

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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	:	
In re:	:	Chapter 11
	:	
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors. <sup>1</sup>	:	Jointly Administered
	:	
	x	

**AFFIDAVIT OF SERVICE**

I, Peter Walsh, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, "KCC," the Court-appointed claims and noticing agent for the Debtors in the above captioned cases.


On August 6, 2012, at my direction and under my supervision, employees of KCC caused the following documents to be served via Overnight Mail to the parties on the service list attached hereto as **Exhibit A**, and via Email to the parties on the service list attached hereto as **Exhibit B**:

- **Accredited Investor Subscription Agreement**, attached hereto as **Exhibit C**; and,
- **Rights Offering Procedures**, attached hereto as **Exhibit D**.

I further certify, that on August 6, 2012, at my direction and under my supervision, employees of KCC caused the following documents to be served via Email to the parties on the service list attached hereto as **Exhibit E**:

- **Backstop Parties Subscription Agreement**, attached hereto as **Exhibit F**; and,
- **Rights Offering Procedures**, attached hereto as **Exhibit D**.

Dated: August 8, 2012

  
Peter Walsh

State of New York  
County of New York

Subscribed and sworn to (or affirmed) before me on August 8, 2012, by Peter Walsh, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: Andrew R. Contreras



<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising, LLC (5235). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.



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## Exhibit A

Name	NoticeName	Address1	Address2	Address3	City	State	Zip	Country
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**REDACTED**

## Exhibit B

Name	Email
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Name	Email
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**REDACTED**

## Exhibit C

**Accredited Investors Subscription Agreement**

**SYMS CORP.**

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**SUBSCRIPTION AGREEMENT**

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**Copy # \_\_\_\_\_**

## NOTICES

THIS SUBSCRIPTION AGREEMENT HAS BEEN PREPARED ON A CONFIDENTIAL BASIS SOLELY FOR THE BENEFIT OF SELECTED ELIGIBLE HOLDERS IN CONNECTION WITH THE PRIVATE PLACEMENT OF SECURITIES OF SYMS CORP. OR A SUCCESSOR (THE "COMPANY") PURSUANT TO THE CHAPTER 11 PLAN OF REORGANIZATION OF THE COMPANY AND ITS SUBSIDIARIES THAT COMMENCED JOINTLY ADMINISTERED CASES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS SUCH TERM IS HEREINAFTER DEFINED) (THE "CHAPTER 11 PLAN"). ANY REPRODUCTION OR DISTRIBUTION OF THIS SUBSCRIPTION AGREEMENT, OR RETRANSMITTAL OF ITS CONTENTS, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY IS PROHIBITED. THIS SUBSCRIPTION AGREEMENT, INCLUDING ALL COPIES HEREOF, MUST BE RETURNED TO THE COMPANY IF REQUESTED.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED, APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY. NONE OF THE FOREGOING AUTHORITIES HAVE PASSED UPON, OR ENDORSED THE MERITS OF, THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE SECURITIES REFERRED TO HEREIN HAVE NOT BEEN REGISTERED WITH THE SEC UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THE SECURITIES WILL BE OFFERED AND SOLD PURSUANT TO THE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE AND SECTION 4(2) OF THE SECURITIES ACT AND/OR REGULATION D PROMULGATED THEREUNDER AND IN COMPLIANCE WITH ANY APPLICABLE STATE OR NON-U.S. SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THIS SUBSCRIPTION AGREEMENT IS NOT AN OFFER TO SELL TO OR A SOLICITATION OF AN OFFER TO BUY FROM, NOR WILL ANY SECURITIES BE OFFERED OR SOLD TO, ANY PERSON IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION, PURCHASE OR SALE WOULD BE UNLAWFUL UNDER THE SECURITIES LAWS OF SUCH JURISDICTION.

THE SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR PLEDGED, IN WHOLE OR IN PART, EXCEPT BOTH (A) AS PERMITTED UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE OR OTHER SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THERE IS NO OBLIGATION ON THE



PART OF THE COMPANY OR ANY OTHER PERSON TO REGISTER THE SECURITIES UNDER THE SECURITIES ACT OR ANY OTHER SECURITIES LAWS.

THE COMPANY MAKES NO REPRESENTATION TO ANY OFFEREE OR PURCHASER OF THE SECURITIES REGARDING THE LEGALITY OF AN INVESTMENT THEREIN BY SUCH OFFEREE OR PURCHASER UNDER APPLICABLE LEGAL INVESTMENT OR SIMILAR LAWS.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS SUBSCRIPTION AGREEMENT, OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY OR ANY OF ITS AGENTS, OFFICERS OR REPRESENTATIVES, AS LEGAL OR TAX ADVICE. EACH OFFEREE SHOULD CONSULT HIS OWN ADVISORS AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING AN INVESTMENT IN THE COMPANY.

AS A PURCHASER OF THE SECURITIES IN A PRIVATE PLACEMENT NOT REGISTERED UNDER THE SECURITIES ACT, EACH INVESTOR SHOULD PROCEED ON THE ASSUMPTION THAT THE ECONOMIC RISK OF THE INVESTMENT MUST BE BORNE FOR AN INDEFINITE PERIOD, SINCE THE SECURITIES MAY NOT BE RESOLD UNLESS THEY ARE SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK. IT IS SPECULATIVE AND SUITABLE ONLY FOR PERSONS WHO HAVE SUBSTANTIAL FINANCIAL RESOURCES AND HAVE NO NEED FOR LIQUIDITY IN THIS INVESTMENT. FURTHER, THIS INVESTMENT SHOULD ONLY BE MADE BY THOSE WHO UNDERSTAND OR HAVE BEEN ADVISED WITH RESPECT TO THE TAX CONSEQUENCES OF AND RISK FACTORS ASSOCIATED WITH THE INVESTMENT AND WHO ARE ABLE TO BEAR THE SUBSTANTIAL ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THEREFORE, INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO RETAIN OWNERSHIP OF THE SECURITIES AND TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

### NOTICE TO FLORIDA INVESTORS

THE SECURITIES REFERRED TO HEREIN WILL BE SOLD TO, AND ACQUIRED BY, THE HOLDER IN A TRANSACTION EXEMPT UNDER SECTION 517.061(11) OF THE FLORIDA SECURITIES ACT. THE SECURITIES HAVE NOT BEEN REGISTERED UNDER SAID ACT WITH THE FLORIDA DIVISION OF SECURITIES AND INVESTOR PROTECTION. IN ADDITION, THE FLORIDA SECURITIES ACT PROVIDES THAT WHERE SALES ARE MADE TO 5 OR MORE FLORIDA INVESTORS, ALL FLORIDA INVESTORS SHALL HAVE THE PRIVILEGE OF VOIDING THE PURCHASE WITHIN THREE DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE COMPANY, AN AGENT OF THE COMPANY OR AN ESCROW AGENT, OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER, WHICHEVER OCCURS LATER. TO ACCOMPLISH THIS, IT IS SUFFICIENT FOR A FLORIDA PURCHASER TO SEND A LETTER OR TELEGRAM TO THE ISSUER WITHIN SUCH THREE DAY PERIOD, STATING THAT THE PURCHASER IS VOIDING AND RESCINDING THE PURCHASE. IF A PURCHASER SENDS A LETTER, IT IS PRUDENT TO DO SO BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO INSURE THAT THE LETTER IS RECEIVED AND TO EVIDENCE THE TIME OF MAILING. HOWEVER, THIS RIGHT IS NOT AVAILABLE TO ANY PURCHASER WHO IS A BANK, TRUST COMPANY, SAVINGS INSTITUTION, INSURANCE COMPANY, SECURITIES DEALER, INVESTMENT COMPANY (AS DEFINED IN THE INVESTMENT COMPANY ACT OF 1940 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER), PENSION OR PROFIT-SHARING TRUST OR QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT).

### NOTICE TO NEW HAMPSHIRE INVESTORS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, 1955, AS AMENDED ("RSA") WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

## SUBSCRIPTION AGREEMENT

Subscription Agreement (this "Agreement"), by and between Syms Corp., a New Jersey corporation (including any successor as contemplated by the Plan (as defined below), the "Company"), and the undersigned (the "Subscriber"), shall be deemed executed as of the date the Company executes this Agreement.

WHEREAS, on November 2, 2011, each of the Company and its subsidiaries filed voluntary petitions for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on July 13, 2012, the Debtors and the Official Committee of Syms Corp. Equity Security Holders filed and co-proposed the Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and Its Subsidiaries (the "Plan");

WHEREAS, pursuant to the Plan, each Eligible Holder has been granted Subscription Rights entitling such Eligible Holder to purchase up to its Pro Rata Share of the Offered Shares and its Pro Rata Share of the Aggregate Unsubscribed Shares, as calculated in accordance with the Rights Offering Procedures and subject to reduction as described in Section 2 of the Rights Offering Procedures;

WHEREAS, the Subscriber has certified that it is an Eligible Holder and held on the Record Date the number of shares of Common Stock set forth on Item 1 of Schedule I;

WHEREAS, the Subscriber wishes to subscribe to purchase Offered Shares as set forth herein on the terms and subject to the conditions of the Rights Offering and in accordance with the Plan; and

WHEREAS, capitalized terms used but not defined in this Agreement have the meanings given in the Rights Offering Procedures attached hereto as Exhibit A (the "Rights Offering Procedures").

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subscriber and the Company hereby represent and agree as follows:

1. SUBSCRIPTION.

(a) The Subscriber hereby agrees to subscribe for that number of shares of Common Stock set forth on Item 3 (the "Initial Shares") and Item 4 (subject to a pro rata reduction as provided in the Rights Offering Procedures, the "Unsubscribed Shares", and together with the Initial Shares the "Shares") of Schedule I. The Subscriber will pay to the Subscription Agent the applicable Purchase Price set forth in Item 5 of Schedule I, (i) in the case of its Initial Shares (Item 3), at the time it returns this Agreement to the Subscription Agent, but in no event later than the Subscription Expiration Deadline and (ii) in the case of its Unsubscribed Shares (Item 4), the aggregate Purchase Price for the Subscriber's Unsubscribed Shares, in no event later than six (6) Business Days after the Determination Date (as defined below)(the "Unsubscribed Shares Payment Deadline"), in each case by wire transfer of immediately available funds in accordance with the instructions included on Schedule I or in the Unsubscribed Shares Notice (as defined below).

(b) As soon as reasonably practicable, and in no event later than two (2) Business Days following the Subscription Expiration Deadline, the Company shall distribute by e-mail or overnight delivery to each Eligible Holder who has subscribed for any of the Aggregate Unsubscribed Shares a notice setting forth the number of such Eligible Holder's Unsubscribed Shares and the aggregate Purchase Price therefor (the "Unsubscribed Shares Purchase Price") to be purchased by such Eligible Holder and the bank account to which the Unsubscribed Shares Purchase Price is to be paid (an "Unsubscribed Shares Notice") (the date of receipt of such Unsubscribed Shares Notice, the "Determination Date").

(c) In the event that funds received by the Subscription Agent in payment for the Subscriber's Initial Shares in accordance with the instructions provided with this Agreement are less than the Initial Shares Purchase Price (as set forth on Schedule I), the number of Initial Shares deemed to be purchased by the Subscriber pursuant to this Agreement will be the lesser of (i) the number of Initial Shares set forth set forth in Item 3 on Schedule I and (ii) a number determined by dividing the amount of such funds received in accordance with the instructions included with this Agreement by the Purchase Price. Any Initial Shares subscribed for but eliminated from the number of Initial Shares deemed purchased, pursuant to the previous sentence, shall be deemed part of the Aggregate Unsubscribed Shares.

(d) In the event that funds received by the Subscription Agent in payment for the Subscriber's Unsubscribed Shares as of the Unsubscribed Shares Payment Deadline are less than the Unsubscribed Shares Purchase Price set forth in the applicable Unsubscribed Shares Notice, the number of Unsubscribed Shares deemed to be purchased by the Subscriber pursuant to this Agreement will be the lesser of (i) the number of Unsubscribed Shares set forth on Schedule I and (ii) a number determined by dividing the amount of such funds received on or prior to the Unsubscribed Shares Payment Deadline by the Purchase Price. Any of the Subscriber's Unsubscribed Shares subscribed for but eliminated from the number of

Unsubscribed Shares deemed purchased by the Subscriber, pursuant to the previous sentence, shall be purchased by the Backstop Parties pursuant to the Backstop Agreement.

(e) In the event that the Subscription Agent receives more funds from the Subscriber than the aggregate Purchase Price for the Subscriber's Initial Shares or Unsubscribed Shares, then such funds, to the extent of such overpayment, will be returned, without interest, to the Subscriber as soon as reasonably practicable after the Determination Date.

(f) The closing of the issuance of Shares contemplated by this Agreement (the "Closing") will take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP on the Effective Date. The date on which the Closing occurs is the "Closing Date."

(g) The Subscriber understands and acknowledges that:

(i) The Shares purchased pursuant hereto will be initially issued in the name of the Subscriber, a controlled Affiliate of the Subscriber or a Related Fund, as indicated on Schedule I.

(ii) This Agreement contains its irrevocable firm commitment, subject only to the terms and conditions of this Agreement and the Rights Offering, to purchase the Shares, subject to pro rata adjustment as provided for in this Agreement and in the Rights Offering Procedures.

(iii) Except to the extent provided in this Agreement, the Company makes no representation or warranty in connection with the purchase of the Shares.

(iv) No federal or state agency has made or will make any finding or determination as to the adequacy or accuracy of any information provided to the Subscriber in connection with its consideration of its investment in the Shares or as to the fairness of this private placement for investment, nor any recommendation or endorsement of the Shares.

(h) The Subscriber understands and acknowledges that the Company will be relying on representations, warranties and agreements made by the Subscriber to the Company, and the covenants agreed to by the Subscriber, herein. The Subscriber agrees to provide, if requested, any additional information that may reasonably be required to determine its eligibility to purchase the Shares. If there is any change in any of the information provided by the Subscriber, or if any of the Subscriber's representations and warranties becomes inaccurate in any respect, the Subscriber will immediately furnish such revised or corrected information to the Company.

(i) The Subscriber understands and acknowledges that the subscription for the Shares contained herein may be accepted or rejected, in whole or in part, by the Company in its sole and absolute discretion, without liability to the Company. The Subscriber also understands and acknowledges that all calculations, including the calculation of the Subscriber's or any other Eligible Holder's Initial Shares and Unsubscribed Shares, shall be finally determined by the Company.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

(a) The Company represents and warrants to the Subscriber as of the date hereof as follows:

(i) The Company is, as of the date hereof, a corporation duly organized and validly existing under the laws of the State of New Jersey. As of the Effective Date, the Company will be a corporation duly organized and validly existing under the laws of the state of Delaware.

(ii) Subject to the entry of the confirmation order relating to the Plan and occurrence of the Closing, (A) the Company will have the requisite corporate power and authority to execute and deliver this Agreement, (B) this Agreement and the consummation by the Company of the transactions contemplated hereby will have been duly authorized by all requisite corporate action and (C) this Agreement will have been duly and validly executed and delivered by the Company and will constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(iii) The Shares, when issued in accordance with the provisions hereof, will be validly issued by the Company, and will represent fully paid and nonassessable shares of the Company.

(iv) Except for the representations and warranties contained in this Section 2, none of the Company and any other Person on behalf of the Company makes any other express or implied representation or warranty with respect to the Company or any other information provided to the Subscriber. Neither the Company nor any other Person will have or be subject to any liability or indemnification obligation to the Subscriber or any other Person resulting from the distribution to the Subscriber, or use by the Subscriber of, any such information, including any information, documents, projections, forecasts or other material made available to the Subscriber, unless any such information is included in a representation or warranty contained in this Section 2.

3. REPRESENTATIONS AND WARRANTIES OF THE SUBSCRIBER.

The Subscriber represents and warrants to the Company as of the date hereof as follows:

(a) The Subscriber is an Eligible Holder and held on the Record Date the number of shares of Common Stock set forth on Item 1 of Schedule I. Any information which the Subscriber has heretofore furnished to the Company or any agent of the Company, with respect to the Subscriber, including the information in the Accredited Investor Questionnaire, is correct and complete as of the date of this Agreement and if there should be any material change in such information prior to its purchase of the Shares, or at any time thereafter, the Subscriber will immediately furnish, in writing, such revised or corrected information to the Company.

(b) The Subscriber has the requisite corporate or individual power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement and the consummation by Subscriber of the transactions contemplated hereby have been duly authorized by all requisite action. This Agreement has been duly and validly executed and delivered by Subscriber and constitutes the valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms. Except to the extent Subscriber is an individual, Subscriber is a duly organized entity validly existing under the laws of the jurisdiction of its incorporation or formation.

(c) Except as provided under applicable state securities laws, this subscription is and shall be irrevocable, except that the Subscriber shall have no obligation hereunder if this Agreement is for any reason rejected or this offering is for any reason cancelled.

(d) The Subscriber understands that the Shares have not been registered under the Securities Act nor qualified under any state securities laws and that the Shares are being offered and sold pursuant to an exemption from such registration and qualification requirements based in part upon the Subscriber's representations contained herein.

(e) The Subscriber has read and understands this Agreement, the Plan and the Disclosure Statement and understands the terms and conditions herein and therein and the risks associated with the Company and its business as described in the Disclosure Statement.

(f) The Subscriber has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment contemplated by this Agreement, and it is able to bear the economic risk of an investment in the Company. The Subscriber has sufficient financial resources available to support the loss of all or a portion of its investment in the Company, and has no need for liquidity in its investment in the Company.

(g) The Subscriber recognizes that there is no obligation on the part of the Company or any other Person to register the Shares under the Securities Act or any other securities laws. The Subscriber understands that it must bear the economic risk of this investment indefinitely unless its Shares are registered pursuant to the Securities Act or an exemption from such registration is available, and unless the disposition of such Shares is qualified under applicable state securities laws or an exemption from such qualification is available. The Subscriber further understands that there is no assurance that any exemption from the Securities Act will be available, or, if available, that such exemption will allow the Subscriber to Transfer all or part of its Shares, in the amounts or at the times the Subscriber might propose.

(h) The Subscriber is acquiring the Shares solely for its own account for investment and neither with a view toward, nor any present intention of, Transferring the Shares. No other Person has any right with respect to or interest in the Shares to be purchased by the Subscriber, nor has the Subscriber agreed to give any Person any such interest or right in the future.

(i) No finder's fee or other similar fee is payable to any third party in connection with the Subscriber's investment in the Company. Should such a fee be payable to any third party, such fee is payable in its entirety by the Subscriber and not by the Company or any of its affiliates.

(j) The Subscriber is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under Section 4(2) of the Securities Act and that the Accredited Investor Questionnaire previously completed by the Subscriber sets forth a true, correct and complete statement of the Subscriber's accredited investor status.

(k) No third-party consents or approvals are required to be obtained, made or given in order to permit the Subscriber to execute and deliver this Agreement and to perform its obligations hereunder.

(l) Neither the execution and delivery of this Agreement by the Subscriber nor the consummation of any of the transactions contemplated hereby will violate or conflict with, or result in a breach of, or constitute a default under (whether upon notice or the passage of time or both) any (i) contract to which the Subscriber is a party or (ii) applicable laws, regulations, orders, judgments and decrees.

(m) Other than as set forth in this Agreement, the Subscriber is not relying upon any other information, representation or warranty by the Company. The Subscriber has consulted, to the extent deemed appropriate by the Subscriber, with the Subscriber's own advisors as to the financial, tax, legal and related matters concerning an investment in the Shares



and on that basis believes that an investment in the Shares is suitable and appropriate for the Subscriber.

(n) The foregoing representations and warranties will be true on the date hereof and as of the Closing Date and will survive delivery of this Agreement. If any of such representations and warranties is not true prior to acceptance of this Agreement by the Company or prior to the Closing Date, the Subscriber will give written notice of such fact to the Company, specifying which representations and warranties are not true and the reasons therefor.

#### 4. SUBSCRIBER ACKNOWLEDGMENTS.

The Subscriber further acknowledges the following as of the date hereof and as of the Closing Date:

(a) The Disclosure Statement contains projections. The projections are subjective in many respects and are based on expectations, estimates, opinions and beliefs of the Company's management with respect to its financial condition, business and industry performance, general economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond the Company's control. Accordingly, there can be no assurance that the estimates and assumptions made in preparing the projections will prove accurate or that the forecasts will be realized. In addition, the projections do not and cannot take into account such factors as general economic conditions, unforeseen changes and developments in available technologies and products, the entry into the Company's market of significant additional competitors, natural disasters, the terms and conditions of future financings of the Company, and other risks inherent to the business of the Company. While management believes that the projections reflect the possible future results of the Company's operations, such results cannot be guaranteed. The Subscriber acknowledges that it is prepared for the substantial economic risks involved in the purchase of the Shares, including the total loss of its investment. The Company will not be under any duty to update the projections included in the Disclosure Statement prior to or after the Closing Date.

(b) The Subscriber understands that the Shares and any certificates therefor will bear a restrictive legend in substantially the following form, in addition to any legend imposed or required by the Company's organizational documents or other applicable securities laws:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE  
HAVE NOT BEEN REGISTERED UNDER THE SECURITIES  
ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR  
ANY SECURITIES LAWS OF ANY STATE AND MAY NOT  
BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED  
UNDER THE SECURITIES ACT AND SUCH THE

APPLICABLE STATE SECURITIES LAWS, PURSUANT TO  
REGISTRATION OR EXEMPTION THEREUNDER.

The Subscriber may present the certificate evidencing the Shares bearing such legend to the Company's transfer agent for the Shares for exchange for one or more new certificates not bearing such legend or for Transfer to a new holder without such legend at such times as (i) such Shares are sold pursuant to an effective registration statement under the Securities Act or (ii) such holder has delivered to the Company an opinion of counsel reasonably satisfactory to the Company to the effect that the Shares are no longer subject to the restrictions pursuant to an exemption under the Securities Act and such Shares may be sold without registration under the Securities Act, in which event the certificate issued to the transferee will not bear such legend.

5. CONDITIONS TO CLOSING.

(a) Conditions to Each Party's Obligations. The respective obligations of the Subscriber and the Company to consummate the transactions contemplated by this Agreement are subject to the occurrence of the Effective Date.

(b) Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement with the Subscriber are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Subscriber in Section 3 of this Agreement must be true, correct and complete in all respects on the Closing Date;

(ii) All acknowledgments of the Subscriber in Sections 1 and 4 of this Agreement must be true, correct and complete in all respects on the Closing Date; and

(iii) Compliance by the Subscriber with the Rights Offering Procedures governing the Rights Offering, including payment by the Subscriber of the Initial Shares Purchase Price and the Unsubscribed Shares Purchase Price.

(c) Conditions to Obligations of the Subscriber. The obligations of the Subscriber to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Company in Section 2 of this Agreement must be true and correct in all material respects on the Closing Date; and

(ii) Compliance by the Company with the Rights Offering Procedures governing the Rights Offering.

6. TERMINATION.

This Agreement will terminate automatically upon the termination of the Backstop Agreement. In the event this Agreement is terminated, any payments received pursuant to Section 1(a) of this Agreement will be returned within four (4) Business Days to the Subscriber.

7. INTERPRETATION OF THIS AGREEMENT.

(a) Terms Defined. As used in this Agreement, the following terms have the respective meanings set forth below:

"Affiliate": With respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by agreement, contract, obligation, promise, undertaking or understanding, whether written or oral, or otherwise).

"Bankruptcy Code": Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended, supplemented or otherwise modified from time to time.

"Disclosure Statement": The disclosure statement (including all exhibits and schedules thereto or referenced therein) that relates to the Plan, as approved by the United States Bankruptcy Court for the District of Delaware pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified or supplemented.

"Person": An individual, partnership, limited liability company, joint-stock company, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Related Fund": With respect to the Subscriber, any fund, account or investment vehicle that is controlled or managed by (a) the Subscriber, (b) a controlled Affiliate of the Subscriber or (c) the same investment manager or advisor as the Subscriber or an Affiliate of such investment manager or advisor.

"Securities Act": The Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Transfer": Any resale, sale, assignment, pledge, hypothecation, distribution or other disposition or encumbrance.

(b) Directly or Indirectly. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision will be applicable whether such action is taken directly or indirectly by such Person.

(c) Governing Law; Jurisdiction. THIS AGREEMENT, AND ALL CLAIMS ARISING OUT OF OR RELATING THERETO, WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE. THE SUBSCRIBER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF, AND VENUE IN, THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE AND WAIVES ANY OBJECTION BASED ON *FORUM NON CONVENIENS*.

(d) Section Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and should not be deemed to constitute a part thereof.

(e) Construction. This Agreement has been freely and fairly negotiated between the parties. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. The words "include", "includes", and "including" will be deemed to be followed by "without limitation." Pronouns in masculine, feminine and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

## 8. MISCELLANEOUS.

### (a) Notices.

(i) The Subscriber acknowledges that a completed and signed copy of this Agreement, together with payment of the Initial Shares Purchase Price, must be received by the Subscription Agent in accordance with the instructions included herewith prior to the Subscription Expiration Deadline for the subscription contemplated hereby to be valid.

(ii) Except as otherwise provided in this Agreement, following execution of this Agreement, all demands, notices, requests, consents and other communications

under this Agreement must be in writing, sent contemporaneously to all of the notice parties set forth below and deemed given when delivered, if delivered by hand or upon confirmation of transmission, if delivered by facsimile, or if no response to the effect that an email cannot be delivered to the sender is received within 2 hours, if delivered by email, during standard business hours (from 8:00 A.M. to 6:00 P.M. at the place of receipt) at the addresses and facsimile numbers set forth below:

(A) if to the Subscriber, at his or her address or facsimile number shown on Schedule I, or at such other address or facsimile number as the Subscriber may have furnished the Company in writing; and

(B) if to the Company, at (or at such other address or facsimile number as it may have furnished in writing to the Subscriber):

Syms Corp.  
One Syms Way  
Secaucus, New Jersey 07094  
Attn: Laura Brandt  
Facsimile: 201-902-9270  
laurabrandt@syms.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher and Flom LLP  
4 Times Square  
New York, New York 10036  
Attn: Jay Goffman and Mark McDermott  
Facsimile: 212-735-2000  
jay.goffman@skadden.com; mark.mcdermott@skadden.com

(b) Expenses and Taxes. The Company will pay, and hold the Subscriber harmless from any and all liabilities (including interest and penalties) with respect to, or resulting from any delay or failure in paying, stamp and other taxes (other than income taxes), if any, which may be payable or determined to be payable on the execution and delivery of this Agreement or acquisition of the securities pursuant to this Agreement.

(c) Reproduction of Documents. This Agreement and all documents relating hereto may not be reproduced or distributed by the Subscriber without the prior written consent of the Company.

(d) Assignment; Successors. This Agreement is not assignable by the Subscriber without the prior written consent of the Company. This Agreement and the rights,

powers and duties set forth herein will inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

(e) Entire Agreement; Amendment and Waiver. This Agreement constitutes the entire understanding of the parties hereto and supersedes all prior understandings among such parties with respect to the matters covered herein. This Agreement may be amended, and the observance of any term of this Agreement may be waived, with (and only with) the written consent of the Company and the Subscriber.

(f) Severability. If any provision of this Agreement or the application of such provision to any person or circumstance is held to be invalid by any court of competent jurisdiction, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid will not be affected thereby.

(g) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.

Please indicate your acceptance and approval of the foregoing in the space provided below.

SYMS CORP.

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

ACCEPTED AND APPROVED

as of the \_\_\_\_ day of \_\_\_\_\_, 2012

SUBSCRIBER: \_\_\_\_\_  
(Please provide full legal name)

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Email Address: \_\_\_\_\_

If Non-U.S. holder, check here and attach W-8: ☐ Non-U.S. holder

## SCHEDULE I

### Name and Address of Subscriber

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_ Facsimile: \_\_\_\_\_  
\_\_\_\_\_ Email: \_\_\_\_\_  
\_\_\_\_\_

If Not Subscriber, Name of Controlled Affiliate or Related  
Fund in Whose Name Shares Should be Issued: \_\_\_\_\_

(Please provide full legal name)

Item 1. Number of Shares of Common Stock Held as of the Record Date: \_\_\_\_\_

Item 2. Calculation of Pro Rata Share for Initial Shares:

10,040,160 X [\_\_\_\_\_] =  
\_\_\_\_\_  
Number of Offered [Shares Held as of the (rounded down to  
Shares above)÷ [Number of the nearest whole  
Shares Held as of the Share)  
Record Date by All  
Eligible Holders]] \_\_\_\_\_

Item 3. Number of Initial Shares (Number of Offered Shares Subscriber Elects to  
Subscribe for (a whole number not to exceed amount calculated in Item 2)): \_\_\_\_\_

Item 4. Number of Unsubscribed Shares Subscriber Elects to Subscribe for (a  
whole number), subject to adjustment as provided in the Rights Offering  
Procedures (i.e., enter the maximum number of Unsubscribed Shares that you  
would like to buy should they become available, understanding that you will be  
limited to your Pro Rata Share of whatever Aggregate Unsubscribed Shares are  
actually available): \_\_\_\_\_

Item 5. Purchase Price. By filling in the following blanks, you are agreeing to purchase the number of Offered Shares specified  
below at a purchase price of \$2.49 per share, on the terms and subject to the conditions set forth in the Plan and this Agreement. The  
number of Unsubscribed Shares to be purchased is subject to pro rata reduction as provided in the Rights Offering Procedures.

\_\_\_\_\_  
Number of Initial Shares (Item 3) X \$2.49 = \_\_\_\_\_  
Initial Shares Purchase Price

\_\_\_\_\_  
Number of Unsubscribed Shares (Item 4 as X \$2.49 = \_\_\_\_\_  
adjusted to reflect a pro rata reduction as provided in the Rights Offering Procedures) Unsubscribed Shares Purchase Price



**Payment of the Initial Shares Purchase Price shall be made by wire transfer of immediately available funds in accordance with the instructions set forth below.**

**Payment of the Unsubscribed Shares Purchase Price shall not be made until the Subscriber receives the Unsubscribed Shares Notice setting forth its actual allocation of Unsubscribed Shares.**

Name of Account:	Computershare Inc AAF for KCC Client Funding Syms Corp.
Bank Account No.:	4426855330
Bank Name:	Bank of America
Bank Location:	New York
Routing Number:	026009593
Special Instructions:	Reference "Funding for Syms Corp. Rights Offering"

PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THE SUBSCRIPTION AGREEMENT IS VALIDLY SUBMITTED ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF YOUR INITIAL SHARES PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE, AUGUST 21, 2012.

PLEASE MAIL OR DELIVER YOUR COMPLETED SUBSCRIPTION FORM TO:

SYMS CORP. RIGHTS OFFERING PROCESSING  
C/O KURTZMAN CARSON CONSULTANTS LLC  
599 LEXINGTON AVENUE, 39<sup>TH</sup> FLOOR  
NEW YORK, NY 10022  
TELEPHONE: 917-281-4800

SUBSCRIPTION FORMS WILL NOT BE ACCEPTED VIA ELECTRONIC MEANS.

## Exhibit D

## RIGHTS OFFERING PROCEDURES

### 1. Defined Terms

*Accredited Investor* has the meaning set forth in Rule 501(a) promulgated under the Securities Act of 1933.

*Accredited Investor Deadline* means 5:00 p.m. (prevailing Eastern Time) on August 6, 2012.

*Accredited Investor Order* means the order (a) authorizing the Company to distribute the Accredited Investor Questionnaire, (b) approving procedures related to such distribution and (c) setting a record date for the Rights Offering, entered by the United States Bankruptcy Court for the District of Delaware on July 9, 2012.

*Accredited Investor Questionnaire* means a questionnaire in substantially the form approved by the Accredited Investor Order.

*Aggregate Unsubscribed Shares* means any Offered Shares that are not validly subscribed for by Eligible Holders pursuant to their right to subscribe for their Pro Rata Share of the Offered Shares.

*Backstop Agreement* means that certain Equity Commitment Agreement dated as of July 13, 2012, by and among the Company, Ms. Marcy Syms, the Laura Merns Living Trust, the Marcy Syms Revocable Living Trust and the Backstop Parties, as such agreement may be further amended or modified in accordance with its terms.

*Backstop Parties* means those parties named as Backstop Parties in the Backstop Agreement.

*Business Day* means any day that is a Saturday, Sunday, legal holiday or other day on which commercial banks in New York, New York are authorized or required by applicable law to close.

*Common Stock* means the shares of common stock of the Company, par value \$0.05 per share.

*Company* means Syms Corp., a New Jersey corporation.

*Debtors* means the Company, Filene's Basement, LLC, Syms Clothing, Inc. and Syms Advertising Inc.

*Effective Date* means the date the Plan becomes effective.

*Eligible Holder* means any holder of Common Stock as of the Record Date, including the Backstop Parties but excluding Ms. Marcy Syms, the Laura Merns Living Trust and the Marcy Syms Revocable Living Trust, that (a) has submitted to the Subscription Agent on or prior to the Accredited Investor Deadline a properly completed Accredited Investor Questionnaire certifying

that such holder is an Accredited Investor and (b) the Company determines is an Accredited Investor.

*Initial Shares* has the meaning set forth in Section 2.

*Offered Shares* means 10,040,160 shares of Common Stock to be offered to Eligible Holders in the Rights Offering.

*Plan* means the Second Amended Joint Plan of Reorganization of Syms Corp. and Its Subsidiaries filed with the United States Bankruptcy Court for the District of Delaware on July 13, 2012, as such plan of reorganization may be amended or modified from time to time in accordance with its terms.

*Pro Rata Share* means:

(x) in the case of the Offered Shares, the number of Offered Shares that an Eligible Holder can subscribe for in the Rights Offering, which is equal to (a) the total number of Offered Shares multiplied by (b) the quotient obtained by dividing (i) the number of shares of Common Stock held by such Eligible Holder as of the Record Date by (ii) the number of shares of Common Stock held by all Eligible Holders as of the Record Date; and

(y) in the case of the Aggregate Unsubscribed Shares, the number of Aggregate Unsubscribed Shares that an Eligible Holder can subscribe for in the Rights Offering, which is equal to (a) the total number of Aggregate Unsubscribed Shares multiplied by (b) the quotient obtained by dividing (i) the number of shares of Common Stock held by such Eligible Holder as of the Record Date by (ii) the number of shares of Common Stock held by all Eligible Holders as of the Record Date.

*Purchase Price* means \$2.49 per share.

*Record Date* means July 12, 2012 at 5:00 p.m. New York City time.

*Rights Offering* means the offering to Eligible Holders of the opportunity to subscribe for Offered Shares at the Purchase Price.

*Subscription Agent* means Kurtzman Carson Consultants LLC, or any other entity designated as such by the Company, in its capacity as a subscription agent and escrow agent in connection with the Rights Offering.

*Subscription Agreement* means the agreement to be entered into by and between the Company and an Eligible Holder pursuant to which such Eligible Holder exercises its Subscription Rights.

*Subscription Commencement Date* means the date on which Subscription Agreements are first sent to Eligible Holders.

*Subscription Expiration Deadline* means August 21, 2012, the date by which properly completed Subscription Agreements and the Purchase Price will be required to be delivered to the Subscription Agent as provided in the Subscription Agreements.

*Subscription Period* means the period beginning on the Subscription Commencement Date and ending on the Subscription Expiration Deadline.

*Subscription Rights* means the non-transferable, non-certificated subscription rights to purchase Offered Shares in connection with the Rights Offering on the terms and subject to the conditions set forth in the Plan, these Rights Offering Procedures and the Subscription Agreement.

*Unsubscribed Shares* has the meaning set forth in Section 2.

*Unsubscribed Shares Notice* has the meaning set forth in Section 2.

## **2. Rights Offering**

Subject to the terms and conditions set forth in the Plan, these Rights Offering Procedures and the Subscription Agreements:

*Initial Shares.* Each Eligible Holder will be entitled to purchase up to its Pro Rata Share of the Offered Shares at the Purchase Price. The number of Offered Shares actually subscribed for and purchased by an Eligible Holder shall be referred to as such Eligible Holder's "*Initial Shares*".

*Unsubscribed Shares.* In addition, each Eligible Holder may subscribe for up to its Pro Rata Share of the Aggregate Unsubscribed Shares at the Purchase Price. The number of Aggregate Unsubscribed Shares actually subscribed for and purchased by an Eligible Holder shall be referred to as such Eligible Holder's "*Unsubscribed Shares*".

As soon as reasonably practicable, and in no event later than two (2) Business Days, following the Subscription Expiration Deadline, the Company will distribute by e-mail or overnight delivery to each Eligible Holder who elected in its Subscription Agreement to subscribe for any of the Aggregate Unsubscribed Shares a notice (the "*Unsubscribed Shares Notice*") setting forth the number of Unsubscribed Shares to be purchased by such Eligible Holder and the aggregate Purchase Price therefor, and the bank account to which such aggregate Purchase Price is to be paid.

### **ALL SUBSCRIPTIONS SET FORTH IN THE SUBSCRIPTION AGREEMENTS ARE IRREVOCABLE.**

Eligible Holders have the right, but not the obligation, to participate in the Rights Offering.

## **3. Subscription Period**

The Rights Offering will commence on the Subscription Commencement Date and will expire on the Subscription Expiration Deadline. Each Eligible Holder intending to purchase Common Stock in the Rights Offering must affirmatively elect to exercise its Subscription Rights in the manner set forth in the instructions included with the Subscription Agreements (consistent herewith, including as described in Section 5 hereof) on or prior to the Subscription Expiration Deadline.

Any exercise of Subscription Rights after the Subscription Expiration Deadline will not be allowed and any purported exercise received by the Subscription Agent after the Subscription Expiration Deadline, regardless of when the documents or payment relating to such exercise were sent, will not be honored.

## **4. Delivery of Subscription Agreements**

Each Eligible Holder may exercise all or any portion of such Eligible Holder's Subscription Rights, but the exercise of any Subscription Rights will be irrevocable. In order to facilitate the exercise of the Subscription Rights, beginning on the Subscription

Commencement Date, the Subscription Agent will send a Subscription Agreement to each Eligible Holder, together with appropriate instructions for the proper completion, due execution and timely delivery of the Subscription Agreement and the payment of the applicable Purchase Price for its Initial Shares.

## **5. Exercise of Subscription Rights**

In order to validly exercise Subscription Rights, each Eligible Holder must:

- (a) return a duly completed Subscription Agreement to the Subscription Agent so that such Subscription Agreement is actually received by the Subscription Agent on or before the Subscription Expiration Deadline;
- (b) at the same time it returns its Subscription Agreement to the Subscription Agent, but in no event later than the Subscription Expiration Deadline, pay the applicable Purchase Price for its Initial Shares to the Subscription Agent by wire transfer of immediately available funds in accordance with the instructions included with the Subscription Agreement; and
- (c) within six (6) Business Days following the distribution of the Unsubscribed Share Notice by e-mail or overnight delivery, pay the applicable Purchase Price for its Unsubscribed Shares to the Subscription Agent by wire transfer of immediately available funds in accordance with the instructions included in the Unsubscribed Share Notice.

In the event that funds received by the Subscription Agent in payment for such Eligible Holder's Initial Shares or Unsubscribed Shares are less than the Purchase Price for such shares, the number of such Eligible Holder's Initial Shares or Unsubscribed Shares, as the case may be, deemed to be purchased by the Eligible Holder will be the lesser of (i) the number of such Eligible Holder's Initial Shares or Unsubscribed Shares, as the case may be, requested by such Eligible Holder and (ii) a number determined by dividing the amount of such funds received by the Purchase Price.

The payments of cash made in accordance with the Rights Offering will be deposited and held by the Subscription Agent in a segregated escrow account until administered in connection with the settlement of the Rights Offering on the Effective Date. The Subscription Agent may not use such funds for any other purpose prior to such Effective Date and may not encumber or permit such funds to be encumbered with any lien or similar encumbrance.

## **6. Transfer Restriction; Revocation**

The Subscription Rights are not transferable. Any transfer or attempted transfer of the Subscription Rights will be null and void, and no purported transferee will be treated as the holder of any Subscription Rights. Once an Eligible Holder has properly exercised its Subscription Rights, such exercise will not be permitted to be revoked.

## **7. Return of Payment**

If the Rights Offering is not consummated, any cash paid to the Subscription Agent will be returned, without interest, to the applicable Eligible Holder as soon as reasonably practicable after the earlier of (a) the Subscription Expiration Deadline and (b) the date on which the Rights Offering is terminated.

In the event that the Subscription Agent receives more funds from an Eligible Holder than the aggregate Purchase Price for such Eligible Holder's Initial Shares and Unsubscribed Shares, then such funds, to the extent of such overpayment, will be returned, without interest, to the applicable Eligible Holder as soon as reasonably practicable.

## **8. Rights Offering Backstop**

On the terms and subject to the conditions set forth in the Backstop Agreement, each of the Backstop Parties has agreed, severally and not jointly, to subscribe for and purchase its respective Pro Rata Share of the Offered Shares and the Aggregate Unsubscribed Shares and its respective share of any and all other Aggregate Unsubscribed Shares not purchased by the other Eligible Holders in the Rights Offering.

## **9. Settlement of the Rights Offering and Distribution of the Offered Shares**

On the Effective Date (or as soon as reasonably practicable thereafter), the Company's transfer agent will distribute the Offered Shares purchased by each Eligible Holder that has properly exercised its Subscription Rights in accordance with the delivery instructions set forth in such Eligible Holder's Subscription Agreement.

## **10. Fractional Shares**

No fractional shares will be issued in the Rights Offering or pursuant to the Backstop Agreement. All share allocations (including each Eligible Holder's Initial Shares and Unsubscribed Shares) will be calculated to one decimal place and rounded down to the closest whole share.

## **11. Validity of Exercise of Subscription Rights**

All questions concerning the timeliness, viability, form and eligibility of any exercise of Subscription Rights (including each Eligible Holder's Initial Shares and Unsubscribed Shares) will be determined by the Company, whose good faith determinations will be final and binding. The Company may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such time as they may determine, or reject the purported exercise of any Subscription Rights. Subscription Agreements will be deemed not to have been received or accepted until all irregularities have been waived or cured within such time as the Company determines. The Company is not obligated to give notice to any Eligible Holder regarding any defect or irregularity in connection with any purported exercise of Subscription Rights by such participant. In addition, the Company may permit any such defect or irregularity to be cured within such time as it may determine in good faith to be appropriate.



*Before exercising any Subscription Rights, Eligible Holders should read the Disclosure Statement and Plan for information relating to the Debtors and risk factors to be considered.*

## **12. Modification of Procedures**

The Company reserves the right to modify or adopt additional procedures to effectuate the Rights Offering and to issue the Offered Shares. In so doing, the Company may execute and enter into agreements and take further action that the Company determines are necessary and appropriate to effect and implement the Rights Offering and the issuance of the Offered Shares.

## **13. Inquiries And Transmittal of Documents; Subscription Agent**

The instructions included with the Subscription Agreement should be carefully read and strictly followed.

Questions relating to the Rights Offering should be directed to the Subscription Agent at the following phone number:

(877) 833-4150

The risk of non-delivery of all documents and payments to the Subscription Agent is on the Eligible Holder electing to exercise its Subscription Rights and not the Company, the Subscription Agent, the Backstop Parties or any other Eligible Holder.

## Exhibit E

Name	Email
------	-------

**REDACTED**

## Exhibit F

**Backstop Parties Subscription Agreement**

**SYMS CORP.**

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**SUBSCRIPTION AGREEMENT**

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**Copy # \_\_\_\_\_**

## NOTICES

THIS SUBSCRIPTION AGREEMENT HAS BEEN PREPARED ON A CONFIDENTIAL BASIS SOLELY FOR THE BENEFIT OF SELECTED ELIGIBLE HOLDERS IN CONNECTION WITH THE PRIVATE PLACEMENT OF SECURITIES OF SYMS CORP. OR A SUCCESSOR (THE "COMPANY") PURSUANT TO THE CHAPTER 11 PLAN OF REORGANIZATION OF THE COMPANY AND ITS SUBSIDIARIES THAT COMMENCED JOINTLY ADMINISTERED CASES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS SUCH TERM IS HEREINAFTER DEFINED) (THE "CHAPTER 11 PLAN"). ANY REPRODUCTION OR DISTRIBUTION OF THIS SUBSCRIPTION AGREEMENT, OR RETRANSMITTAL OF ITS CONTENTS, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY IS PROHIBITED. THIS SUBSCRIPTION AGREEMENT, INCLUDING ALL COPIES HEREOF, MUST BE RETURNED TO THE COMPANY IF REQUESTED.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED, APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY. NONE OF THE FOREGOING AUTHORITIES HAVE PASSED UPON, OR ENDORSED THE MERITS OF, THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE SECURITIES REFERRED TO HEREIN HAVE NOT BEEN REGISTERED WITH THE SEC UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THE SECURITIES WILL BE OFFERED AND SOLD PURSUANT TO THE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE AND SECTION 4(2) OF THE SECURITIES ACT AND/OR REGULATION D PROMULGATED THEREUNDER AND IN COMPLIANCE WITH ANY APPLICABLE STATE OR NON-U.S. SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THIS SUBSCRIPTION AGREEMENT IS NOT AN OFFER TO SELL TO OR A SOLICITATION OF AN OFFER TO BUY FROM, NOR WILL ANY SECURITIES BE OFFERED OR SOLD TO, ANY PERSON IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION, PURCHASE OR SALE WOULD BE UNLAWFUL UNDER THE SECURITIES LAWS OF SUCH JURISDICTION.

THE SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR PLEDGED, IN WHOLE OR IN PART, EXCEPT BOTH (A) AS PERMITTED UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE OR OTHER SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THERE IS NO OBLIGATION ON THE

PART OF THE COMPANY OR ANY OTHER PERSON TO REGISTER THE SECURITIES UNDER THE SECURITIES ACT OR ANY OTHER SECURITIES LAWS.

THE COMPANY MAKES NO REPRESENTATION TO ANY OFFEREE OR PURCHASER OF THE SECURITIES REGARDING THE LEGALITY OF AN INVESTMENT THEREIN BY SUCH OFFEREE OR PURCHASER UNDER APPLICABLE LEGAL INVESTMENT OR SIMILAR LAWS.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS SUBSCRIPTION AGREEMENT, OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY OR ANY OF ITS AGENTS, OFFICERS OR REPRESENTATIVES, AS LEGAL OR TAX ADVICE. EACH OFFEREE SHOULD CONSULT HIS OWN ADVISORS AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING AN INVESTMENT IN THE COMPANY.

AS A PURCHASER OF THE SECURITIES IN A PRIVATE PLACEMENT NOT REGISTERED UNDER THE SECURITIES ACT, EACH INVESTOR SHOULD PROCEED ON THE ASSUMPTION THAT THE ECONOMIC RISK OF THE INVESTMENT MUST BE BORNE FOR AN INDEFINITE PERIOD, SINCE THE SECURITIES MAY NOT BE RESOLD UNLESS THEY ARE SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK. IT IS SPECULATIVE AND SUITABLE ONLY FOR PERSONS WHO HAVE SUBSTANTIAL FINANCIAL RESOURCES AND HAVE NO NEED FOR LIQUIDITY IN THIS INVESTMENT. FURTHER, THIS INVESTMENT SHOULD ONLY BE MADE BY THOSE WHO UNDERSTAND OR HAVE BEEN ADVISED WITH RESPECT TO THE TAX CONSEQUENCES OF AND RISK FACTORS ASSOCIATED WITH THE INVESTMENT AND WHO ARE ABLE TO BEAR THE SUBSTANTIAL ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THEREFORE, INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO RETAIN OWNERSHIP OF THE SECURITIES AND TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

### NOTICE TO FLORIDA INVESTORS

THE SECURITIES REFERRED TO HEREIN WILL BE SOLD TO, AND ACQUIRED BY, THE HOLDER IN A TRANSACTION EXEMPT UNDER SECTION 517.061(11) OF THE FLORIDA SECURITIES ACT. THE SECURITIES HAVE NOT BEEN REGISTERED UNDER SAID ACT WITH THE FLORIDA DIVISION OF SECURITIES AND INVESTOR PROTECTION. IN ADDITION, THE FLORIDA SECURITIES ACT PROVIDES THAT WHERE SALES ARE MADE TO 5 OR MORE FLORIDA INVESTORS, ALL FLORIDA INVESTORS SHALL HAVE THE PRIVILEGE OF VOIDING THE PURCHASE WITHIN THREE DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE COMPANY, AN AGENT OF THE COMPANY OR AN ESCROW AGENT, OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER, WHICHEVER OCCURS LATER. TO ACCOMPLISH THIS, IT IS SUFFICIENT FOR A FLORIDA PURCHASER TO SEND A LETTER OR TELEGRAM TO THE ISSUER WITHIN SUCH THREE DAY PERIOD, STATING THAT THE PURCHASER IS VOIDING AND RESCINDING THE PURCHASE. IF A PURCHASER SENDS A LETTER, IT IS PRUDENT TO DO SO BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO INSURE THAT THE LETTER IS RECEIVED AND TO EVIDENCE THE TIME OF MAILING. HOWEVER, THIS RIGHT IS NOT AVAILABLE TO ANY PURCHASER WHO IS A BANK, TRUST COMPANY, SAVINGS INSTITUTION, INSURANCE COMPANY, SECURITIES DEALER, INVESTMENT COMPANY (AS DEFINED IN THE INVESTMENT COMPANY ACT OF 1940 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER), PENSION OR PROFIT-SHARING TRUST OR QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT).

### NOTICE TO NEW HAMPSHIRE INVESTORS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, 1955, AS AMENDED ("RSA") WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.



## **SUBSCRIPTION AGREEMENT**

Subscription Agreement (this "Agreement"), by and between Syms Corp., a New Jersey corporation (including any successor as contemplated by the Plan (as defined below), the "Company"), and the undersigned (the "Subscriber"), shall be deemed executed as of the date the Company executes this Agreement.

WHEREAS, on November 2, 2011, each of the Company and its subsidiaries filed voluntary petitions for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on July 13, 2012, the Debtors and the Official Committee of Syms Corp. Equity Security Holders filed and co-proposed the Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and Its Subsidiaries (the "Plan");

WHEREAS, pursuant to the Plan, each Eligible Holder has been granted Subscription Rights entitling such Eligible Holder to purchase up to its Pro Rata Share of the Offered Shares and its Pro Rata Share of the Aggregate Unsubscribed Shares, as calculated in accordance with the Rights Offering Procedures and subject to reduction as described in Section 2 of the Rights Offering Procedures;

WHEREAS, the Subscriber has certified that it is an Eligible Holder and held on the Record Date the number of shares of Common Stock set forth on Item 1 of Schedule I;

WHEREAS, the Subscriber wishes to subscribe to purchase Offered Shares as set forth herein on the terms and subject to the conditions of the Rights Offering and the Backstop Agreement, and in accordance with the Plan; and

WHEREAS, capitalized terms used but not defined in this Agreement have the meanings given in the Rights Offering Procedures attached hereto as Exhibit A (the "Rights Offering Procedures").

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subscriber and the Company hereby represent and agree as follows:

1. SUBSCRIPTION.

(a) The Subscriber hereby agrees to subscribe for (i) that number of shares of Common Stock set forth on Item 3 (the "Initial Shares") and Item 4 (subject to adjustment as provided in the Rights Offering Procedures and Section 1.1(b) of the Backstop Agreement, the "Unsubscribed Shares") of Schedule I and (ii) that number of EH Default Shares (as defined in the Backstop Agreement, and together with the Initial Shares and the Unsubscribed Shares the "Shares") allocated to it pursuant to Section 2.1(a) of the Backstop Agreement; provided that the Subscriber's subscription hereunder shall not exceed its Commitment (as defined in the Backstop Agreement, and subject to the Subscriber's right to elect pursuant to the Backstop Agreement to purchase BP Default Shares, as defined in the Backstop Agreement, in excess of its Commitment). For the purpose of filling out Schedule I, the number of shares set forth on Item 3 of Schedule I shall equal the Subscriber's Pro Rata Share of the Offered Shares (each as defined in the Backstop Agreement), and the number of shares set forth on Item 4 of Schedule I shall equal the maximum number of Unsubscribed Shares that could be hypothetically purchased with the Subscriber's Commitment minus the number of shares set forth on Item 3 of Schedule I. The Subscriber will pay to the Subscription Agent the applicable Purchase Price set forth in Item 5 of Schedule I, (i) in the case of its Initial Shares (Item 3), at the time it returns this Agreement to the Subscription Agent, but in no event later than the Subscription Expiration Deadline and (ii) in the case of its Unsubscribed Shares (Item 4), the aggregate Purchase Price for the Subscriber's Unsubscribed Shares, in no event later than two (2) Business Days after the Subscriber's receipt of the Unsubscribed Shares Notice (as defined below) (the "Unsubscribed Shares Payment Deadline"), in each case by wire transfer of immediately available funds in accordance with the instructions included on Schedule I or in the Unsubscribed Shares Notice (as defined below). In the case of its EH Default Shares, the Subscriber shall pay the aggregate Purchase Price in connection with the purchase of the Subscriber's EH Default Shares no later two (2) Business Days after receiving notice from the Company specifying the number of EH Default Shares, by wire transfer of immediately available funds in accordance with the instructions included on Schedule I or in the notice from the Company specifying the number of EH Default Shares.

(b) As soon as reasonably practicable, and in no event later than two (2) Business Days following the Subscription Expiration Deadline, the Company shall distribute by e-mail or overnight delivery to each Eligible Holder who has subscribed for any of the Aggregate Unsubscribed Shares a notice setting forth the number of such Eligible Holder's Unsubscribed Shares and the aggregate Purchase Price therefor (the "Unsubscribed Shares Purchase Price") to be purchased by such Eligible Holder and the bank account to which the Unsubscribed Shares Purchase Price is to be paid (an "Unsubscribed Shares Notice") (the date of receipt of such Unsubscribed Shares Notice, the "Determination Date"). Within two (2) Business Days of an EH Default (as defined in the Backstop Agreement), the Company will send a notice to the Subscriber, specifying the number of EH Default Shares, which EH Default Shares shall be allocated among each of the Backstop Parties in accordance with Section 2.1(a) of the Backstop Agreement.

(c) In the event that the Subscription Agent receives more funds from the Subscriber than the aggregate Purchase Price for the Subscriber's Initial Shares or Unsubscribed Shares, then such funds, to the extent of such overpayment, will be returned, without interest, to the Subscriber as soon as reasonably practicable after the Determination Date.

(d) The closing of the issuance of Shares contemplated by this Agreement (the "Closing") will take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP on the Effective Date. The date on which the Closing occurs is the "Closing Date."

(e) The Subscriber understands and acknowledges that:

(i) The Shares purchased pursuant hereto will be initially issued in the name of the Subscriber, a controlled Affiliate of the Subscriber or a Related Fund, as indicated on Schedule I.

(ii) This Agreement contains its irrevocable firm commitment, subject only to the terms and conditions of the Backstop Agreement, this Agreement and the Rights Offering, to purchase the Shares.

(iii) Except to the extent provided in this Agreement, the Company makes no representation or warranty in connection with the purchase of the Shares.

(iv) No federal or state agency has made or will make any finding or determination as to the adequacy or accuracy of any information provided to the Subscriber in connection with its consideration of its investment in the Shares or as to the fairness of this private placement for investment, nor any recommendation or endorsement of the Shares.

(f) The Subscriber understands and acknowledges that the Company will be relying on representations, warranties and agreements made by the Subscriber to the Company, and the covenants agreed to by the Subscriber, herein. The Subscriber agrees to provide, if requested, any additional information that may reasonably be required to determine its eligibility to purchase the Shares. If there is any change in any of the information provided by the Subscriber, or if any of the Subscriber's representations and warranties becomes inaccurate in any respect, the Subscriber will immediately furnish such revised or corrected information to the Company.

(g) The Subscriber understands and acknowledges that the subscription for the Shares contained herein may be accepted or rejected, in whole or in part, by the Company in its sole and absolute discretion, without liability to the Company. The Subscriber also

understands and acknowledges that all calculations, including the calculation of the Subscriber's or any other Eligible Holder's Initial Shares and Unsubscribed Shares, shall be finally determined by the Company.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

(a) The Company represents and warrants to the Subscriber as of the date hereof as follows:

(i) The Company is, as of the date hereof, a corporation duly organized and validly existing under the laws of the State of New Jersey. As of the Effective Date, the Company will be a corporation duly organized and validly existing under the laws of the state of Delaware.

(ii) Subject to the entry of the confirmation order relating to the Plan and occurrence of the Closing, (A) the Company will have the requisite corporate power and authority to execute and deliver this Agreement, (B) this Agreement and the consummation by the Company of the transactions contemplated hereby will have been duly authorized by all requisite corporate action and (C) this Agreement will have been duly and validly executed and delivered by the Company and will constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(iii) The Shares, when issued in accordance with the provisions hereof, will be validly issued by the Company, and will represent fully paid and nonassessable shares of the Company.

(iv) Except for the representations and warranties contained in this Section 2, none of the Company and any other Person on behalf of the Company makes any other express or implied representation or warranty with respect to the Company or any other information provided to the Subscriber. Neither the Company nor any other Person will have or be subject to any liability or indemnification obligation to the Subscriber or any other Person resulting from the distribution to the Subscriber, or use by the Subscriber of, any such information, including any information, documents, projections, forecasts or other material made available to the Subscriber, unless any such information is included in a representation or warranty contained in this Section 2.

3. REPRESENTATIONS AND WARRANTIES OF THE SUBSCRIBER.

The Subscriber represents and warrants to the Company as of the date hereof as follows:

(a) The Subscriber is an Eligible Holder and held on the Record Date the number of shares of Common Stock set forth on Item 1 of Schedule I. Any information which the Subscriber has heretofore furnished to the Company or any agent of the Company, with respect to the Subscriber, including the information in the Accredited Investor Questionnaire, is correct and complete as of the date of this Agreement and if there should be any material change in such information prior to its purchase of the Shares, or at any time thereafter, the Subscriber will immediately furnish, in writing, such revised or corrected information to the Company.

(b) The Subscriber has the requisite corporate or individual power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement and the consummation by Subscriber of the transactions contemplated hereby have been duly authorized by all requisite action. This Agreement has been duly and validly executed and delivered by Subscriber and constitutes the valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms. Except to the extent Subscriber is an individual, Subscriber is a duly organized entity validly existing under the laws of the jurisdiction of its incorporation or formation.

(c) Except as provided under applicable state securities laws, this subscription is and shall be irrevocable, except that the Subscriber shall have no obligation hereunder if this Agreement is for any reason rejected or this offering is for any reason cancelled.

(d) The Subscriber understands that the Shares have not been registered under the Securities Act nor qualified under any state securities laws and that the Shares are being offered and sold pursuant to an exemption from such registration and qualification requirements based in part upon the Subscriber's representations contained herein.

(e) The Subscriber has read and understands this Agreement, the Plan and the Disclosure Statement and understands the terms and conditions herein and therein and the risks associated with the Company and its business as described in the Disclosure Statement.

(f) The Subscriber has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment contemplated by this Agreement, and it is able to bear the economic risk of an investment in the Company. The Subscriber has sufficient financial resources available to support the loss of all or a portion of its investment in the Company, and has no need for liquidity in its investment in the Company.

(g) The Subscriber recognizes that there is no obligation on the part of the Company or any other Person to register the Shares under the Securities Act or any other

securities laws. The Subscriber understands that it must bear the economic risk of this investment indefinitely unless its Shares are registered pursuant to the Securities Act or an exemption from such registration is available, and unless the disposition of such Shares is qualified under applicable state securities laws or an exemption from such qualification is available. The Subscriber further understands that there is no assurance that any exemption from the Securities Act will be available, or, if available, that such exemption will allow the Subscriber to Transfer all or part of its Shares, in the amounts or at the times the Subscriber might propose.

(h) The Subscriber is acquiring the Shares solely for its own account for investment and neither with a view toward, nor any present intention of, Transferring the Shares. No other Person has any right with respect to or interest in the Shares to be purchased by the Subscriber, nor has the Subscriber agreed to give any Person any such interest or right in the future.

(i) No finder's fee or other similar fee is payable to any third party in connection with the Subscriber's investment in the Company. Should such a fee be payable to any third party, such fee is payable in its entirety by the Subscriber and not by the Company or any of its affiliates.

(j) The Subscriber is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under Section 4(2) of the Securities Act and that the Accredited Investor Questionnaire previously completed by the Subscriber sets forth a true, correct and complete statement of the Subscriber's accredited investor status.

(k) No third-party consents or approvals are required to be obtained, made or given in order to permit the Subscriber to execute and deliver this Agreement and to perform its obligations hereunder.

(l) Neither the execution and delivery of this Agreement by the Subscriber nor the consummation of any of the transactions contemplated hereby will violate or conflict with, or result in a breach of, or constitute a default under (whether upon notice or the passage of time or both) any (i) contract to which the Subscriber is a party or (ii) applicable laws, regulations, orders, judgments and decrees.

(m) Other than as set forth in this Agreement, the Subscriber is not relying upon any other information, representation or warranty by the Company. The Subscriber has consulted, to the extent deemed appropriate by the Subscriber, with the Subscriber's own advisors as to the financial, tax, legal and related matters concerning an investment in the Shares and on that basis believes that an investment in the Shares is suitable and appropriate for the Subscriber.

(n) The foregoing representations and warranties will be true on the date hereof and as of the Closing Date and will survive delivery of this Agreement. If any of such representations and warranties is not true prior to acceptance of this Agreement by the Company or prior to the Closing Date, the Subscriber will give written notice of such fact to the Company, specifying which representations and warranties are not true and the reasons therefor.

#### 4. SUBSCRIBER ACKNOWLEDGMENTS.

The Subscriber further acknowledges the following as of the date hereof and as of the Closing Date:

(a) The Disclosure Statement contains projections. The projections are subjective in many respects and are based on expectations, estimates, opinions and beliefs of the Company's management with respect to its financial condition, business and industry performance, general economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond the Company's control. Accordingly, there can be no assurance that the estimates and assumptions made in preparing the projections will prove accurate or that the forecasts will be realized. In addition, the projections do not and cannot take into account such factors as general economic conditions, unforeseen changes and developments in available technologies and products, the entry into the Company's market of significant additional competitors, natural disasters, the terms and conditions of future financings of the Company, and other risks inherent to the business of the Company. While management believes that the projections reflect the possible future results of the Company's operations, such results cannot be guaranteed. The Subscriber acknowledges that it is prepared for the substantial economic risks involved in the purchase of the Shares, including the total loss of its investment. The Company will not be under any duty to update the projections included in the Disclosure Statement prior to or after the Closing Date.

(b) The Subscriber understands that the Shares and any certificates therefor will bear a restrictive legend in substantially the following form, in addition to any legend imposed or required by the Company's organizational documents or other applicable securities laws:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND SUCH THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREUNDER.

The Subscriber may present the certificate evidencing the Shares bearing such legend to the Company's transfer agent for the Shares for exchange for one or more new certificates not bearing such legend or for Transfer to a new holder without such legend at such times as (i) such Shares are sold pursuant to an effective registration statement under the Securities Act or (ii) such holder has delivered to the Company an opinion of counsel reasonably satisfactory to the Company to the effect that the Shares are no longer subject to the restrictions pursuant to an exemption under the Securities Act and such Shares may be sold without registration under the Securities Act, in which event the certificate issued to the transferee will not bear such legend.

5. CONDITIONS TO CLOSING.

(a) Conditions to Each Party's Obligations. The respective obligations of the Subscriber and the Company to consummate the transactions contemplated by this Agreement are subject to the occurrence of the Effective Date.

(b) Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement with the Subscriber are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Subscriber in Section 3 of this Agreement must be true, correct and complete in all respects on the Closing Date;

(ii) All acknowledgments of the Subscriber in Sections 1 and 4 of this Agreement must be true, correct and complete in all respects on the Closing Date; and

(iii) Compliance by the Subscriber with the Rights Offering Procedures governing the Rights Offering, including payment by the Subscriber of the Initial Shares Purchase Price and the Unsubscribed Shares Purchase Price.

(c) Conditions to Obligations of the Subscriber. The obligations of the Subscriber to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Company in Section 2 of this Agreement must be true and correct in all material respects on the Closing Date; and

(ii) Compliance by the Company with the Rights Offering Procedures governing the Rights Offering.



6. TERMINATION.

This Agreement will terminate automatically upon the termination of the Backstop Agreement. In the event this Agreement is terminated, any payments received pursuant to Section 1(a) of this Agreement will be returned within four (4) Business Days to the Subscriber.

7. INTERPRETATION OF THIS AGREEMENT.

(a) Terms Defined. As used in this Agreement, the following terms have the respective meanings set forth below:

"Affiliate": With respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by agreement, contract, obligation, promise, undertaking or understanding, whether written or oral, or otherwise).

"Bankruptcy Code": Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended, supplemented or otherwise modified from time to time.

"Disclosure Statement": The disclosure statement (including all exhibits and schedules thereto or referenced therein) that relates to the Plan, as approved by the United States Bankruptcy Court for the District of Delaware pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified or supplemented.

"Person": An individual, partnership, limited liability company, joint-stock company, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Related Fund": With respect to the Subscriber, any fund, account or investment vehicle that is controlled or managed by (a) the Subscriber, (b) a controlled Affiliate of the Subscriber or (c) the same investment manager or advisor as the Subscriber or an Affiliate of such investment manager or advisor.

"Securities Act": The Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Transfer": Any resale, sale, assignment, pledge, hypothecation, distribution or other disposition or encumbrance.

(b) Directly or Indirectly. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision will be applicable whether such action is taken directly or indirectly by such Person.

(c) Governing Law; Jurisdiction. THIS AGREEMENT, AND ALL CLAIMS ARISING OUT OF OR RELATING THERETO, WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE. THE SUBSCRIBER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF, AND VENUE IN, THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE AND WAIVES ANY OBJECTION BASED ON *FORUM NON CONVENIENS*.

(d) Section Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and should not be deemed to constitute a part thereof.

(e) Construction. This Agreement has been freely and fairly negotiated between the parties. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. The words "include", "includes", and "including" will be deemed to be followed by "without limitation." Pronouns in masculine, feminine and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

## 8. MISCELLANEOUS.

### (a) Notices.

(i) The Subscriber acknowledges that a completed and signed copy of this Agreement, together with payment of the Initial Shares Purchase Price, must be received by the Subscription Agent in accordance with the instructions included herewith prior to the Subscription Expiration Deadline for the subscription contemplated hereby to be valid.

(ii) Except as otherwise provided in this Agreement, following execution of this Agreement, all demands, notices, requests, consents and other communications under this Agreement must be in writing, sent contemporaneously to all of the notice parties set forth below and deemed given when delivered, if delivered by hand or upon confirmation of

transmission, if delivered by facsimile, or if no response to the effect that an email cannot be delivered to the sender is received within 2 hours, if delivered by email, during standard business hours (from 8:00 A.M. to 6:00 P.M. at the place of receipt) at the addresses and facsimile numbers set forth below:

(A) if to the Subscriber, at his or her address or facsimile number shown on Schedule I, or at such other address or facsimile number as the Subscriber may have furnished the Company in writing; and

(B) if to the Company, at (or at such other address or facsimile number as it may have furnished in writing to the Subscriber):

Syms Corp.  
One Syms Way  
Secaucus, New Jersey 07094  
Attn: Laura Brandt  
Facsimile: 201-902-9270  
laurabrandt@syms.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher and Flom LLP  
4 Times Square  
New York, New York 10036  
Attn: Jay Goffman and Mark McDermott  
Facsimile: 212-735-2000  
jay.goffman@skadden.com; mark.mcdermott@skadden.com

(b) Expenses and Taxes. The Company will pay, and hold the Subscriber harmless from any and all liabilities (including interest and penalties) with respect to, or resulting from any delay or failure in paying, stamp and other taxes (other than income taxes), if any, which may be payable or determined to be payable on the execution and delivery of this Agreement or acquisition of the securities pursuant to this Agreement.

(c) Reproduction of Documents. This Agreement and all documents relating hereto may not be reproduced or distributed by the Subscriber without the prior written consent of the Company.

(d) Assignment; Successors. This Agreement is not assignable by the Subscriber without the prior written consent of the Company. This Agreement and the rights, powers and duties set forth herein will inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

(e) Entire Agreement; Amendment and Waiver. This Agreement and the Backstop Agreement constitute the entire understanding of the parties hereto and supersedes all prior understandings among such parties with respect to the matters covered herein. This Agreement may be amended, and the observance of any term of this Agreement may be waived, with (and only with) the written consent of the Company and the Subscriber. In the event of any conflicts between the Backstop Agreement and this Agreement, the Backstop Agreement shall control.

(f) Severability. If any provision of this Agreement or the application of such provision to any person or circumstance is held to be invalid by any court of competent jurisdiction, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid will not be affected thereby.

(g) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.

Please indicate your acceptance and approval of the foregoing in the space provided below.

SYMS CORP.

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

ACCEPTED AND APPROVED

as of the \_\_\_\_ day of \_\_\_\_\_, 2012

SUBSCRIBER: \_\_\_\_\_  
(Please provide full legal name)

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Email Address: \_\_\_\_\_

If Non-U.S. holder, check here and attach W-8: ☐ Non-U.S. holder

## SCHEDULE I

### Name and Address of Subscriber

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_ Facsimile: \_\_\_\_\_  
\_\_\_\_\_ Email: \_\_\_\_\_  
\_\_\_\_\_

If Not Subscriber, Name of Controlled Affiliate or Related  
Fund in Whose Name Shares Should be Issued: \_\_\_\_\_

(Please provide full legal name)

Item 1. Number of Shares of Common Stock Held as of the Record Date: \_\_\_\_\_

Item 2. Calculation of Pro Rata Share for Initial Shares:

10,040,160 X [\_\_\_\_\_] = \_\_\_\_\_  
Number of Offered Shares [Shares Held as of the Record Date (Item 1 above) ÷ [Number of Shares Held as of the Record Date by All Eligible Holders]] (rounded down to the nearest whole Share)

Item 3. Number of Initial Shares (Number of Offered Shares Subscriber Elects to Subscribe for (a whole number not to exceed amount calculated in Item 2)): \_\_\_\_\_

Item 4. Number of Unsubscribed Shares Subscriber Elects to Subscribe for (a whole number), subject to adjustment as provided in the Rights Offering Procedures and Section 1.1(b) of the Backstop Agreement (i.e., enter the maximum number of Unsubscribed Shares that you are required to enter pursuant to Section 1(a) of this Agreement): \_\_\_\_\_

Item 5. Purchase Price. By filling in the following blanks, you are agreeing to purchase the number of Offered Shares specified below at a purchase price of \$2.49 per share, on the terms and subject to the conditions set forth in the Plan and this Agreement. The number of Unsubscribed Shares to be purchased is subject to adjustment as provided in the Rights Offering Procedures and Section 1.1(b) of the Backstop Agreement.

\_\_\_\_\_  
Number of Initial Shares (Item 3) X \$2.49 = \_\_\_\_\_  
Initial Shares Purchase Price

\_\_\_\_\_  
Number of Unsubscribed Shares (Item 4, subject to adjustment as provided in the Rights Offering Procedures and Section 1.1(b) of the Backstop Agreement) X \$2.49 = \_\_\_\_\_  
[TO BE PROVIDED BY THE COMPANY]  
Unsubscribed Shares Purchase Price

**Payment of the Initial Shares Purchase Price shall be made by wire transfer of immediately available funds in accordance with the instructions set forth below.**

**Payment of the Unsubscribed Shares Purchase Price shall not be made until the Subscriber receives the Unsubscribed Shares Notice setting forth its actual allocation of Unsubscribed Shares.**

Name of Account:	Computershare Inc AAF for KCC Client Funding Syms Corp.
Bank Account No.:	4426855330
Bank Name:	Bank of America
Bank Location:	New York
Routing Number:	026009593
Special Instructions:	Reference "Funding for Syms Corp. Rights Offering"

PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THE SUBSCRIPTION AGREEMENT IS VALIDLY SUBMITTED ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF YOUR INITIAL SHARES PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE, AUGUST 21, 2012.

PLEASE MAIL OR DELIVER YOUR COMPLETED SUBSCRIPTION FORM TO:

SYMS CORP. RIGHTS OFFERING PROCESSING  
C/O KURTZMAN CARSON CONSULTANTS LLC  
599 LEXINGTON AVENUE, 39<sup>TH</sup> FLOOR  
NEW YORK, NY 10022  
TELEPHONE: 917-281-4800

SUBSCRIPTION FORMS WILL NOT BE ACCEPTED VIA ELECTRONIC MEANS.