EXHIBIT 10.1  
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 INSIGHTFUL CORPORATION  
  
  
 PLEDGE AGREEMENT  
  
  
 This PLEDGE AGREEMENT (this "Agreement"), dated as of September 10, 2001,  
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is made by and between Insightful Corporation, a Delaware corporation  
("Insightful"), and Xx. Xxxxxxx Xxxxxxxxxx ("Shareholder").  
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 RECITALS  
  
 A. Insightful, Predict AG, a Swiss corporation ("Predict"), and the  
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shareholders of Predict, including Shareholder, have entered into a Share  
Purchase Agreement (the "Purchase Agreement"), executed concurrently with this  
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Agreement, pursuant to which Insightful shall acquire all of the outstanding  
capital stock of Predict.  
  
 B. Shareholder shall provide services to, and shall be employed by,  
Predict pursuant to the terms of an employment agreement (the "Employment  
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Agreement"), executed concurrently with this Agreement, by and between Predict  
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and Shareholder.  
  
 C. Pursuant to the Purchase Agreement, certificates representing  
115'810 shares of common stock of Insightful (the "Insightful Common Stock"),  
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$0.01 par value, otherwise issuable to Shareholder shall be held by, and the  
shares represented by such certificates shall be subject to forfeiture to,  
Insightful, all in accordance with the terms and conditions of this Agreement,  
the execution of which is a condition precedent to the consummation of the  
transactions contemplated by the Purchase Agreement.  
  
 D. Capitalized terms used but not otherwise defined in this Agreement  
shall have the meaning set forth in the Purchase Agreement.  
  
 NOW, THEREFORE, in consideration of the promises and of the mutual  
covenants of the parties contained in this Agreement, the parties hereby agree  
as follows:  
  
1. HOLDBACK OF PLEDGE SHARES.  
  
 (a) At the Closing Date, certificates representing 93'806 shares  
of Insightful Common Stock otherwise issuable to Shareholder pursuant to the  
Purchase Agreement (the "Initial Pledge Shares" and, together with the Repledge  
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Shares (as defined in Section 1(d) of this Agreement) and the New Pledge Shares  
(as defined in Section 1(e) of this Agreement), the "Pledge Shares") shall be  
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held by, and the shares represented by such  
  
  
  
certificates shall be subject to forfeiture by Shareholder to, Insightful, in  
accordance with the provisions of Section 2 of this Agreement. Upon the  
consummation of the transactions contemplated by the Purchase Agreement (in the  
case of the Initial Pledge Shares) or at the time of issuance (in the case of  
any New Pledge Shares), Shareholder shall be deemed to have pledged such Pledge  
Shares to Insightful, and Insightful shall hold such Pledge Shares in accordance  
with the terms and conditions of this Agreement. So long as any Pledge Shares  
are held by Insightful under this Agreement, Insightful shall have, and the  
Shareholder shall be deemed to have granted to Insightful, a perfected,  
first-priority security interest in the Pledge Shares, to secure the obligations  
of the Shareholder under the Employment Agreement.  
  
 (b) Notwithstanding the foregoing, unless and until retransferred  
to Insightful in accordance with the provisions of Section 2 of this Agreement,  
the Pledge Shares shall be held of record by and owned by Shareholder for all  
purposes (including Swiss federal, cantonal and municipal income tax and U.S.  
income tax purposes), and Shareholder shall have the full right to vote the  
Pledge Shares on all matters coming before the stockholders of Insightful. For  
U.S. federal and state income tax purposes, as well as for Swiss federal,  
cantonal and municipal income tax purposes, any dividends paid or other  
distributions made with respect to the Pledge Shares shall be income of  
Shareholder and shall be immediately disbursed by Insightful to Shareholder.  
  
 (c) Any attempt by Shareholder to sell, exchange, transfer, pledge  
or otherwise dispose of the Pledge Shares before the release of the Pledge  
Shares pursuant to Section 3 of this Agreement shall be null and void and shall  
have no force or effect.  
  
 (d) On the first anniversary of the Closing Date, certificates  
representing 22'004 Indemnification Shares (the "Repledge Shares") shall  
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continue to be held by Purchaser, but shall be deemed to constitute Pledge  
Shares hereunder and shall be subject to forfeiture to Purchaser pursuant to the  
provisions of this Agreement.  
  
 (e) In the event of any stock dividend, stock split, consolidation  
of shares or any like capital adjustment of the outstanding securities of  
Insightful, any new, substituted or additional securities or other property to  
which Shareholder becomes entitled by reason of his ownership of the Pledge  
Shares (the "New Pledge Shares") shall be subject to forfeiture with the same  
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force and effect, and in the same proportion, as the Pledge Shares are subject  
to forfeiture immediately before the event.  
  
 (f) Concurrent with the execution of this Agreement, Shareholder  
shall execute and deliver to Insightful one or more stock powers endorsed in  
blank, in a form reasonably acceptable to the parties. Thereafter, Shareholder  
shall execute and deliver to Insightful such other documentation as Insightful  
shall reasonably require to carry out the purposes of this Agreement.  
  
 (g) Any shares forfeited to Insightful pursuant to Section 2 shall  
be retransferred to Insightful for cancellation.  
  
2. FORFEITURE OF PLEDGE SHARES UPON TERMINATION.  
  
  
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 (a) In the event that, during the period beginning on the date of  
this Agreement and continuing until the date that is 36 months after the Closing  
Date (the "Pledge Period"), Shareholder (a) voluntarily ceases to be employed by  
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Predict for any reason other than his death, his Total Disability (as defined  
below) or Good Reason (as defined below) or (b) is terminated by Predict for  
Cause (as defined below), Shareholder shall, without any action on the part of  
Shareholder, immediately forfeit to Insightful, as liquidated damages, the  
Pledge Shares (other than any Pledge Shares that have been previously released  
pursuant to Section 3 of this Agreement).  
  
 (b) For purposes of this Agreement, "Cause" shall mean and is  
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limited to the following:  
  
 (i) any act of fraud, embezzlement, or deceit by Shareholder  
against Insightful or Predict;  
  
 (ii) any material breach by Shareholder of the Inventions  
Agreement;, provided that Shareholder has been notified in writing of such  
breach and has failed to cure such breach within a reasonable time period after  
such notification; or  
  
 (iii) the conviction of Shareholder of any felony that  
impairs the business, goodwill or reputation of Insightful or Predict or that  
compromises Shareholder's ability to represent Insightful or Predict with the  
public;  
  
 (iv) any willful misconduct by Shareholder in connection with  
his responsibilities as an employee that impairs the business, goodwill or  
reputation of Insightful or Predict or that compromises Shareholder's ability to  
represent Insightful or Predict with the public; or  
  
 (v) Shareholder's unreasonable refusal to perform his lawful  
material duties as an employee of Predict, to adhere to explicitly stated and  
reasonable guidelines of employment or to follow the reasonable directives of  
the Board of Directors of Predict, provided that Shareholder has been notified  
in writing of such unreasonable refusal and has failed to discontinue such  
refusal within a reasonable time period after such notification.  
  
 (c) For the purposes of this Agreement, "Good Reason" shall mean  
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and is limited to the occurrence of the following events:  
  
 (i) a material change in Shareholder's status, title,  
position or responsibilities that represents a substantial reduction in such  
status, title, position or responsibilities as in effect immediately before the  
change, except as a result of the termination of Shareholder's employment by  
Predict for Cause or because of his death or Total Disability, or by Shareholder  
other than for Good Reason or the assignment to Shareholder of any material  
duties or responsibilities that are substantially inconsistent with such status,  
title, position or responsibilities; or  
  
 (ii) failure by Predict to timely pay, or reduction by  
Predict, of Shareholder's annual base salary, except for reductions that are  
generally applicable to all employees of Predict of similar position and  
authority;  
  
  
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 (iii) a requirement by Predict that the principal place of  
business at which Shareholder performs his duties be changed to a location more  
than 50 miles from the current location of Predict's office in Basel,  
Switzerland;  
  
 (iv) a failure by Predict to continue in effect any benefits  
provided to Shareholder, unless Insightful provides Shareholder with a plan or  
plans that provide substantially similar benefits, or the taking of any action  
by Predict that would adversely affect Shareholder's benefits under any such  
plans or deprive Shareholder of any material fringe benefit enjoyed by him,  
except to the extent that such loss or reduction of benefits is applicable to  
all employees of Predict of similar position and authority; or  
  
 (v) any material breach by Predict of any provision of the  
Employment Agreement.  
  
 (d) For purposes of this Agreement, "Total Disability" shall mean  
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a mental or physical impairment of Shareholder that renders him, or is  
reasonably expected to render him, unable to perform the material services  
contemplated by the Employment Agreement for a period of three months, whether  
or not consecutive, in any 12-month period. A determination of Total  
Disability shall be made by a physician satisfactory to both Shareholder and  
Insightful; provided, that if Shareholder and Insightful do not agree on a  
physician, Shareholder and Insightful shall each select a physician and these  
two physicians shall together select a third physician, whose determination as  
to Total Disability shall be binding on all parties.  
  
3. RELEASE OF PLEDGE SHARES.  
  
 (a) Unless previously forfeited pursuant to Section 2 of this  
Agreement, 50% of the Pledge Shares (and such additional securities or other  
property to which Shareholder has become entitled by virtue of his ownership of  
such Pledge Shares) shall be released by Insightful to Shareholder, and shall no  
longer be subject to forfeiture (the "Released Shares"), on each of the second  
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and third anniversaries of the Closing Date (each, a "Release Date"). Promptly  
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following each Release Date, Insightful shall deliver or cause to be delivered  
to Shareholder the certificate or certificates representing the applicable  
number of Released Shares, plus any dividends paid or other distributions made  
with respect to the Released Shares.  
  
 (b) Notwithstanding the foregoing, all remaining Pledge Shares  
shall be immediately released if:  
  
 (i) Predict terminates Shareholder's employment with Predict  
without Cause;  
  
 (ii) Shareholder terminates his employment for Good Reason;  
or  
  
 (iii) Shareholder's employment is terminated automatically or  
by either party in the event of his death or Total Disability.  
  
 Promptly following such termination, Insightful shall deliver or  
cause to be delivered to Shareholder the certificate or certificates  
representing the applicable  
  
  
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number of Pledge Shares, plus any dividends paid or other distributions made  
with respect to the Pledge Shares.  
  
4. MISCELLANEOUS.  
 (a) Further Assurances. Each party shall execute and deliver all  
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such further instruments and documents, and shall perform any and all acts,  
necessary to give full force and effect to all of the terms of this Agreement.  
  
 (b) Notices. Any notice, request or demand desired or required to  
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be given under this Agreement shall be in writing given by personal delivery,  
confirmed facsimile transmission or overnight courier service, in each case  
addressed as set forth below or to such other address as any party shall have  
previously designated by such a notice. The effective date of any notice,  
request or demand shall be the date of personal delivery, the date on which  
successful facsimile transmission is confirmed or the date actually delivered by  
a reputable overnight courier service, as the case may be, in each case properly  
addressed as provided in this Section 4(b) and with all charges prepaid.  
  
 If to Insightful:  
  
 Insightful Corporation  
 0000 Xxxxxxxx Xxxxxx Xxxxx, Xxxxx 000  
 Xxxxxxx, XX 00000-0000  
 XXX  
 Fax: (000) 000-0000  
 Attention: General Counsel  
  
 with a copy to:  
  
 Xxxxxx, Xxxxxxxxxx & Xxxxxxxxx LLP  
 000 Xxxxxx Xxxxxx, Xxxxx 000  
 Xxxxxxx, XX 00000  
 XXX  
 Fax: (000) 000-0000  
 Attention: Xxxx X. Xxxxx  
  
If to Shareholder: Xxxxxxx Xxxxxxxxxx  
 Xxxxxxxxx 00  
 0000 Xxxxxxx  
 Xxxxxxxxxxx  
 Fax:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 (c) Severability. If any term or other provision of this  
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Agreement is held invalid, illegal or incapable of being enforced by any rule of  
law or under public policy, all other conditions and provisions of this  
Agreement shall nevertheless remain in full force and effect so long as the  
economic or legal substance of the transactions contemplated by this Agreement  
is not affected in any manner adverse to any party. Upon such determination  
that any term or other provision is invalid, illegal or incapable of being  
enforced, the parties to this Agreement shall negotiate in good faith to modify  
this  
  
  
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Agreement so as to effect the original intent of the parties as closely as  
possible in a mutually acceptable manner, in order that the transactions  
contemplated by this Agreement be consummated as originally contemplated to the  
fullest extent possible.  
  
 (d) Entire Agreement. This Agreement constitutes the entire  
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agreement among the parties with respect to the subject matter of this Agreement  
and supersedes all prior agreements and undertakings, both written and oral,  
among the parties, or any of them, with respect to such subject matter.  
  
 (e) Assignment. Shareholder may not assign this Agreement by  
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operation of law or otherwise. Insightful may assign its rights and obligations  
under this Agreement to any corporation wholly owned (directly or through  
intermediate wholly owned subsidiaries) by Insightful or to any corporation  
resulting from a merger, consolidation or other reorganization to which  
Insightful is a party or to any transferee of substantially all of Insightful's  
assets. This Agreement shall inure to the benefit of, and be enforceable by,  
the parties to this Agreement and their respective successors and permitted  
assigns.  
  
 (f) Governing Law; Venue. This Agreement shall be governed by,  
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and construed in accordance with, the laws of the state of Delaware applicable  
to contracts executed in and to be performed in that state. The parties  
irrevocably consent to the jurisdiction and venue of the state and federal  
courts located in the United States in connection with any action relation to  
this Agreement.  
  
 (g) Headings. The descriptive headings contained in this  
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Agreement are included for convenience of reference only and shall not affect in  
any way the meaning or interpretation of this Agreement.  
  
 (h) Counterparts. This Agreement, and any amendment or  
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modification of this Agreement, may be executed in any number of counterparts,  
each of which shall be deemed to be an original and all of which, taken  
together, shall constitute one and the same instrument.  
  
 (i) Waiver of Jury Trial. Each of Insightful and Shareholder  
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hereby irrevocably waives all right to trial by jury in any action, proceeding  
or counterclaim (whether based on contract, tort or otherwise) arising out of or  
relating to this Agreement, the transactions contemplated by this Agreement or  
the actions of such parties in the negotiation, administration, performance and  
enforcement of this Agreement.  
  
 (j) Attorneys' Fees. Should either party to this Agreement, or  
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any heir, personal representative, successor or assign of either party, resort  
to litigation or arbitration in connection with this Agreement or Shareholder's  
employment with Insightful, the party or parties prevailing in such litigation  
shall be entitled, in addition to such other relief as may be granted, to  
recover its or their reasonable attorneys' fees and costs in such litigation or  
arbitration from the non-prevailing party or parties.  
  
 (k) Amendment. No amendment, modification, waiver, termination or  
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discharge of any provision of this Agreement, or consent to any departure from  
any provision by either party to this Agreement, shall in any event be effective  
unless in writing, specifically identifying this Agreement and the provision  
intended to be amended,  
  
  
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modified, waived, terminated or discharged, signed by the Chief Executive  
Officer or [Chief Financial Officer] of Insightful (or other person duly  
authorized by Insightful) and Shareholder. Each such amendment, modification,  
waiver, termination or discharge shall be effective only in the specific  
instance and for the specific purpose for which it was given. No provision of  
this Agreement shall be varied, contradicted or explained by any oral agreement,  
course of dealing or performance or any other matter not set forth in an  
agreement in a signed writing.  
  
 (l) Rights Cumulative. The rights and remedies provided by this  
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Agreement are cumulative, and the exercise of any right or remedy by either  
party to this Agreement (or by its successor), whether pursuant to this  
Agreement, to any other agreement or to law, shall not preclude or waive such  
party's right to exercise any or all other rights and remedies.  
  
  
 (m) Nonwaiver. No failure or neglect of either party to this  
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Agreement in any instance to exercise any right, power or privilege under this  
Agreement or under law shall constitute a waiver of any other right, power or  
privilege or of the same right, power or privilege in any other instance. All  
waivers by either party to this Agreement must be contained in a written  
instrument signed by the party to be charged and, in the case of Insightful, by  
the Chief Executive Officer or [Chief Financial Officer] of Insightful (or other  
person duly authorized by Insightful).  
  
 (n) Arbitration. Any controversy, claim or dispute arising out of  
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or relating to this Agreement between the parties, their successors, assignees,  
affiliates or agents, shall be settled by arbitration in accordance with the  
National Rules for the Resolution of Employment Disputes of the American  
Arbitration Association then in effect. The arbitration shall be conducted in  
[Seattle, Washington] by one arbitrator either mutually agreed upon by  
Insightful and Shareholder or chosen in accordance with the AAA Rules, except  
that the parties shall have any right to discovery as would be permitted by the  
Federal Rules of Civil Procedure for a period of 90 days following the  
commencement of the arbitration and the arbitrator shall resolve any dispute  
which arises in connection with such discovery. The parties agree to abide by  
all decisions and awards rendered in such proceedings, and decisions and awards  
rendered by the arbitrator shall be final and conclusive and may be entered in  
any court having jurisdiction as a basis of judgment and of the issuance of  
execution for its collection. All such controversies, claims or disputes shall  
be resolved by arbitration in lieu of any action at law or equity; provided  
however, that nothing in this subsection 4(n) shall be construed as precluding  
Insightful from bringing an action for injunctive relief or other equitable  
relief. The prevailing party shall be entitled to costs, expenses and  
reasonable attorneys' fees, and judgment upon the award rendered by the  
arbitrator may be entered in any court having jurisdiction. The parties shall  
keep confidential the existence of the claim, controversy or disputes from third  
parties (other than arbitrator(s)), and the determination of the arbitration,  
unless otherwise required by law.  
  
 [SIGNATURE PAGE FOLLOWS]  
  
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IN WITNESS WHEREOF, the parties to this Pledge Agreement have entered into and  
signed this Pledge Agreement as of the date and year first above written.  
  
 INSIGHTFUL CORPORATION  
  
 By: /S/ Xxxxx Xxxxx  
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 Name: Xxxxx Xxxxx  
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 Title: Chief Executive Officer  
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 SHAREHOLDER  
  
 /S/ Xxxxxxx Xxxxxxxxxx  
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 Xxxxxxx Xxxxxxxxxx  
  
  
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