

# **EXHIBIT E**

## COLLATERAL AGENT AGREEMENT

THIS COLLATERAL AGENT AGREEMENT (the “Agreement”) is made between Seung Ni Capital Partners, L.L.C., a Delaware limited liability company (“Collateral Agent”), and the lenders listed on Exhibit “A” hereto (each, a “Lender” and collectively, the “Lenders”), and The Bankruptcy Estates of The SCO Group, Inc., a Delaware corporation and SCO Operations, Inc., a Delaware corporation, by and through Edward N.Cahn solely in his capacity as Chapter 11 trustee (“Borrower”), and this Agreement is executed in connection with the following facts:

### RECITALS:

A. Each Lender, including Collateral Agent, has entered into a duplicate original with Borrower of that certain Credit Agreement, of even date herewith (each, the “Credit Agreement”), under which Collateral Agent, as one of the Lenders, has agreed to extend a portion of the Loan, as defined in the Credit Agreement, to Borrower. Except where the context otherwise requires herein, the term “Lenders” used herein shall include the Collateral Agent.

B. The Lenders have entered into duplicate originals of the Credit Agreement and certain exhibit agreements attached thereto under which each Lender has agreed to extend a portion of the Loan to Borrower. Each of the Lenders, thus, has rights and obligations with vis a vis the Borrower and the making each Lender’s portion of the Loan and vis a vis enforcement of the Loan Documents against the Borrower, except as set forth in this Agreement.

C. The Loan Documents create certain security interests in the Collateral in each of the Lender’s favor for the purpose of securing Borrower’s repayment of the Loan. The Lenders’, including Collateral Agent’s, desire to designate and appoint a third party to act as the collateral agent on all of the Lenders’ collective behalf with respect to the Collateral, as more fully set forth in this Agreement.

D. Collateral Agent is willing to act without compensation as the collateral agent for such purposes in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Borrower, Lenders, and Collateral Agent hereby agree as follows:

1. Recitals. The parties hereto acknowledge the accuracy of the Recitals and hereby incorporate the foregoing Recitals into this Agreement.

2. Definitions. Except as defined in this Agreement, each capitalized term appearing herein shall have the meaning ascribed or given to it in the Credit Agreement.

3. Appointment of Collateral Agent. Each of the Lenders acknowledges that it has read and entered into the Credit Agreement and the other Loan Documents. Effective Immediately and by signing this Agreement, each of the Lenders hereby irrevocably and unconditionally appoints Collateral Agent to serve as collateral agent for all of the Lenders and irrevocably appoints and authorizes Collateral Agent to act as agent for all of the Lenders for the purpose of: (a) executing, filing, and/or delivering such documents and agreements as are

necessary or desirable to perfect the security interests granted to each Lender in the Collateral under duplicate originals and versions of the Loan Documents; and (b) enforcing the Lenders' rights in the Collateral and the Borrower's obligations under such versions of the Loan Documents and the Borrower's obligations thereunder; (c) releasing the Liens against the Collateral upon payment in full of the Loan Fee and the other amounts due under the Loan Documents; and (d) holding all Lenders' security interests and Liens in the Collateral granted in the Lenders' favor under such versions of the Loan Documents. Collateral Agent accepts such appointment and covenants and agrees to perform all covenants and obligations set forth herein. Further, Collateral Agent shall have the sole authority to exercise any and all remedies against Borrower under any and all of the Security Documents and to act in such capacity in accordance with the terms and conditions of this Agreement.

4. Decisions/Actions Related to Remedies under Security Documents.

(a) The Collateral Agent may take such actions and pursue such remedies with respect to the actions and authority set forth in Section 3 hereof as the Collateral Agent shall, in its discretion, deem appropriate or necessary under the circumstances. In accordance with any Majority Vote, as defined herein, the Collateral Agent shall: (i) take such actions to enforce, modify, or amend the Security Agreements on all of the Lenders' behalf; and (ii) collect upon, dispose of, or foreclose upon all or any portion of the Collateral.

(b) The Collateral Agent shall not be obligated or required to take any action or give any notice that it believes is contrary to Applicable Law, to the terms of this Agreement, or to the terms of the Credit Agreement or the other Loan Documents, or that the Collateral Agent believes will expose any of its owners, officers, or employees to liability. Further, the Collateral Agent shall not be required to take any action hereunder unless and until it has received (for itself, its owners, officers, employees, and agents) indemnities against any and all losses, costs, expenses, and liabilities connected thereto.

(c) The Collateral Agent shall have no liability whatever in acting in accordance with a Majority Vote. Further, no Lender shall have liability to any other Lender hereunder or otherwise for casting its vote in connection with any Majority Vote.

(d) The Collateral Agent shall provide notice to all of the Lenders of any action taken in accordance with any Majority Vote and otherwise taken hereunder on behalf of all Lenders. However, the Collateral Agent's failure to provide any such notice to the other Lenders shall not impair Collateral Agent's right or ability to take any action authorized hereunder, nor shall it impair the validity or enforceability of this Agreement or of any of the Loan Documents, nor shall it create a cause of action against any party to this Agreement, including the Collateral Agent.

(e) Except for the Lenders' right to receive its share of the Loan Fee in accordance with the Credit Agreement, the Lenders only right hereunder and in the Collateral shall be the right to cast its vote with respect to any Majority Vote in accordance herewith. Each of the Lenders hereby agrees that none of them shall have, and each of them hereby waives, the right to take or threaten to take any action to enforce any term or provision in any of the Security Documents or to enforce any rights with respect to any or all of the Collateral, it being

understood that the Collateral Agent alone shall have the right to seek and enforce any and all rights and remedies in the Collateral and under this Agreement.

(f) The Collateral Agent may, in its discretion, request a Majority Vote with respect to any action, decision, or course of action Collateral Agent desires or plans to take hereunder, and the Majority Vote with respect to such action, decision, or course of action shall be binding on all of the Lenders for all purposes.

(g) The Collateral Agent may release all security interests and Liens of the Lenders against the Collateral upon payment in full of the amount due under the Note and the other Loan Documents, including the payment of the Loan Fee. The Collateral Agent may also release any or all of such security interests or Liens against the Collateral upon a Majority Vote of the Lenders.

(h) The Lenders acknowledge and agree that the Borrower has the rights to dispose of the Collateral, as set forth in the Credit Agreement.

5. Application of Collateral Proceeds. Any amount received by the Collateral Agent from its enforcement of any of the Security Documents, including, without limitation, the proceeds from the enforcement, sale, collection, or disposition of any of the Collateral (collectively, the “Proceeds”), shall be applied and paid by the Collateral Agent as follows:

(a) First, to the costs and expenses of such sale, collection, enforcement, or disposition, including the fees and costs of such professional advisors as Collateral Agent deems necessary or appropriate incurred in with exercising any right or remedy hereunder, including costs related to any indemnification to which Collateral Agent is entitled hereunder or under any of the Loan Documents; and

(b) Second, to the payment of the Obligations for the ratable and proportionate benefit of the Lenders.

Until the Collateral Agent so applies and pays any such amount, the Collateral Agent shall hold such Proceeds in its custody in accordance with the Collateral Agent’s procedures for holding such funds.

6. Consent/Approval of Lenders. Collateral Agent is hereby authorized as the only Lender to communicate to and with Borrower with respect to any approval, notice, and/or consent required or permitted to be given to Borrower or any third party under the Loan Documents as follows:

(a) Proportionate Voting/Majority Vote/Binding and Final. In each instance of consent, approval, or notice permitted or required under the Loan Documents, with respect to each additional action requiring a Majority Vote hereunder, and with respect to each Majority Vote requested by Collateral Agent hereunder, each Lender shall have the right to cast a vote. Each Lender’s vote shall be weighted, and Collateral Agent and Borrower shall have the right to rely on a simple majority vote of the Lenders, i.e., a vote of anything amount more than a

50.00% vote, as described herein (each, a “Majority Vote”). Each Majority Vote shall be conclusive, final and binding on Collateral Agent, the other Lenders, and Borrower.

(b) A Majority Vote of Lenders shall be calculated by weighting each Lender’s vote and by aggregating or adding up the weighted votes of all Lenders. Each Lender’s vote shall be equal to that portion of the total of all Lenders’ votes, using the following percentage or formula: the dollar amount of such Lender’s portion of the aggregate amount of the Loan, divided by the aggregate amount of the Loan made by or from all of the Lenders (including that portion of the Loan made from Collateral Agent). Collateral Agent shall collect the votes of all Lenders using the foregoing percentage calculation or formula. For example, and by not way of limitation, a Lender who makes a \$200,000.00 portion of the Loan in the aggregate amount of \$2,000,000.00 shall cast a vote equal to 10.00% of the total vote cast by all Lenders. Similar votes cast by Lenders who made more than 50% of the aggregate amount of the Loan shall constitute a Majority Vote for purposes of this Agreement. Collateral Agent shall communicate the outcome of each Majority Vote to all Lenders.

(c) If at any time, any Lender fails to cast its vote by the date identified by Collateral Agent, such failure shall allow Collateral Agent to cast such Lender’s vote as Collateral Agent, in its sole discretion, deems appropriate. Collateral Agent’s decision as to casting such Lender’s vote shall not expose Collateral Agent to any liability hereunder or otherwise and shall be conclusive and binding on all Lenders.

7. Compensation. Borrower shall be responsible to pay all fees and charges of Collateral Agent hereunder.

8. Termination of Duties. Collateral Agent’s appointment as collateral agent shall terminate upon the earlier of:

a. The satisfaction in full of all Obligations owing by Borrower under the Credit Agreement and the Note, including payment of the Loan Fee; or

b. Thirty (30) days written notice from Collateral Agent that Collateral Agent desires to resign as collateral agent.

9. Successor Collateral Agent. Upon the termination of Collateral Agent’s appointment as collateral agent, Collateral Agent shall immediately assign its rights hereunder and in the Collateral to the successor collateral agent.

10. Notices. All notices by any party hereto shall be in writing and shall be sent as provided in the Credit Agreement.

11. Disclaimers.

(a) By becoming a party to this Agreement, Collateral Agent shall have no duties, obligations, or liabilities, except to perform the duties expressly set forth herein. The Collateral Agent is and shall not be liable for any statement, representation, or warranty contained herein or in any of the Loan Documents or in any other document executed or delivered or existing in

connection therewith or for the validity, enforceability, genuineness, effectiveness, or sufficiency of any of the such Loan Documents or other documents or agreements, or for the validity, perfection, priority, or effectiveness of any security interest or Lien granted to any of the Lenders under any or all of the Loan Documents or otherwise. The Collateral Agent may employ agents and advisors to fulfill any or all of its duties hereunder and shall not be responsible for the negligence of any such agents or advisors. Neither the Collateral Agent, nor its owners, officers, directors, agents, or advisors shall be liable for any action or omission taken or omitted to be taken hereunder or in connection herewith, except for actions that are finally and judicially determined to have resulted from their own gross negligence or willful misconduct.

(b) The Collateral Agent may request and rely upon any certification, notice, or other communication believed by it to be genuine and correct, including the outcome of any Majority Vote.

(c) Each of the Lenders for themselves and their successors and assigns (each an “Indemnifying Party”) hereby, jointly and severally, agrees to indemnify, defend, and hold Collateral Agent (and its owners, officers, agents, and advisors) harmless from and against all liabilities, losses, obligations, damages, claims, actions, proceedings, penalties, judgments, costs (including attorney’s fees and costs), expenses, and/or disbursements of any kind or nature whatever arising, imposed on, suffered by, asserted against, or connected with Collateral Agent in any way relating to or arising in connection with this Agreement, the Collateral, the Loan Documents, or any other documents executed referred to or existing in connection with any or all of the foregoing documents or with the Transactions; provided, however, that none of the Indemnifying Parties shall be liable for any of the foregoing indemnity obligations to extent that they are finally and judicially determined to have resulted from the gross negligence or the willful misconduct of Collateral Agent.

(d) Except as expressly set forth herein, Collateral Agent shall have no duty to take any affirmative step or action with respect to collection of any amounts payable or owed in connection with or related to the Collateral

## 12. General.

(a) This Agreement is made for the sole and exclusive benefit of Borrower and Collateral Agent and is not intended to benefit any third party. No such third party may claim any right or benefit or seek to enforce any term or provision of this Agreement.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. In the event of any dispute hereunder, each of the parties hereto agrees to submit to the venue and jurisdiction of the federal and state courts of the State of Delaware.

(c) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(d) All references in this Agreement to the singular shall be deemed to include the plural if the context so requires and vice versa. References in the collective or conjunctive shall also include the disjunctive unless the context otherwise clearly requires a different interpretation.

(e) This Agreement, together with the Loan Documents, constitute the entire agreement between the parties hereto as to the subject matter hereof and may not be altered or amended except by written agreement signed by Administrative Agent, Borrower, and Collateral Agent. All other prior and contemporaneous agreements, arrangements, and understandings between the parties hereto as to the subject matter hereof are, except as otherwise expressly provided herein, rescinded. Facsimile and electronic mail signatures on this Agreement shall be deemed and shall constitute originals for all purposes, and this Agreement may be executed in any number of counterparts.

(f) Each of the parties to this Agreement represents and warrants to the other parties hereto that the execution, delivery, and performance by such party has been duly authorized by all necessary corporate or other action required for such authorization and does not violate the provisions of any agreement or other document to which such party is a party and does not require any governmental or other approval.

(g) Each of the parties hereto agrees to promptly pay Collateral Agent its proportionate share (calculated in the same manner as a Majority Vote is determined) of all expenses and costs incurred by Collateral Agent hereunder.

(h) Collateral Agent may demand specific performance of this Agreement by every and each party hereto. Further, each party hereto waives any defense it may have to any such claim for specific performance.

COLLATERAL AGENT:

SEUNG NI CAPITAL PARTNERS, L.L.C.

By: \_\_\_\_\_

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

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

BORROWER:

\_\_\_\_\_  
EDWARD N. CAHN, Soley in His Capacity  
as Trustee of the Bankruptcy Estates of The  
SCO Group, Inc. and SCO Operations, Inc.,  
both Delaware corporations

[LENDERS' SIGNATURES APPEAR ON SEPARATE COUNTERPART PAGES]

LENDER:

\_\_\_\_\_

By: \_\_\_\_\_

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

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

(Each Lender shall execute and deliver this signature page to Collateral Agent)

EXHIBIT "A"

LIST OF LENDERS

Ralph Yarro	\$400,000
Jan Loeb	\$400,000
Rex Lewis	\$600,000
Hank Beinstein	\$350,000
Dan Campbell	\$100,000
Darcy Mott	\$10,000

These individuals may be a "Lender" either individually or through an entity in which they own or control an interest. Additional "Lenders" may be added, or the foregoing amounts may change.

Collateral Agent Agreement (5) (2).DOC