If to the Executive, to the Executive at:

Shimmy Zimels  
75 Broad Street  
31<sup>th</sup> Floor  
New York, NY 10004

If to the Company, to the Company at

deltathree, Inc.  
75 Broad St  
31<sup>th</sup> Floor  
New York, NY 10004  
Attention: Corporate Counsel

or to such other address as shall be furnished by notice from time to time by one party hereto to the other party. Any such communication shall be deemed to have been given, (i) in the case of personal delivery, on the date of delivery, (ii) in the case of delivery by air courier, on the first business day following the day on which such communication was posted, and (iii) in the case of mailing, on the third business day following the day on which such notice was posted.

**17. Sole and Entire Understanding; Amendments**

The entire understanding and agreement between the Company and Executive have been incorporated into this Agreement. There are no other agreements, promises, representations, understandings or inducements by the Company to Executive or Executive to the Company other than those specifically set forth in this Agreement. This Agreement may not be altered, amended or added to except in a single writing signed by the Company and the Executive.

**18. Waiver of Breach**

A waiver or breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, and any failure to enforce any provision hereof shall not operate as a waiver of such provision or of any other provision.

**19. Headings**

The headings of sections in this Agreement are for convenience only, are not a part of this Agreement and shall not affect the construction of the provisions of this Agreement.

**20. Arm's Length**

(a) This Agreement was entered into at arm's length, without duress or coercion, and is to be interpreted as an agreement between parties of equal bargaining strength. Both the Company and the Executive agree that this Agreement is clear and unambiguous as to its terms, and that no parole or other evidence will be used or admitted to alter or explain the terms of this Agreement, but that it will be interpreted based on the language within its four corners in accordance with the purposes for which it is entered into.

(b) The parties hereto expressly agree that any rule or contractual interpretation, as applied under California law or anywhere else, that would allow parole or extrinsic evidence to attempt to show fraud in the inducement or duress to contradict the plain, unambiguous terms of this Agreement shall not apply to this Agreement and its performance and enforcement. This provision is a material part of this Agreement and, should any party try to introduce evidence contrary to this provision, any other party shall be entitled to consider it a breach and to rescind this contract in full.

**21. Successors and Assigns**

(a) This Agreement will inure to the benefit of, and will be binding upon, the Company, its successors and assigns and upon the Executive and their heirs, successors and assigns; provided, however, that, because this is an Agreement for personal services, the Executive cannot assign any of their obligations under this Agreement to anyone else.

(b) This Agreement may be executed in counterparts, in which case each of the two counterparts will be deemed to be an original and the final counterpart shall be deemed to have been executed in New York, New York.

**22. New York Law Governs**

Any questions or other matters arising under this Agreement, whether of validity, interpretation, performance or otherwise, will therefore be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed in New York, without reference to principles of conflicts or choice of law under which the law of any other jurisdiction would apply.

**IN WITNESS WHEREOF**, this Agreement has been executed by Executive and then by the Company in New York, New York, on the dates shown below, but effective as of the date and year first above written.

Date: April 28, 2004

By: /s/ Shimmy Zimels  
Executive

deltathree, Inc.

Date: April 28, 2004

By: /s/ Paul C. White

Title: Chief Financial Officer

**EXECUTIVE EMPLOYMENT AGREEMENT**

**EXECUTIVE EMPLOYMENT AGREEMENT**, dated April 26, 2004, by and between deltathree, Inc., a Delaware corporation (the "Company"), and Paul C. White ("Executive").

**W I T N E S S E T H:**

**WHEREAS**, the Company and Executive entered into an Executive Employment Agreement, dated August 28, 1999 (inclusive of the most recent extension dated September 1, 2003), and both parties wish to enter into a subsequent Executive Employment Agreement, effectively extending the executive's employment; and

**WHEREAS**, the Company desires to enter into an agreement, effective as of the date of this Agreement (the "Commencement Date") to set out the terms and conditions of Executive's employment by the Company from and after the Commencement Date; and

**WHEREAS**, the Executive desires to continue in the employment of the Company from and after the Commencement Date under those terms and conditions;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the Company and Executive hereby agree as follows:

**1. Employment.**

(a) **Agreement to Employ.** Upon the terms and subject to the conditions of this Agreement, the Company hereby employs Executive, and Executive hereby accepts continued employment by the Company.

(b) **Term of Agreement.** Unless earlier terminated pursuant to Section 5 hereof, the period of this Agreement and the Executive's continued employment hereunder (the "Agreement Term") shall commence as of the date hereof, (the "Effective Date"), and shall expire on March 31, 2007; provided, however, that the Agreement Term shall be automatically extended for the same duration on the expiration date and on each expiration date thereafter (each an "Extension Date"), unless written notice of non-extension is provided by either party to the other party at least three (3) months prior to such anniversary, provided that Executive provides notice of renewal six (6) months prior to the end of the Agreement Term to the Compensation Committee.

The period commencing on the Commencement Date and ending on the earlier of (i) the expiration of the Agreement, or (ii) the date of Executive's termination of employment pursuant to Section 5(a) shall be referred to as the "Employment Period".

**2. Position and Duties.**

(a) **In general.** Executive shall be employed as Chief Financial Officer and shall perform such duties and services, consistent with such position and their current duties and services for the Company, and as may be assigned to them from time to time by the Chief Executive Officer (the "CEO") of the Company. The duties of the Executive shall include serving as an officer or director or otherwise performing services for any "Affiliate" of the Company as requested by the Company. An "Affiliate" of the Company means any entity that controls, is controlled by or is under common control with the Company. Executive shall report to the CEO.

(b) **Full-time employment.** During the Employment Period, Executive shall devote their full business time to the services required of them hereunder, except for time devoted to services required by them to be performed for any "Affiliate" of the Company, vacation time and reasonable periods of absence due to sickness, personal injury or other disability, and shall use their reasonable best efforts, judgment, skill and energy to perform such services in a manner consonant with the duties of their position and to improve and advance the business and interests of the Company. Executive shall not be engaged in any other business activity which, in the reasonable judgment of the CEO, conflicts with the duties of the Executive under this Agreement. In such event, Executive shall receive five days' written notice to disengage from such business activity. Executive may serve on the Board of Directors or on advisory boards of other corporations which do not compete with the Company; provided, however, that, in such case, (i) Executive shall provide the Company with 5 days' written notice of any scheduled meeting of the Board of Directors of such company and (ii) Executive shall be charged with ½ vacation day for every four hours spent at such Board of Directors meeting during business hours. Executive shall travel to such location or locations as may be requested by the Company, or which Executive believes is necessary or advisable, in the performance by Executive of their duties hereunder or to the extent appropriate to improve and advance the interests of the Company and its Affiliates. There is no formal disciplinary procedure, but Executive is expected at all times to behave in a manner befitting their employment.

### 3. Compensation.

(a) **Base Salary.** During the Employment Period, the Company shall pay Executive a base salary at the annual rate of US \$226,000; provided that, Executive's annual base salary shall be increased as of January 1 of each year, by an amount equal to the base salary then in effect, multiplied by the percentage increase in the Cost of Living Index during the preceding year. The "Cost of Living Index" means the consumer price index for all urban consumers in the New York metropolitan area published by the Department of Labor, or if such index is no longer available, such other generally available index measuring changes in consumer purchasing power (in the New York metropolitan area or nationally) designated by the Board of Directors. Any delay in increase in Executive's annual base salary by reason of the unavailability of any such index at the time any such increase shall otherwise be due shall be made up by a lump sum payment promptly after the index becomes available. Executive's salary, as adjusted for any increase in the Cost of Living Index, may be further increased at the option and in the discretion of the Board of Directors (such salary, as the same may be increased from time to time, is referred to herein as the "Base Salary"). The Base Salary shall be payable in such installments (but not less frequent than monthly) as the salaries of other executives of the Company are paid.

(b) **Performance Incentive Plan.** During the Employment Period, Executive shall be eligible to participate in the Company's 1999 Performance Incentive Plan. The discretionary portion of the bonus shall be determined by the Compensation Committee. If the Company shall amend or terminate the 1999 Performance Incentive Plan in a manner that would reduce the opportunity of Executive to earn an incentive bonus as provided in the 1999 Performance Incentive Plan, the Company shall provide a substitute arrangement so that Executive's total bonus opportunity will not be materially reduced.

(c) **Stock Incentive Plan.** To the extent approved by the Compensation Committee and the Board (including, the number of options awarded and other specific terms of the award), Executive shall be granted stock option grants. Such grants will be commensurate with Executive's position with the Company and with stock options awarded to other senior executives of the Company (other than grants made to other executives in connection with their initial employment with the Company).

All Options shall become immediately exercisable in full in the event that Executive's employment with the Company is terminated: (i) by the Company other than for Cause, (ii) by Executive for Good Reason or (iii) by reason of the death or Disability of the Executive; **provided, however,** that if Executive's employment is terminated for any reason prior to the 18 month anniversary of the Commencement Date, only the exercisable portion of the Option, if any, shall remain exercisable and any unvested portion of the Option shall not be exercisable. The Option shall expire on the seven-year anniversary of the Commencement Date.

Additionally, all Options shall become immediately exercisable in full upon a Change in Control. The exercisable portion of the Option shall, following any termination of Executive's employment (other than for Cause), remain exercisable for the lesser of two years and the remaining term of the Option.

### 4. Benefits, Perquisites and Expenses.

(a) **Benefits.** During the Employment Period, Executive shall be eligible to participate in (i) each welfare benefit plan sponsored or maintained by the Company, including, without limitation, each group life, hospitalization, medical, dental, health, accident or disability insurance or similar plan or program of the Company, (ii) each pension, profit sharing, retirement, deferred compensation or savings plan sponsored or maintained by the Company, in each case, whether now existing or established hereafter, on the same basis as generally made available to other senior officers of the Company, (iii) all other benefits sponsored or maintained by the Company, in each case, whether now existing or established hereafter, on the same basis as generally made available to other management level employees of the Company.

(b) **Perquisites.** During the Employment Period, Executive shall be entitled to five weeks' paid vacation annually and shall also be entitled to receive such perquisites as are generally provided to other senior officers of the Company in accordance with the then current policies and practices of the Company. Executive shall not be entitled to receive remuneration for unused vacation and shall not be permitted to carry-over unused vacation to the following year, unless Executive receives the written consent from the CEO prior to September 30<sup>th</sup> of such year.

(c) **Business Expenses.** During the Employment Period, the Company shall pay or reimburse Executive for all reasonable expenses incurred or paid by Executive in the performance of Executive's duties hereunder, upon presentation of expense statements or vouchers and such other information as the Company may require and in accordance with the generally applicable policies and procedures of the Company.

(d) **Indemnification.** The Company shall indemnify Executive and hold Executive harmless from and against any claim, loss or cause of action arising from or out of Executive's performance as an officer, director or employee of the Company or any of its subsidiaries or affiliates or in any other capacity, including any fiduciary capacity, in which Executive serves at the request of the Company to the maximum extent permitted by applicable law and the Company's Certificate of Incorporation and Bylaws in effect on the date hereof. If any claim is asserted against Executive with respect to which Executive reasonably believes in good faith he is entitled to indemnification, the Company shall either defend Executive or, at its option, pay Executive's legal expenses (or cause such expenses to be paid) on a quarterly basis, provided that Executive shall reimburse the Company for such amounts, plus simple interest thereon at the 90-day United States Treasury Bill rate as in effect from time to time, compounded annually, if Executive shall be found by a court of competent jurisdiction not to have been entitled to indemnification.

## 5. Termination of Employment.

(a) Termination of the Employment Period. The Employment Period shall end upon the earliest to occur of (i) a termination of Executive's employment on account of Executive's death, (ii) a Termination due to Disability or Retirement, (iii) a Termination for Cause, (iv) a Termination Without Cause, (v) a Termination by Executive for Good Reason, (vi) a Termination by Executive other than for Good Reason, or (vii) the expiration of the Term. The Company or the Executive may initiate a termination in any manner permitted hereunder by giving the other party written notice thereof (the "Termination Notice"). The effective date (the "Termination Date") of any termination shall be deemed to be the later of (i) in the case of a Termination Notice from Executive, 45 days after the receipt by the Company of the Termination Notice, (ii) the date on which the Termination Notice is given, or (iii) the date specified in the Termination Notice; *provided, however*, that in the case of the Executive's death, the Termination Date shall be the date of death. Upon termination of their employment for any reason, Executive will immediately resign from all positions that he holds with the Company and its Affiliates.

(b) Payments Upon Certain Terminations.

(i) Termination Without Cause or Termination by Executive for Good Reason. In the event that Executive's employment is terminated by the Company Without Cause or by Executive for Good Reason, the Company shall pay Executive their Earned Salary, Vested Benefits and a Severance Benefit (as such terms are hereinafter defined). In addition, if Executive's employment terminates pursuant to this subsection (i), the Company shall continue to provide to Executive the welfare benefits (other than disability insurance) referred to in Section 4, or substantially comparable benefits, until the earlier of (x) the date on which Executive is eligible to obtain comparable benefits from other employment, (y) the expiration of the Term or (z) one year.

(ii) Termination due to Death. In the event of the termination of Executive's employment due to Executive's death, the Company shall pay Executive's estate Executive's Earned Salary, Vested Benefits and a lump sum payment equal to 12 months of Executive's Base Salary (at the rate in effect on the date of their death).

(iii) Termination due to Disability or Retirement. In the event of termination of Executive's employment by the Company due to Disability or a Termination due to Retirement, the Company shall pay Executive their Earned Salary and Vested Benefits, plus, in the event of termination due to Disability, to the Executive or their estate their Base Salary at the Termination Date on a monthly basis for 12 months following the month in which Executive's employment is terminated. In the event that Executive's employment with the Company is terminated due to Disability, Executive's benefits under this subsection (iii) shall be reduced by the amount of any Company sponsored (and paid for) disability benefits paid to Executive.

(iv) Termination by Executive Other Than for Good Reason. In the event of a Termination by Executive other than for Good Reason, the Company shall pay Executive their Earned Salary and Vested Benefits.

(v) Termination for Cause. In the event of a termination of Executive's employment by the Company for Cause, the Company shall pay Executive their Earned Salary and Vested Benefits.

(c) Timing of Payments. Earned Salary shall be paid in a single lump sum as soon as practicable, but in no event later than the earlier of 60 days following the end of the Employment Period or the day such Earned Salary would have been payable under the Company's normal payroll practices. Vested Benefits shall be payable in accordance with the terms of the plan, policy, practice, program, contract or agreement under which such benefits have accrued except as otherwise expressly modified by this Agreement. Severance Benefits shall be paid in a single lump sum 5 days prior to the Termination Date.

(d) Retention of monies owed. The Company may at any time during Executive's employment or upon their termination for any reason deduct and retain from any monies owed by it to Executive any sum properly paid by it or any Affiliate to, on behalf or at the request of Executive or due to it from Executive including, but not limited to, unauthorized expenses or excess vacation.

(e) Definitions. The following capitalized terms have the following meanings:

"Change in Control" means the occurrence of (i) a sale or other disposition of stock of the Company, such that the then current largest shareholder is no longer the largest shareholder, (ii) any merger, consolidation or reorganization following which those persons who are members of the Board of Directors of the Company immediately prior to the closing of such transaction constitute less than one half of the membership of the board of directors of the surviving entity immediately following the closing of such transaction, (iii) a transaction pursuant to which more than 50% of the total value of the assets of the Company and its consolidated subsidiaries are transferred and the transferee of such assets is not a subsidiary of the Company, or a company controlled by the Company, (iv) a complete liquidation of the Company, (v) the Company ceases to be publicly owned, i.e., its shares cease to be traded in any public market, or (vi) the Company announces a change in control to the SEC for a material change in the Company (and will specifically exclude treating the current majority shareholder owning less than 50% of the Company as a Change in Control, regardless of the SEC's current or future regulations defining this as a Change in Control).

"Earned Salary" means any Base Salary earned, but unpaid, for services rendered to the Company on or prior to the date on which the Employment Period ends.

"Normal Retirement Age" means the first day of the month following Executive attaining age 65.

"Severance Benefit" means an amount equal to Executive's annual Base Salary as in effect immediately prior to the Termination Date.

"Termination due to Disability" means a termination of Executive's employment by the Company because Executive has been incapable of substantially fulfilling the positions, duties, responsibilities and obligations set forth in this Agreement because of physical, mental or emotional incapacity resulting from injury, sickness or disease for a period of (i) at least six consecutive months or (ii) more than nine months in any twelve month period. Any question as to the existence, extent or potentiality of Executive's disability upon which Executive and the Company cannot agree shall be determined by a qualified, independent physician selected by the Company and reasonably acceptable to Executive. The determination of any such physician shall be final and conclusive for all purposes of this Agreement. Executive or their legal representative or any adult member of their immediate family shall have the right to present to such physician such information and arguments as to Executive's disability as he, she or they deem appropriate, including the opinion of Executive's personal physician.

"Termination due to Retirement" means termination of employment by Executive other than for Good Reason, or termination of Executive's employment by the Company other than a Termination for Cause, on or after Executive's Normal Retirement Age.

"Termination for Cause" means a termination of Executive's employment by the Company due to (i) Executive's conviction of a felony or the entering by Executive of a plea of nolo contendere with respect to a charged felony, (ii) Executive's gross negligence, recklessness, dishonesty, or fraud, willful malfeasance or willful misconduct in the performance of the services contained in this Agreement; (iii) a willful failure without reasonable justification to comply with a reasonable written order of the Board of Directors or the CEO; or (iv) a willful and material breach of Executive's duties or obligations under this Agreement, including, without limitation, Executive's failure to devote full business time to the Company in accordance with Section 2(b) of this Agreement. Notwithstanding the foregoing, a termination shall not be treated as a Termination for Cause unless the Company shall have delivered a written notice to Executive stating that it intends to terminate their employment for Cause and specifying the factual basis for such termination, and the event or events that form the basis for the notice, if capable of being cured, shall not have been cured within 30 days of the receipt of such notice.

"Termination Without Cause" means any termination by the Company of Executive's employment hereunder other than (i) a Termination due to Disability, (ii) a Termination due to Retirement or (iii) a Termination for Cause.

"Termination for Good Reason" means a termination of Executive's employment by Executive within 90 days following (i) a reduction in Executive's annual Base Salary and/or bonus opportunity; (ii) a material reduction in Executive's positions, duties, responsibilities or reporting lines from those described in Section 2 hereof; (iii) a material change in Executive's work location; (iv) a Change in Control; or (v) a material breach of this Agreement by the Company. Notwithstanding the foregoing, a termination shall not be treated as a Termination for Good Reason (x) if Executive shall have consented in writing to the occurrence of the event giving rise to the claim of Termination for Good Reason or (y) unless Executive shall have delivered a written notice to the Company within 30 days of their having actual knowledge of the occurrence of one of the events specified in clause (i), (ii) or (iii) above stating that he intends to terminate their employment for Good Reason and specifying the factual basis for such termination, and such event, if capable of being cured, shall not have been cured within 30 days of the receipt of such notice.

"Termination Without Good Reason" means any termination by Executive of Executive's employment hereunder other than (i) a termination due to Executive's death, (ii) a Termination due to Retirement, (iii) a Termination for Good Reason, or (iv) a Termination due to Disability.

"Vested Benefits" means amounts which are vested or which Executive is otherwise entitled to receive under the terms of or in accordance with any plan, policy, practice or program of, or any contract or agreement with, the Company, including the Option (to the extent provided in Section 3(c)), at or subsequent to the date of their termination without regard to the performance by Executive of further services or the resolution of a contingency and expenses incurred prior to termination of employment that are reimbursable under Section 4(c).

(f) Full Discharge of Company Obligations. The amounts payable to Executive pursuant to this Section 5 following termination of their employment (including amounts payable with respect to Vested Benefits) shall be in full and complete satisfaction of Executive's rights under this Agreement and any other claims he may have in respect of their employment by the Company or any of its subsidiaries or Affiliates. Such amounts shall constitute liquidated damages with respect to any and all such rights and claims and, upon Executive's receipt of such amounts, the Company shall be released and discharged from any and all liability to Executive in connection with this Agreement or otherwise in connection with Executive's employment with the Company and its subsidiaries and Affiliates, other than Executive's rights to indemnification under Section 4(d).

## **6. Agreement Not to Compete With Company**

(a) During the Employment Period and for a period of twelve months thereafter (the "Applicable Period"), Executive shall not directly or indirectly own, manage, operate, finance, join, control, advise, consult, render services to, have an interest or future interest or participate in the ownership, management, operation, financing or control of, or be employed by or connected in any manner with any Competing Business (other than as a holder of common stock of the Company, and not in excess of 1% of the outstanding voting shares of any other publicly traded company). "Competing Business" means the business of internet telephony and web telephony communication services engaged in by the Company in any country where the Company or an Affiliate conducts such business at any time during the Term. Any opportunity directly or indirectly related to any business engaged in by the Company, its subsidiaries and Affiliates of which Executive becomes aware during the Term shall be deemed a corporate opportunity of the Company, and Executive shall promptly make such opportunity available to the Company.

(b) If, during the period of twelve months after expiration of the Employment Period, Executive proposes to engage directly or indirectly in what may be a Competing Business, Executive shall so notify the Company in a writing which shall fully set forth and describe in detail the nature of the activity which may be a competitive Business, the names of the companies or other entities with or for whom such activity

is proposed to be engaged in by Executive or by an Affiliate of Executive (the "Section 6 Notice"). If, within 30 days after receipt by the Company of a Section 6 Notice, the Company shall fail to notify Executive that it deems the proposed activity to be a Competitive Business, then Executive shall be free to engage in the activities described in the Section 6 Notice without violation of Section 6(a). If, however, the Company notifies Executive that the proposed activities constitute a Competitive Business, then (i) Executive shall not engage in such Competitive Business during the twelve month period following expiration of the Employment Period, and (ii) the Company shall pay Executive, during such twelve month period, in equal monthly installments, an amount equal to their highest Base Salary; *provided* that the amount payable under this Section 6(b) shall be reduced by the amount of Severance Benefit that Executive is receiving for such period.

## **7. Confidential Information**

(a) Without the prior written consent of the Company, Executive shall not disclose at any time during the Employment Period or any time thereafter any Confidential Information (as defined below) to any third person other than in the course of fulfilling Executive's responsibilities under this Agreement unless such Confidential Information has been previously disclosed to the public by the Company or an Affiliate or is in the public domain (other than by reason of Executive's breach of the provisions of this paragraph).

(b) "Confidential Information" is any non-public information pertaining to the Company or an Affiliate. "Confidential Information" includes not only information disclosed by the Company or an Affiliate to Executive, but non-public information developed, created or learned by Executive during the course of or as a result of Executive's employment with the Company. "Confidential Information" specifically includes non-public information and documents concerning the Company's and its Affiliates' methods of doing business; research, telecommunications technology, its actual and potential clients, transactions and suppliers (including the Company's or an Affiliate's terms, conditions and other business arrangements with them); client or potential client or transaction lists and billing; advertising, marketing and business plans and strategies (including prospective or pending licensing applications or investments in license holders or applicants); profit margins, goals, objectives and projections; compilations, analyses and projections regarding the Company, its Affiliates or any of its clients or potential clients or their businesses; trade secrets; salary, staffing, management organization or employment information; information relating to members of the Board of Directors and management of the Company or an Affiliate; files, drawings or designs; information regarding product development, marketing plans, sales plans or manufacturing plans; operating policies or manuals, business plans, financial records or packaging design; any other non-public financial, commercial, business or technical information relating to the Company, or an Affiliate may receive belonging to others who do business with any of them; or any non-public information pertaining to the Company or an Affiliate, any of their businesses or the business or personal affairs how any of them conducts its or their business or affairs.

(c) Nothing herein shall prevent the disclosure by Executive of any information required by an order of a court having competent jurisdiction or under subpoena from a government agency, *provided* that, if Executive receives a request for the disclosure of any Confidential Information pursuant to court process or by a government agency, Executive shall promptly (and at the latest within five business days but not less than three days prior to the date Executive is required to respond to the request) notify the Company of that request and cooperate to the maximum extent authorized by law with the Company in protecting the Company's and its Affiliates' interest in maintaining the confidentiality of any Confidential Information. The Company will reimburse Executive for reasonable out-of-pocket costs or expenses incurred by Executive in connection with their cooperation with the Company and its Affiliates hereunder.

## **8. No Disparaging Comments**

Each of the parties hereto agrees not to make disparaging or derogatory comments about the other party, members of the Board or Affiliates, or members of the Board of Affiliates, except to the extent required by law, and then only after consultation with the other party to the maximum extent possible in order to maintain goodwill for each of the parties.

## **9. Return of Company Property**

Promptly (and at the latest within ten business days) following Executive's termination of services, Executive shall:

- (i) return to the Company all documents, records, notebooks, computer diskettes and tapes and anything else containing the Company's Confidential Information (as defined above), and any other property or Confidential Information of the Company or its Affiliates, including all copies thereof in Executive's possession, custody or control, and
- (ii) delete from any computer or other electronic storage medium owned by Executive any of the proprietary or Confidential Information of the Company or its Affiliates.

## **10. No Soliciting or Hiring Company Employees**

During the Employment Period and for a one-year period thereafter, Executive shall not directly or indirectly induce any employee of the Company or any Affiliate, other than Executive's secretary or personal assistant, to terminate employment with such entity, and during the Employment Period and for a six-month period thereafter, shall not directly or indirectly, either individually or as owner, agent, employee, consultant or otherwise, employ or offer employment to any person who is or was employed by the Company or any Affiliate as an employee.

## 11. Continuing Obligations Following Termination

Executive agrees that their obligations and restrictions with respect to noncompetition, confidentiality, Company property, nondisparagement and nonsolicitation, and the Company obligations to indemnify Executive under Section 4(d), will continue to apply following the termination of Executive's relationship regardless of the manner in which their relationship with the Company is terminated, whether voluntarily, for Cause, for Good Reason, without Cause or otherwise.

## 12. Arbitration of All Disputes

(a) Any dispute, controversy or claim between the Executive and the Company or any of its officers, directors, employees or shareholders (who are expressly made third-party beneficiaries of this agreement) arising out of, relating to or in connection with this agreement, or the breach, termination or validity thereof, shall be finally resolved by binding and non-appealable arbitration, before a single arbitrator selected by the procedure set forth below, conducted in New York, New York.

(b) Either party may commence an arbitration proceeding by giving written notice to the other party of its desire to arbitrate.

(c) The single arbitrator (the "Arbitrator") shall be selected from among the New York City members of the New York Regional Panel of Distinguished Neutrals (the "Panel") of the Center for Public Resources ("CPR") by mutual agreement of the parties, or if the parties are unable to agree, by the following means:

(A) The Company, on one hand, and Executive on the other hand, shall simultaneously exchange lists each containing the names of five members of their choice of the Panel who have indicated a willingness to serve.

(B) If a single name appears on both lists, that individual shall be appointed.

(C) If more than one name appears on both parties' lists, the Arbitrator shall be selected from the common names by mutual agreement of the parties or by the toss of a coin.

(D) If the lists contain no names in common, each party shall strike four names from the other party's list and the Arbitrator shall be selected from the remaining two names by mutual agreement of the parties or by the toss of a coin.

(E) If the CPR ceases to have a Panel or it is otherwise impossible to select the Arbitrator from the Panel as contemplated by this Agreement, the Arbitrator shall be selected by the President of the CPR in the manner that the President deems closest to satisfying the purposes of this Section, or, if such person is unable to do so, by the President of the Association of the Bar of the City of New York.

(d) The Arbitrator, after appropriate consultation with the parties, shall (i) determine, in their sole discretion, the rules governing the arbitration proceeding, including whether and to what extent the parties shall have any right to pre-hearing discovery or other forms of disclosure, the manner of presentation of arguments and/or evidence before or at any hearing, whether and to what extent formal rules of evidence shall govern the proceeding and the parties' rights following the proceeding, and (ii) be governed in exercising such discretion by the goal of reaching a fair and reasonable decision in an expeditious and efficient manner while endeavoring to streamline the process and avoid undue litigation costs.

(e) The Arbitrator shall assess the costs of the proceeding (including the prevailing party's reasonable attorney's fees) on any unsuccessful party to the extent the Arbitrator concludes that such party is unsuccessful, unless he or she concludes that (i) matters of equity or important considerations of fairness dictate otherwise or (ii) in the case of Executive, the Arbitrator determined that Executive acted reasonably and in good faith in pursuing all of the claims asserted by them in such arbitration.

(f) The Arbitrator shall be required to state their decision in writing and may, but shall not be required to, elaborate on the reasons for such decision.

(g) The arbitrator(s) shall have the authority upon application by a party to direct specific performance, including preliminary or interim specific performance pending the final resolution of the arbitration, of any portion of this agreement. The parties expressly consent to the jurisdiction and power of any federal or state court in New York to enforce the terms of such a direction upon application by a party. If the arbitrator(s) have not yet been appointed, the parties may obtain injunctive or other appropriate relief from a court to enforce the terms of this agreement pending the appointment of the arbitrator(s) who shall thereafter have full power to continue, modify or vacate the terms of any injunctive relief ordered by the court.

(h) Notwithstanding the terms of this agreement that provide that New York law shall govern, the arbitration and the provisions in this agreement dealing with arbitration shall be governed exclusively by the United States (Federal) Arbitration Act, 9 U.S.C. §§ 1-16, and judgment on or enforcement of the award or any direction for specific performance rendered by the arbitrators may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or assets of such party.

(i) If, notwithstanding the parties' agreement to arbitrate, any issue is presented to a court for decision, the parties hereby waive any right to trial by jury.

(j) The parties agree that any dispute between the parties and the arbitration itself shall be kept confidential and that the existence of the arbitration and any element of it (including but not limited to any pleading, brief or other document submitted or exchanged, any testimony or other oral submission, and any award) shall not be disclosed except to the arbitrator(s), the CPR Institute for Dispute Resolution, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

### **13. No Punitive or Emotional Damages**

The parties hereto agree that neither the Executive nor the Company will be entitled to seek or obtain punitive, exemplary or similar damages of any kind from the other or, in the case of Executive, from the Company's officers, directors, employees or shareholders, or to seek or obtain damages or compensation for emotional distress, as a result of any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, or the performance, breach, termination or validity thereof. Nothing herein shall preclude an award of compensatory or punitive damages against any other third party.

### **14. Injunctive Relief to Avoid Irreparable Injury**

(a) Executive acknowledges and agrees that the individualized services and capabilities that he will provide to the Company under this Agreement are of a personal, special, unique, unusual, extraordinary and intellectual character.

(b) Executive acknowledges and agrees that because the internet telephony and web communications industry is globally integrated and that its constituent companies are dependent for their survival on protection of their confidential information which is highly advanced and technical and on carefully developed knowledge of customer systems and requirements, the restrictions in this agreement are reasonable to protect the Company's rights under this Agreement and to safeguard the Company's and its Affiliates' Confidential Information.

(c) Executive acknowledges and agrees that the covenants and obligations of Executive with respect to noncompetition, nonsolicitation, confidentiality and Company property relate to special, unique and extraordinary matters and that a violation of any of the terms of such covenants and obligations will cause the Company and its Affiliates irreparable injury for which adequate remedies are not available at law. Executive therefore agrees that the Company shall be entitled to an order of specific performance, injunction, restraining order or such other interim or permanent equitable relief (without the requirement to post bond) restraining Executive from committing any violation of the covenants and obligations contained in this Agreement. Executive acknowledges and agrees that if any one or more of any part of such restrictions shall be rendered or judged invalid or unenforceable, such restriction or part shall be deemed to be severed from this Agreement and such invalidity or unenforceability shall not in any way affect the validity of the remaining provisions.

(d) These injunctive remedies are cumulative and are in addition to any other rights and remedies the Company may have at law or in equity.

### **15. Automatic Amendment by Court Order and Interim Enforcement**

(a) If the Arbitrator(s) or a court determines that, but for the provisions of this paragraph, any part of this agreement is illegal, void as against public policy or otherwise unenforceable, the relevant part will automatically be amended to the extent necessary to make it sufficiently narrow in scope, time and geographic area to be legally enforceable. All other terms will remain in full force and effect.

(b) If the Executive raises any question as to the enforceability of any part or terms of this agreement, including, without limitation, the provisions relating to noncompetition, nonsolicitation, confidentiality and Company property, the Executive specifically agrees that he will comply fully with this Agreement unless and until the entry of an arbitral award to the contrary.

### **16. Notices**

All notices and other communications required or permitted hereunder shall be sufficiently given if (a) delivered personally, (b) sent by facsimile transmission (with confirmation received), (c) sent by a nationally-recognized air courier assuring overnight delivery, or (d) mailed (by registered or certified mail, return receipt requested and postage prepaid) as follows:

If to the Executive, to the Executive at:

Paul White  
40 Oak Ridge Lane  
Milford CT 06460

If to the Company, to the Company at

deltathree, Inc.  
75 Broad St  
31<sup>th</sup> Floor  
New York, NY 10004  
Attention: Corporate Counsel

or to such other address as shall be furnished by notice from time to time by one party hereto to the other party. Any such communication shall be deemed to have been given, (i) in the case of personal delivery, on the date of delivery, (ii) in the case of delivery by air courier, on the first business day following the day on which such communication was posted, and (iii) in the case of mailing, on the third business day following the day on which such notice was posted.

**17. Sole and Entire Understanding; Amendments**

The entire understanding and agreement between the Company and Executive have been incorporated into this Agreement. There are no other agreements, promises, representations, understandings or inducements by the Company to Executive or Executive to the Company other than those specifically set forth in this Agreement. This Agreement may not be altered, amended or added to except in a single writing signed by the Company and the Executive.

**18. Waiver of Breach**

A waiver or breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, and any failure to enforce any provision hereof shall not operate as a waiver of such provision or of any other provision.

**19. Headings**

The headings of sections in this Agreement are for convenience only, are not a part of this Agreement and shall not affect the construction of the provisions of this Agreement.

**20. Arm's Length**

(a) This Agreement was entered into at arm's length, without duress or coercion, and is to be interpreted as an agreement between parties of equal bargaining strength. Both the Company and the Executive agree that this Agreement is clear and unambiguous as to its terms, and that no parole or other evidence will be used or admitted to alter or explain the terms of this Agreement, but that it will be interpreted based on the language within its four corners in accordance with the purposes for which it is entered into.

(b) The parties hereto expressly agree that any rule or contractual interpretation, as applied under California law or anywhere else, that would allow parole or extrinsic evidence to attempt to show fraud in the inducement or duress to contradict the plain, unambiguous terms of this Agreement shall not apply to this Agreement and its performance and enforcement. This provision is a material part of this Agreement and, should any party try to introduce evidence contrary to this provision, any other party shall be entitled to consider it a breach and to rescind this contract in full.

**21. Successors and Assigns**

(a) This Agreement will inure to the benefit of, and will be binding upon, the Company, its successors and assigns and upon the Executive and their heirs, successors and assigns; provided, however, that, because this is an Agreement for personal services, the Executive cannot assign any of their obligations under this Agreement to anyone else.

(b) This Agreement may be executed in counterparts, in which case each of the two counterparts will be deemed to be an original and the final counterpart shall be deemed to have been executed in New York, New York.

**22. New York Law Governs**

Any questions or other matters arising under this Agreement, whether of validity, interpretation, performance or otherwise, will therefore be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed in New York, without reference to principles of conflicts or choice of law under which the law of any other jurisdiction would apply.

**IN WITNESS WHEREOF**, this Agreement has been executed by Executive and then by the Company in New York, New York, on the dates shown below, but effective as of the date and year first above written.

Date: April 28, 2004

By: /s/ Paul C. White  
Executive

deltathree, Inc.

Date: April 28, 2004

By: /s/ Shimmy Zimels

Title: Chief Executive Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Shimmy Zimels, certify that:

1. I have reviewed this annual report on Form 10-K/A of deltathree, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 28, 2004

/s/ Shimmy Zimels  
Shimmy Zimels  
Title: Chief Executive Officer and President  
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Paul C. White, certify that:

1. I have reviewed this annual report on Form 10-K/A of deltathree, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 28, 2004

/s/ Paul C. White  
Paul C. White  
Title: Chief Financial Officer  
(Principal Financial Officer)