

# DATAWATCH CORP

## **FORM 8-K** (Current report filing)

Filed 12/06/17 for the Period Ending 12/01/17

Address	4 CROSBY DRIVE BEDFORD, MA, 01730
Telephone	978-441-2200
CIK	0000792130
Symbol	DWCH
SIC Code	7372 - Services-Prepackaged Software
Industry	Software
Sector	Technology
Fiscal Year	09/30

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported)

December 1, 2017

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**Datawatch Corporation**

(Exact Name of Registrant as Specified in Its Charter)

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**Delaware**

(State or Other Jurisdiction of Incorporation)

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**000-19960**

(Commission File Number)

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**02-0405716**

(IRS Employer Identification No.)

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**4 Crosby Drive  
Bedford, Massachusetts**

(Address of Principal Executive Offices)

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**01730**

(Zip Code)

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**(978) 441-2200**

(Registrant's Telephone Number, Including Area Code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions ( *see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

**(e) Compensatory Plans and Arrangements**

On December 1, 2017, the Board of Directors (the “**Board**”) of Datawatch Corporation (“**Datawatch**”) approved the fiscal 2018 Corporate Officers Compensation Plan (the “**2018 Compensation Plan**”), which provides for fiscal 2018 compensation for the executive officers of Datawatch, including base salary, performance-based cash bonuses and awards of restricted stock units for shares of Datawatch’s common stock (“**RSUs**”).

**Base Salary and Cash Bonuses**

The following table sets forth base salary and performance-based cash bonus eligibility amounts under the 2018 Compensation Plan for the executive officers of Datawatch:

<b>Name/Title</b>	<b>Base Salary (\$)</b>	<b>Aggregate Target Cash Bonus (\$)</b>	<b>Each Quarterly Bonus Eligibility at 90% Plan Revenue (\$)</b>	<b>Quarterly Bonus Eligibility at 100% Plan Revenue (\$)</b>	<b>Additional Bonus Eligibility at 105% Annual Revenue (\$)</b>	<b>Additional Bonus Eligibility at 125% Annual Revenue (\$)</b>
Michael A. Morrison, <i>Chief Executive Officer</i>	380,000	275,000	55,000	68,750	33,000	247,500
Ken Tacelli, <i>Chief Operating Officer</i>	350,000	250,000	n/a	n/a	n/a	n/a
James Eliason, <i>Chief Financial Officer</i>	315,000	140,000	28,000	35,000	16,800	126,000

For executives other than Mr. Tacelli, aggregate target cash bonus eligibility is split into four quarterly bonuses in equal target amounts that together represent 100% of the aggregate target cash bonus amount and are payable based on: (A) whether Datawatch achieves earnings before interest, taxes, severance, depreciation and amortization in excess of a certain threshold for such fiscal quarter (each such threshold amount as approved by the Board is referred to herein as the “**Quarterly EBITDA Threshold**”) and (B) only if such Quarterly EBITDA Threshold is met, the extent to which Datawatch achieves its revenue targets for the applicable fiscal quarter (each such quarterly revenue target referred to herein as the “**Quarterly Revenue Target**”, and each such quarterly bonus, a “**Quarterly Bonus**”). Each Quarterly Bonus will be payable only if Datawatch’s earnings before interest, taxes, severance, depreciation and amortization meets or exceeds the applicable Quarterly EBITDA Threshold. 100% of Mr. Tacelli’s cash bonus is commission-based, tied to monthly revenue and will be paid out monthly in arrears.

Quarterly Bonus Eligibility and Calculation

Each Quarterly Bonus is eligible for payout if Datawatch: (A) achieves the applicable Quarterly EBITDA Threshold and (B) achieves at least 90% of the applicable Quarterly Revenue Target. Assuming the applicable Quarterly EBITDA Threshold is met, Quarterly Bonus eligibility at performance representing 90% of the Quarterly Revenue Target is 80% of the Quarterly Bonus amount, with bonus eligibility scaling up at a 2 to 1 rate as performance improves above 90% to 100% of the applicable Quarterly Revenue Target. Quarterly Revenue achievement above 100% of each Quarterly Revenue Target will not result in additional payments above 100% of the applicable Quarterly Bonus amount.

### Additional Bonus Eligibility and Calculation

If Datawatch achieves year-to-date earnings before interest, taxes, severance, depreciation and amortization in excess of Datawatch's threshold for fiscal year 2018 (as such EBITDA threshold is determined by the Board, the " **Annual EBITDA Threshold** "), performance over 100% of Datawatch's revenue target for fiscal year 2018 (as such revenue target is determined by the Board, the " **Annual Revenue Target** ") will result in eligibility for additional cash bonus amounts calculated: (i) at a 2 to 1 rate as performance improves above 100% to 105% of the Annual Revenue Target and (ii) at a 4 to 1 rate as performance improves above 105% of the Annual Revenue Target. There is no cap on the amount of additional cash bonus amounts potentially payable as a result of Datawatch's performance relative to the Annual Revenue Target. For example, assuming the Annual EBITDA Threshold is met, (y) performance at 105% of the Annual Revenue Target will result in eligibility for an additional cash bonus amount equal to 10% of the applicable aggregate target cash bonus amount for such executive and (z) performance at 125% of the Annual Revenue Target will result in eligibility for an additional cash bonus amount equal to 90% of the applicable aggregate target cash bonus amount for such executive.

The Board retains the discretion at any time to change the above cash bonus criteria (including bonus amounts, Quarterly EBITDA Thresholds, Quarterly Revenue Targets, Annual EBITDA Threshold and Annual Revenue Target), including based on individual performance or in the event any operating changes (including acquisitions) are approved during the fiscal year that materially impact Datawatch's fiscal 2018 financial plan.

### **RSUs**

The following table sets forth the time-based RSUs (" **Time-Based RSUs** ") awarded to the executive officers of Datawatch on December 1, 2017:

<b>Executive</b>	<b>RSUs</b>
Michael Morrison, <i>Chief Executive Officer</i>	70,000
Ken Tacelli, <i>Chief Operating Officer</i>	40,000
James Eliason, <i>Chief Financial Officer</i>	35,000

All of the Time-Based RSUs awarded to each executive will vest in equal installments on May 1, 2019 and each of the first and second anniversaries of May 1, 2019. Vesting with respect to fifty percent (50%) of the then unvested portion of each such Time-Based RSU award shall be accelerated and vest in full immediately prior to the consummation of a change in control of Datawatch and the vesting with respect to one hundred percent (100%) of the then unvested portion of each such Time-Based RSU award shall be accelerated and vest in full if such executive officer is terminated without cause or resigns with good reason within 12 months after the consummation of a change in control of Datawatch.

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The following table sets forth the performance-based RSUs (“ **Performance-Based RSUs** ”) awarded to the executive officers of Datawatch on December 1, 2017:

<b>Executive</b>	<b>RSUs</b>
Michael Morrison, <i>Chief Executive Officer</i>	20,000
Ken Tacelli, <i>Chief Operating Officer</i>	15,000
James Eliason, <i>Chief Financial Officer</i>	5,000

Except for 10,000 Performance-Based RSUs awarded to Ken Tacelli, all of the Performance-Based RSUs awarded to each executive will vest as follows: one-third of such Performance-Based RSUs will vest on November 15, 2018 following Datawatch’s release of its fiscal 2018 earnings only if Datawatch achieves the Annual Revenue Target. If Datawatch achieves the Annual Revenue Target for fiscal 2018, the remaining two-thirds of such Performance-Based RSUs will vest in equal installments on the first and second anniversaries of November 15, 2018, provided the executive remains employed by Datawatch on these dates.

10,000 Performance-Based RSUs awarded to Ken Tacelli will vest as follows: one-third of such Performance-Based RSUs will vest on November 15, 2018 if Datawatch achieves its revenue target for the six months ended March 31, 2018 (the “ **1H Revenue Target** ”). If Datawatch achieves its 1H Revenue Target, the remaining two-thirds of such Performance-Based RSUs awarded to Mr. Tacelli will vest in equal installments on the first and second anniversaries of November 15, 2018, provided the executive remains employed by Datawatch on these dates.

Vesting with respect to fifty percent (50%) of the then unvested portion of each Performance-Based RSU award shall be accelerated and vest in full immediately prior to the consummation of a change in control of Datawatch and the vesting with respect to one hundred percent (100%) of the then unvested portion of each Performance-Based RSU award shall be accelerated and vest in full if such executive officer is terminated without cause or resigns with good reason within 12 months after the consummation of a change in control of Datawatch.

#### ***Amendments to Executive Agreements***

On December 1, 2017, Datawatch entered into amended and restated executive severance agreements (the “ **Restated Executive Agreements** ”) with Michael Morrison, James Eliason and Ken Tacelli. Each Restated Executive Agreement provides that in the event that Datawatch terminates such executive’s employment for reasons other than for “Cause” (as defined in each Restated Executive Agreement) or such executive elects to terminate his employment with Datawatch for “Good Reason” (each such termination, a “ **Severance Trigger Event** ”) such executive is entitled to severance payments equal in the aggregate to his then current annual base salary, payable on a monthly basis for twelve months, in the case of Mr. Morrison, and six months, in the case of Mr. Eliason and Mr. Tacelli, following such executive’s termination date (the “ **Severance Payments** ”). If a Severance Trigger Event occurs within twelve months after a “Change in Control” of Datawatch (as defined in the Restated Executive Agreements), the Restated Executive Agreements extend Severance Payments for an additional six months following the payment of all Severance Payments resulting from the Severance Trigger Event.

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For the duration of the applicable severance period, each executive is also entitled to a taxable monthly payment in an amount equal to Datawatch's share of such executive's monthly premium for group medical and dental coverage that is in effect immediately prior to termination (the " **Benefits Coverage** "). Pursuant to Mr. Eliason's Restated Executive Agreement, he is entitled to Benefits Coverage for a period of eighteen months, whether or not a Severance Trigger Event occurs within twelve months after a Change in Control of Datawatch.

The Restated Executive Agreements each provide that if any of the Severance Payments and other benefits provided for in the Restated Executive Agreements or otherwise payable to the executives (" **280G Payments** ") constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code and could be subject to excise tax under Section 4999 of the Internal Revenue Code, then the 280G Payments will be delivered in full or delivered as to such lesser extent which would result in no portion of such benefits being subject to excise tax, whichever results in the greater amount of after-tax benefits to such executive.

A copy of each Restated Executive Agreement, each dated as of December 1, 2017, is attached hereto as Exhibit 10.1, 10.2 and 10.3, respectively, and are incorporated herein by reference. The description of the Restated Executive Agreements contained in this Current Report on Form 8-K is qualified in its entirety by reference to such document.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

The following Exhibit is furnished as part of this report:

<b>Exhibit No.</b>	<b>Description</b>
<a href="#"><u>10.1</u></a>	<a href="#"><u>Amended and Restated Severance Agreement, dated as of December 1, 2017, by and between Michael Morrison and Datawatch Corporation.</u></a>
<a href="#"><u>10.2</u></a>	<a href="#"><u>Amended and Restated Severance Agreement, dated as of December 1, 2017, by and between James Eliason and Datawatch Corporation.</u></a>
<a href="#"><u>10.3</u></a>	<a href="#"><u>Amended and Restated Severance Agreement, dated as of December 1, 2017, by and between Ken Tacelli and Datawatch Corporation.</u></a>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**DATAWATCH CORPORATION**

By: /s/ James Eliason  
Name: James Eliason  
Title: Chief Financial Officer

Date: December 6, 2017

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## EXHIBIT INDEX

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<a href="#"><u>10.3</u></a>	<a href="#"><u>Amended and Restated Severance Agreement, dated as of December 1, 2017, by and between Ken Tacelli and Datawatch Corporation.</u></a>

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December 1, 2017

Mr. Michael A. Morrison  
7 Overlook Drive  
Groton, MA 01450

Dear Michael:

The purpose of this letter is to memorialize the terms of your eligibility for severance with Datawatch Corporation (the "Company") in the event that you are involuntarily terminated by the Company or a successor to the Company without Cause (as defined in Paragraph 4 below), or if you terminate your employment with the Company for Good Reason (as defined in Paragraph 3 below). This letter amends, restates and replaces in its entirety the letter agreement, dated as of April 23, 2013, by and between you and the Company (the "Prior Agreement").

1. As an at-will employee, either you or the Company may terminate your employment at any time for any or no reason with or without notice. Neither this letter nor its terms constitute a contract for continued employment or a contract for a specific term of employment. Instead, this letter sets forth the terms of our agreement with respect to your eligibility for severance.

2. For purposes of this Agreement, a "Change in Control" means the occurrence of any of the following events:

(a) The Company is merged or consolidated or reorganized into or with another corporation or other legal person, and as a result of such merger, consolidation or reorganization less than a majority of the combined voting power of the then-outstanding securities of such surviving, resulting or reorganized corporation or person immediately after such transaction is held in the aggregate by the holders of the then-outstanding securities entitled to vote generally in the election of directors of the Company ("Voting Stock") immediately prior to such transaction;

(b) The Company sells or otherwise transfers all or substantially all of its assets to any other corporation or other legal person, and as a result of such sale or transfer less than a majority of the combined voting power of the then-outstanding securities of such corporation or person immediately after such sale or transfer is held in the aggregate by the holders of Voting Stock of the Company immediately prior to such sale or transfer;

(c) There is a report filed on Schedule 13D or Schedule 14D 1 (or any successor schedule, form or report), each as promulgated pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), disclosing that any "person" (as such term is used in Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) has become the "beneficial owner" (as such term is used in Rule 13d-3 under the Exchange Act) of securities representing 50% or more of the Voting Stock of the Company;

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(d) The Company files a report or proxy statement with the Securities and Exchange Commission pursuant to the Exchange Act disclosing in response to Form 8 K or Schedule 14A (or any successor schedule, form or report or item therein) that a change in control of the Company has occurred; or

(e) If during any period of two consecutive years, individuals who at the beginning of any such period constitute the Board cease for any reason to constitute at least a majority thereof, unless the election, or the nomination for election by the Company's stockholders, of each director of the Company first elected during such period was approved by a vote of at least a majority of the directors then still in office who were directors of the Company at the beginning of any such period; provided, however, that a "Change in Control" shall not be deemed to have occurred for purposes of this Agreement solely because (x) the Company, (y) an entity in which the Company directly or indirectly beneficially owns 50% or more of the voting securities, or (z) any Company-sponsored employee stock ownership plan or any other employee benefit plan of the Company, either files or becomes obligated to file a report or a proxy statement under or in response to Schedule 13D, Schedule 14D-1, Form 8-K or Schedule 14A (or any successor schedule, form or report) under the Exchange Act, disclosing beneficial ownership by it of shares of Voting Stock or because the Company reports that a change in control of the Company has occurred by reason of such beneficial ownership.

3. In the event that you voluntarily terminate your employment with the Company at your own election and without Good Reason, you shall be entitled to no severance. For the purpose of this Agreement, "Good Reason" is defined as (i) a material diminution in the nature or scope of your responsibilities, duties or authority; provided, however, that the transfer of certain job responsibilities, or the assignment to others of your duties and responsibilities while you are out of work due to a disability or on a leave of absence for any reason, shall not constitute a material diminution in the nature or scope of the your responsibilities, duties or authority as set forth in this Paragraph, (ii) a material diminution in your annual salary rate, or (iii) a change in the geographic location where you are required to perform services or at which you are principally employed to a geographic location more than 50 miles from the Company's current corporate headquarters in Bedford, Massachusetts.

4. In the event that the Company terminates your employment for "Cause," you shall be entitled to no severance. Termination by the Company shall constitute a termination for Cause under this Paragraph 4 if such termination is for one or more of the following reasons:

- (a) the willful and continuing failure or refusal by you to render services to the Company in accordance with your obligations to the Company;
  - (b) gross negligence, dishonesty, breach of fiduciary duty or breach of the terms of any other agreements executed in connection herewith;
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(c) the commission by you of an act of fraud, embezzlement or substantial disregard of the rules or policies of the Company;

(d) acts which, in the judgment of the Board of Directors, would tend to generate significant adverse publicity toward the Company;

(e) the commission, or plea of nolo contendere, by you of a felony; or

(f) a breach by you of the terms of the Proprietary Information, Inventions and Non-Competition Agreement executed by you.

5. (a) In the event that the Company or any successor company terminates your employment for any reason other than those stated in Paragraph 4 above or if you terminate your employment for Good Reason as defined in Paragraph 3, and you sign a comprehensive release in the form, and of a scope, acceptable to the Company (the "Release"), the Company will pay you severance payments in equal monthly installments at your then monthly base salary for twelve months following your termination (the "Primary Severance Period"). Such payments shall be made in accordance with the Company's customary payroll practices and shall be subject to all applicable federal and state withholding, payroll and other taxes.

(b) If, within the twelve month period immediately following a Change in Control, (i) the Company or any successor company terminates your employment for any reason other than those stated in Paragraph 4 above or (ii) you terminate your employment for Good Reason as defined in Paragraph 3, and you sign a Release, the Company will pay you severance payments in equal monthly installments at your then monthly base salary for an additional six months following your termination (the "CIC Severance Period" and, together with the Primary Severance Period, collectively, the "Severance Period"). For the avoidance of doubt, the payment of any amounts owed to you under this Paragraph 5(b) shall be in addition to, and not in substitution of, the payments that would also be owed to you pursuant to Paragraph 5(a).

(c) Any payments pursuant to this Paragraph 5 shall be made in accordance with the Company's customary payroll practices and shall be subject to all applicable federal and state withholding, payroll and other taxes.

(d) For the duration of the applicable Severance Period, the Company shall also pay to you a taxable monthly payment (the "Taxable Payments") in an amount equal to the Company's share of your monthly premium for group medical and dental coverage that is in effect immediately prior to termination of your employment. For the avoidance of doubt, the Taxable Payments may be used by you for any purpose, including, but not limited to continuation of your medical and dental coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), for which you shall be eligible immediately following termination of your employment, subject to the terms and conditions applicable to COBRA coverage.

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(e) If you breach your post-employment obligations under your Proprietary Information Inventions and Non-Competition Agreement, the Company may immediately cease payment of all severance and/or benefits described in this Agreement. This cessation of severance and/or benefits shall be in addition to, and not as an alternative to, any other remedies in law or in equity available to the Company, including the right to seek specific performance or an injunction.

6. (a) Notwithstanding any other provision of this Agreement or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits provided or to be provided by the Company to you or for your benefit pursuant to the terms of this Agreement or otherwise (“Covered Payments”) constitute parachute payments (“Parachute Payments”) within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “Code”), and would, but for this Paragraph 6 be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (collectively, the “Excise Tax”), then prior to making the Covered Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) to you of the Covered Payments after payment of the Excise Tax to (ii) the Net Benefit to you if the Covered Payments are limited to the extent necessary to avoid being subject to the Excise Tax. Only if the amount calculated under subparagraph (i) above is less than the amount under subparagraph (ii) above will the Covered Payments be reduced to the minimum extent necessary to ensure that no portion of the Covered Payments is subject to the Excise Tax (that amount, the “Reduced Amount”). For purposes of this Agreement, “Net Benefit” shall mean the present value of the Covered Payments net of all federal, state, local, foreign income, employment and excise taxes.

(b) Any such reduction shall be made in accordance with Section 409A of the Code and the following: (i) the Covered Payments which do not constitute nonqualified deferred compensation subject to Section 409A of the Code shall be reduced first; and (ii) all other Covered Payments shall then be reduced as follows: (A) cash payments shall be reduced before non-cash payments; and (B) payments to be made on a later payment date shall be reduced before payments to be made on an earlier payment date.

(c) Any determination required under this Paragraph 6, including whether any payments or benefits are parachute payments, shall be made by the Company in its sole discretion. You shall provide the Company with such information and documents as the Company may reasonably request in order to make a determination under this Paragraph 6. The Company's determination shall be final and binding on you.

(d) It is possible that after the determinations and selections made pursuant to this Paragraph 6, you will receive Covered Payments that are in the aggregate more than the amount provided under this Paragraph 6 (“Overpayment”) or less than the amount provided under this Paragraph 6 (“Underpayment”). In the event that it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding that has been finally and conclusively resolved that an Overpayment has been made, then you shall pay any such Overpayment to the Company. In the event that a court of competent jurisdiction determines that an Underpayment has occurred, any such Underpayment will be paid promptly by the Company to or for the benefit of you.

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7. The terms of this agreement constitute the entire understanding relating to your employment and supersede and cancel all agreements, written or oral, made prior to the date hereof between you and the Company relating to your employment with the Company (including, without limitation, the Prior Agreement); provided, however, that nothing herein shall be deemed to limit or terminate the provisions of Proprietary Information, Inventions and Non-Competition Agreement executed by you or in any manner alter the terms of any Restricted Stock Unit Agreements entered into between you and the Company.

8. This Agreement, the employment relationship contemplated herein and any claim arising from such relationship, whether or not arising under this Agreement, shall be governed by and construed in accordance with the internal laws of Massachusetts, without giving effect to the principles of choice of law or conflicts of law of Massachusetts and this Agreement shall be deemed to be performable in Massachusetts. Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under this Agreement) shall be commenced or maintained in any state or federal court located in Massachusetts, and Executive hereby submits to the jurisdiction and venue of any such court.

9. No waiver by either party of any breach by the other or any provision hereof shall be deemed to be a waiver of any later or other breach thereof or as a waiver of any other provision of this Agreement. This Agreement and its terms may not be waived, changed, discharged or terminated orally or by any course of dealing between the parties, but only by an instrument in writing signed by the party against whom any waiver, change, discharge or termination is sought. No modification or waiver by the Company shall be effective without the consent of the Board of Directors then in office at the time of such modification or waiver.

10. You acknowledge that the services to be rendered by you to the Company are unique and personal in nature. Accordingly, you may not assign any of your rights or delegate any of your duties or obligations under this Agreement. The rights and obligations of the Company under this Agreement may be assigned by the Company and shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Company.

[ *Remainder of page intentionally left blank.* ]

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If this letter correctly states the understanding we have reached, please indicate your acceptance by countersigning the enclosed copy and returning it to me.

Very truly yours,

DATAWATCH CORPORATION

/s/ James Eliason

James Eliason  
Chief Financial Officer

YOU REPRESENT THAT YOU HAVE READ THE FOREGOING AGREEMENT, THAT YOU FULLY UNDERSTAND THE TERMS AND CONDITIONS OF SUCH AGREEMENT AND THAT YOU ARE VOLUNTARILY EXECUTING THE SAME.

ACCEPTED:

/s/ Michael A. Morrison

Michael A. Morrison

December 1, 2017

Date

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December 1, 2017

Mr. James Eliason  
3 Karen Drive  
Bedford, MA 01730

Dear James:

The purpose of this letter is to memorialize the terms of your eligibility for severance with Datawatch Corporation (the "Company") in the event that you are involuntarily terminated by the Company or a successor to the Company without Cause (as defined in Paragraph 4 below), or if you terminate your employment with the Company for Good Reason (as defined in Paragraph 3 below). This letter amends, restates and replaces in its entirety the letter agreement, dated as of April 23, 2013, by and between you and the Company (the "Prior Agreement").

1. As an at-will employee, either you or the Company may terminate your employment at any time for any or no reason with or without notice. Neither this letter nor its terms constitute a contract for continued employment or a contract for a specific term of employment. Instead, this letter sets forth the terms of our agreement with respect to your eligibility for severance.

2. For purposes of this Agreement, a "Change in Control" means the occurrence of any of the following events:

(a) The Company is merged or consolidated or reorganized into or with another corporation or other legal person, and as a result of such merger, consolidation or reorganization less than a majority of the combined voting power of the then-outstanding securities of such surviving, resulting or reorganized corporation or person immediately after such transaction is held in the aggregate by the holders of the then-outstanding securities entitled to vote generally in the election of directors of the Company ("Voting Stock") immediately prior to such transaction;

(b) The Company sells or otherwise transfers all or substantially all of its assets to any other corporation or other legal person, and as a result of such sale or transfer less than a majority of the combined voting power of the then-outstanding securities of such corporation or person immediately after such sale or transfer is held in the aggregate by the holders of Voting Stock of the Company immediately prior to such sale or transfer;

(c) There is a report filed on Schedule 13D or Schedule 14D-1 (or any successor schedule, form or report), each as promulgated pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), disclosing that any "person" (as such term is used in Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) has become the "beneficial owner" (as such term is used in Rule 13d-3 under the Exchange Act) of securities representing 50% or more of the Voting Stock of the Company;

(d) The Company files a report or proxy statement with the Securities and Exchange Commission pursuant to the Exchange Act disclosing in response to Form 8-K or Schedule 14A (or any successor schedule, form or report or item therein) that a change in control of the Company has occurred; or

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(e) If during any period of two consecutive years, individuals who at the beginning of any such period constitute the Board cease for any reason to constitute at least a majority thereof, unless the election, or the nomination for election by the Company's stockholders, of each director of the Company first elected during such period was approved by a vote of at least a majority of the directors then still in office who were directors of the Company at the beginning of any such period; provided, however, that a "Change in Control" shall not be deemed to have occurred for purposes of this Agreement solely because (x) the Company, (y) an entity in which the Company directly or indirectly beneficially owns 50% or more of the voting securities, or (z) any Company-sponsored employee stock ownership plan or any other employee benefit plan of the Company, either files or becomes obligated to file a report or a proxy statement under or in response to Schedule 13D, Schedule 14D-1, Form 8-K or Schedule 14A (or any successor schedule, form or report) under the Exchange Act, disclosing beneficial ownership by it of shares of Voting Stock or because the Company reports that a change in control of the Company has occurred by reason of such beneficial ownership.

3. In the event that you voluntarily terminate your employment with the Company at your own election and without Good Reason, you shall be entitled to no severance. For the purpose of this Agreement, "Good Reason" is defined as (i) a material diminution in the nature or scope of your responsibilities, duties or authority; provided, however, that the transfer of certain job responsibilities, or the assignment to others of your duties and responsibilities while you are out of work due to a disability or on a leave of absence for any reason, shall not constitute a material diminution in the nature or scope of your responsibilities, duties or authority as set forth in this Paragraph, (ii) a material diminution in your annual salary rate, or (iii) a change in the geographic location where you are required to perform services or at which you are principally employed to a geographic location more than 50 miles from the Company's current corporate headquarters in Bedford, Massachusetts.

4. In the event that the Company terminates your employment for "Cause," you shall be entitled to no severance. Termination by the Company shall constitute a termination for Cause under this Paragraph 4 if such termination is for one or more of the following reasons:

- (a) the willful and continuing failure or refusal by you to render services to the Company in accordance with your obligations to the Company;
  - (b) gross negligence, dishonesty, breach of fiduciary duty or breach of the terms of any other agreements executed in connection herewith;
  - (c) the commission by you of an act of fraud, embezzlement or substantial disregard of the rules or policies of the Company;
  - (d) acts which, in the judgment of the Board of Directors, would tend to generate significant adverse publicity toward the Company;
  - (e) the commission, or plea of *nolo contendere*, by you of a felony; or
  - (f) a breach by you of the terms of the Proprietary Information, Inventions and Non-Competition Agreement executed by you.
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5. (a) In the event that the Company or any successor company terminates your employment for any reason other than those stated in Paragraph 4 above or if you terminate your employment for Good Reason as defined in Paragraph 3, and you sign a comprehensive release in the form, and of a scope, acceptable to the Company (the "Release"), the Company will pay you severance payments in equal monthly installments at your then monthly base salary for six months following your termination (the "Primary Severance Period"). Such payments shall be made in accordance with the Company's customary payroll practices and shall be subject to all applicable federal and state withholding, payroll and other taxes.
- (b) If, within the twelve-month period immediately following a Change in Control, (i) the Company or any successor company terminates your employment for any reason other than those stated in Paragraph 4 above or (ii) you terminate your employment for Good Reason as defined in Paragraph 3, and you sign a Release, the Company will pay you severance payments in equal monthly installments at your then monthly base salary for an additional six months following your termination (the "CIC Severance Period" and, together with the Primary Severance Period, collectively, the "Severance Period"). For the avoidance of doubt, the payment of any amounts owed to you under this Paragraph 5(b) shall be in addition to, and not in substitution of, the payments that would also be owed to you pursuant to Paragraph 5(a).
- (c) Any payments pursuant to this Paragraph 5 shall be made in accordance with the Company's customary payroll practices and shall be subject to all applicable federal and state withholding, payroll and other taxes.
- (d) For the duration of the Primary Severance Period and for a period of twelve (12) months thereafter, the Company shall also pay to you a taxable monthly payment (the "Taxable Payments") in an amount equal to the Company's share of your monthly premium for group medical and dental coverage that is in effect immediately prior to termination of your employment. For the avoidance of doubt, the Taxable Payments may be used by you for any purpose, including, but not limited to continuation of your medical and dental coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), for which you shall be eligible immediately following termination of your employment, subject to the terms and conditions applicable to COBRA coverage.
- (e) If you breach your post-employment obligations under your Proprietary Information Inventions and Non-Competition Agreement, the Company may immediately cease payment of all severance and/or benefits described in this Agreement. This cessation of severance and/or benefits shall be in addition to, and not as an alternative to, any other remedies in law or in equity available to the Company, including the right to seek specific performance or an injunction.
6. (a) Notwithstanding any other provision of this Agreement or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits provided or to be provided by the Company to you or for your benefit pursuant to the terms of this Agreement or otherwise ("Covered Payments") constitute parachute payments ("Parachute Payments") within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and would, but for this Paragraph 6 be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (collectively, the "Excise Tax"), then prior to making the Covered Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) to you of the Covered Payments after payment of the Excise Tax to (ii) the Net Benefit to you if the Covered Payments are limited to the extent necessary to avoid being subject to the Excise Tax. Only if the amount calculated under subparagraph (i) above is less than the amount under subparagraph (ii) above will the Covered Payments be reduced to the minimum extent necessary to ensure that no portion of the Covered Payments is subject to the Excise Tax (that amount, the "Reduced Amount"). For purposes of this Agreement, "Net Benefit" shall mean the present value of the Covered Payments net of all federal, state, local, foreign income, employment and excise taxes.
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(b) Any such reduction shall be made in accordance with Section 409A of the Code and the following: (i) the Covered Payments which do not constitute nonqualified deferred compensation subject to Section 409A of the Code shall be reduced first; and (ii) all other Covered Payments shall then be reduced as follows: (A) cash payments shall be reduced before non-cash payments; and (B) payments to be made on a later payment date shall be reduced before payments to be made on an earlier payment date.

(c) Any determination required under this Paragraph 6, including whether any payments or benefits are parachute payments, shall be made by the Company in its sole discretion. You shall provide the Company with such information and documents as the Company may reasonably request in order to make a determination under this Paragraph 6. The Company's determination shall be final and binding on you.

(d) It is possible that after the determinations and selections made pursuant to this Paragraph 6, you will receive Covered Payments that are in the aggregate more than the amount provided under this Paragraph 6 ("Overpayment") or less than the amount provided under this Paragraph 6 ("Underpayment"). In the event that it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding that has been finally and conclusively resolved that an Overpayment has been made, then you shall pay any such Overpayment to the Company. In the event that a court of competent jurisdiction determines that an Underpayment has occurred, any such Underpayment will be paid promptly by the Company to or for the benefit of you.

7. The terms of this agreement constitute the entire understanding relating to your employment and supersede and cancel all agreements, written or oral, made prior to the date hereof between you and the Company relating to your employment with the Company (including, without limitation, the Prior Agreement and any offer letter between you and the Company); provided, however, that nothing herein shall be deemed to limit or terminate the provisions of Proprietary Information, Inventions and Non-Competition Agreement executed by you or in any manner alter the terms of any Restricted Stock Unit Agreement entered into between you and the Company.

8. This Agreement, the employment relationship contemplated herein and any claim arising from such relationship, whether or not arising under this Agreement, shall be governed by and construed in accordance with the internal laws of Massachusetts, without giving effect to the principles of choice of law or conflicts of law of Massachusetts and this Agreement shall be deemed to be performable in Massachusetts. Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under this Agreement) shall be commenced or maintained in any state or federal court located in Massachusetts, and Executive hereby submits to the jurisdiction and venue of any such court.

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9. No waiver by either party of any breach by the other or any provision hereof shall be deemed to be a waiver of any later or other breach thereof or as a waiver of any other provision of this Agreement. This Agreement and its terms may not be waived, changed, discharged or terminated orally or by any course of dealing between the parties, but only by an instrument in writing signed by the party against whom any waiver, change, discharge or termination is sought. No modification or waiver by the Company shall be effective without the consent of the Board of Directors then in office at the time of such modification or waiver.

10. You acknowledge that the services to be rendered by you to the Company are unique and personal in nature. Accordingly, you may not assign any of your rights or delegate any of your duties or obligations under this Agreement. The rights and obligations of the Company under this Agreement may be assigned by the Company and shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Company.

*[ Remainder of page intentionally left blank. ]*

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If this letter correctly states the understanding we have reached, please indicate your acceptance by countersigning the enclosed copy and returning it to me.

Very truly yours,

DATAWATCH CORPORATION

/s/ Michael A. Morrison

Michael A. Morrison  
Chief Executive Officer

YOU REPRESENT THAT YOU HAVE READ THE FOREGOING AGREEMENT, THAT YOU FULLY UNDERSTAND THE TERMS AND CONDITIONS OF SUCH AGREEMENT AND THAT YOU ARE VOLUNTARILY EXECUTING THE SAME.

ACCEPTED:

/s/ James Eliason  
James Eliason

December 1, 2017  
Date

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December 1, 2017

Ken Tacelli  
via Echosign

Dear Ken,

The purpose of this letter is to memorialize the terms of your eligibility for severance with Datawatch Corporation (the “Company”) in the event that you are involuntarily terminated by the Company or a successor to the Company without Cause (as defined in Paragraph 4 below), or if you terminate your employment with the Company for Good Reason (as defined in Paragraph 3 below). This letter amends, restates and replaces in its entirety the letter agreement, dated as of July 25, 2016, by and between you and the Company (the “Prior Agreement”).

1. As an at-will employee, either you or the Company may terminate your employment at any time for any or no reason with or without notice. Neither this letter nor its terms constitute a contract for continued employment or a contract for a specific term of employment. Instead, this letter sets forth the terms of our agreement with respect to your eligibility for severance.

2. For purposes of this Agreement, a “Change in Control” means the occurrence of any of the following events:

(a) The Company is merged or consolidated or reorganized into or with another corporation or other legal person, and as a result of such merger, consolidation or reorganization less than a majority of the combined voting power of the then-outstanding securities of such surviving, resulting or reorganized corporation or person immediately after such transaction is held in the aggregate by the holders of the then-outstanding securities entitled to vote generally in the election of directors of the Company (“Voting Stock”) immediately prior to such transaction;

(b) The Company sells or otherwise transfers all or substantially all of its assets to any other corporation or other legal person, and as a result of such sale or transfer less than a majority of the combined voting power of the then-outstanding securities of such corporation or person immediately after such sale or transfer is held in the aggregate by the holders of Voting Stock of the Company immediately prior to such sale or transfer;

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(c) There is a report filed on Schedule 13D or Schedule 14D-1 (or any successor schedule, form or report), each as promulgated pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), disclosing that any "person" (as such term is used in Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) has become the "beneficial owner" (as such term is used in Rule 13d-3 under the Exchange Act) of securities representing 50% or more of the Voting Stock of the Company;

(d) The Company files a report or proxy statement with the Securities and Exchange Commission pursuant to the Exchange Act disclosing in response to Form 8-K or Schedule 14A (or any successor schedule, form or report or item therein) that a change in control of the Company has occurred; or

(e) If during any period of two consecutive years, individuals who at the beginning of any such period constitute the Board cease for any reason to constitute at least a majority thereof, unless the election, or the nomination for election by the Company's stockholders, of each director of the Company first elected during such period was approved by a vote of at least a majority of the directors then still in office who were directors of the Company at the beginning of any such period; provided, however, that a "Change in Control" shall not be deemed to have occurred for purposes of this Agreement solely because (x) the Company, (y) an entity in which the Company directly or indirectly beneficially owns 50% or more of the voting securities, or (z) any Company-sponsored employee stock ownership plan or any other employee benefit plan of the Company, either files or becomes obligated to file a report or a proxy statement under or in response to Schedule 13D, Schedule 14D-1, Form 8-K or Schedule 14A (or any successor schedule, form or report) under the Exchange Act, disclosing beneficial ownership by it of shares of Voting Stock or because the Company reports that a change in control of the Company has occurred by reason of such beneficial ownership.

3. In the event that you voluntarily terminate your employment with the Company at your own election and without Good Reason, you shall be entitled to no severance. For the purpose of this Agreement, "Good Reason" is defined as (i) a material diminution in the nature or scope of your responsibilities, duties or authority; provided, however, that the transfer of certain job responsibilities, or the assignment to others of your duties and responsibilities while you are out of work due to a disability or on a leave of absence for any reason, shall not constitute a material diminution in the nature or scope of the your responsibilities, duties or authority as set forth in this Paragraph, (ii) a material diminution in your annual salary rate, or (iii) a change in the geographic location where you are required to perform services or at which you are principally employed to a geographic location more than 50 miles from the Company's current corporate headquarters in Bedford, Massachusetts.

4. In the event that the Company terminates your employment for "Cause," you shall be entitled to no severance. Termination by the Company shall constitute a termination for Cause under this Paragraph 4 if such termination is for one or more of the following reasons:

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- (a) the willful and continuing failure or refusal by you to render services to the Company in accordance with your obligations to the Company;
  - (b) gross negligence, dishonesty, breach of fiduciary duty or breach of the terms of any other agreements executed in connection herewith;
  - (c) the commission by you of an act of fraud, embezzlement or substantial disregard of the rules or policies of the Company;
  - (d) acts which, in the judgment of the Board of Directors, would tend to generate significant adverse publicity toward the Company;
  - (e) the commission, or plea of *nolo contendere*, by you of a felony; or
  - (f) a breach by you of the terms of the Proprietary Information, Inventions and Non-Competition Agreement executed by you.
5. (a) In the event that the Company or any successor company terminates your employment for any reason other than those stated in Paragraph 4 above or if you terminate your employment for Good Reason as defined in Paragraph 3, and you sign a comprehensive release in the form, and of a scope, acceptable to the Company (the "Release"), the Company will pay you severance payments in equal monthly installments at your then monthly base salary for six months following your termination (the "Primary Severance Period"). Such payments shall be made in accordance with the Company's customary payroll practices and shall be subject to all applicable federal and state withholding, payroll and other taxes.
- (b) If, within the twelve-month period immediately following a Change in Control, (i) the Company or any successor company terminates your employment for any reason other than those stated in Paragraph 4 above or (ii) you terminate your employment for Good Reason as defined in Paragraph 3, and you sign a Release, the Company will pay you severance payments in equal monthly installments at your then monthly base salary for an additional six months following your termination (the "CIC Severance Period" and, together with the Primary Severance Period, collectively, the "Severance Period"). For the avoidance of doubt, the payment of any amounts owed to you under this Paragraph 5(b) shall be in addition to, and not in substitution of, the payments that would also be owed to you pursuant to Paragraph 5(a).
- (c) Any payments pursuant to this Paragraph 5 shall be made in accordance with the Company's customary payroll practices and shall be subject to all applicable federal and state withholding, payroll and other taxes.

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(d) For the duration of the applicable Severance Period, the Company shall also pay to you a taxable monthly payment (the “Taxable Payments”) in an amount equal to the Company’s share of your monthly premium for group medical and dental coverage that is in effect immediately prior to termination of your employment. For the avoidance of doubt, the Taxable Payments may be used by you for any purpose, including, but not limited to continuation of your medical and dental coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), for which you shall be eligible immediately following termination of your employment, subject to the terms and conditions applicable to COBRA coverage.

(e) If you breach your post-employment obligations under your Proprietary Information Inventions and Non-Competition Agreement, the Company may immediately cease payment of all severance and/or benefits described in this Agreement. This cessation of severance and/or benefits shall be in addition to, and not as an alternative to, any other remedies in law or in equity available to the Company, including the right to seek specific performance or an injunction.

6. (a) Notwithstanding any other provision of this Agreement or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits provided or to be provided by the Company to you or for your benefit pursuant to the terms of this Agreement or otherwise (“Covered Payments”) constitute parachute payments (“Parachute Payments”) within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “Code”), and would, but for this Paragraph 6 be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (collectively, the “Excise Tax”), then prior to making the Covered Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) to you of the Covered Payments after payment of the Excise Tax to (ii) the Net Benefit to you if the Covered Payments are limited to the extent necessary to avoid being subject to the Excise Tax. Only if the amount calculated under subparagraph (i) above is less than the amount under subparagraph (ii) above will the Covered Payments be reduced to the minimum extent necessary to ensure that no portion of the Covered Payments is subject to the Excise Tax (that amount, the “Reduced Amount”). For purposes of this Agreement, “Net Benefit” shall mean the present value of the Covered Payments net of all federal, state, local, foreign income, employment and excise taxes.

(b) Any such reduction shall be made in accordance with Section 409A of the Code and the following: (i) the Covered Payments which do not constitute nonqualified deferred compensation subject to Section 409A of the Code shall be reduced first; and (ii) all other Covered Payments shall then be reduced as follows: (A) cash payments shall be reduced before non-cash payments; and (B) payments to be made on a later payment date shall be reduced before payments to be made on an earlier payment date.

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(c) Any determination required under this Paragraph 6, including whether any payments or benefits are parachute payments, shall be made by the Company in its sole discretion. You shall provide the Company with such information and documents as the Company may reasonably request in order to make a determination under this Paragraph 6. The Company's determination shall be final and binding on you.

(d) It is possible that after the determinations and selections made pursuant to this Paragraph 6, you will receive Covered Payments that are in the aggregate more than the amount provided under this Paragraph 6 ("Overpayment") or less than the amount provided under this Paragraph 6 ("Underpayment"). In the event that it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding that has been finally and conclusively resolved that an Overpayment has been made, then you shall pay any such Overpayment to the Company. In the event that a court of competent jurisdiction determines that an Underpayment has occurred, any such Underpayment will be paid promptly by the Company to or for the benefit of you.

7. The terms of this agreement constitute the entire understanding relating to your employment and supersede and cancel all agreements, written or oral, made prior to the date hereof between you and the Company relating to your employment with the Company (including, without limitation, the Prior Agreement); provided, however, that nothing herein shall be deemed to limit or terminate the provisions of Proprietary Information, Inventions and Non-Competition Agreement executed by you or in any manner alter the terms of any Restricted Stock Unit Agreement entered into between you and the Company.

8. This Agreement, the employment relationship contemplated herein and any claim arising from such relationship, whether or not arising under this Agreement, shall be governed by and construed in accordance with the internal laws of Massachusetts, without giving effect to the principles of choice of law or conflicts of law of Massachusetts and this Agreement shall be deemed to be performable in Massachusetts. Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under this Agreement) shall be commenced or maintained in any state or federal court located in Massachusetts, and Executive hereby submits to the jurisdiction and venue of any such court.

9. No waiver by either party of any breach by the other or any provision hereof shall be deemed to be a waiver of any later or other breach thereof or as a waiver of any other provision of this Agreement. This Agreement and its terms may not be waived, changed, discharged or terminated orally or by any course of dealing between the parties, but only by an instrument in writing signed by the party against whom any waiver, change, discharge or termination is sought. No modification or waiver by the Company shall be effective without the consent of the Board of Directors then in office at the time of such modification or waiver.

10. You acknowledge that the services to be rendered by you to the Company are unique and personal in nature. Accordingly, you may not assign any of your rights or delegate any of your duties or obligations under this Agreement. The rights and obligations of the Company under this Agreement may be assigned by the Company and shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Company.

*[ Remainder of page intentionally left blank. ]*

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If this letter correctly states the understanding we have reached, please indicate your acceptance by countersigning the enclosed copy and returning it to me.

Very truly yours,

DATAWATCH CORPORATION

/s/ Brigid MacDonald

Brigid MacDonald

Vice President Human Resources

YOU REPRESENT THAT YOU HAVE READ THE FOREGOING AGREEMENT, THAT YOU FULLY UNDERSTAND THE TERMS AND CONDITIONS OF SUCH AGREEMENT AND THAT YOU ARE VOLUNTARILY EXECUTING THE SAME.

ACCEPTED:

/s/ Ken Tacelli

Ken Tacelli

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