

12-05-2000

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BOX ISSUE FEE

10-23-00

RECORDATION FOR
PATENT APPLICATIONS



101536473

TO THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS:

SIR: Please record the enclosed original documents or copy thereof.

1. NAME OF CONVEYING PARTY/IES (ASSIGNOR/S):

a. **Vuent, Inc.**

b. d.

c. e.

Additional names of conveying parties enclosed?

☒ NO ☐ YES

2. PARTY(ASSIGNEE) RECEIVING INTEREST:

NAME: **iEngineer.com, Inc.**
ADDRESS: **477 Potrero Avenue**
Sunnyvale, CA 94086

Additional names and addresses enclosed?

☒ NO ☐ YES

3. NATURE OF CONVEYANCE:

(Submit only one document for recordation--multiple copies of same Assignment signed by different inventors is one document)

☒ Assignment of ☒ Whole ☐ Part interest

☐ Change of name ☒ Patent Application

☐ Security ☐ Merger ☐ Other:

Execution date: May 12, 000

4. Execution date/s on Declaration (if filed herewith):

4.5 Appl/Pat Nos.: others on additional sheets enclosed?

☒ NO ☐ YES

A. Pat. App. No/s	Matter #	1st inventor if not in item 1	B. Patent No(s)	1st inventor if not in item 1
09/003,863	0239316			

5. Name and address of party to whom correspondence concerning document should be mailed:

Pillsbury Madison & Sutro LLP
1100 New York Avenue N.W., 9th Floor, East Tower
Washington, D.C. 20005-3918

6. NUMBER INVOLVED:
Applns: 1 + Pats: 0 = TOTAL 1

7. Amount of fee enclosed (Code 581):
Above Total x \$40 = **\$40.00**

5.5 ATTY DKT: **0239316**

8. If above fee is missing or inadequate, charge insufficiency to DEPOSIT ACCOUNT NO. 03-3975

0239316

AMT-003

UNDER ORDER NO.: **0239316**

MATTER NO.

CLIENT REF.

9. STATEMENT AND SIGNATURE. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Signature

10. Total pages including this cover sheet and document: **68**

Atty: Mark J. Danielson, Reg. No. 40,580
Tel: (650) 233-4777 Fax: (650) 233-4545

Date: **October 17, 2000**

ASSET PURCHASE AGREEMENT

by and between

iEngineer.com., Inc.,
a Delaware corporation

and

Vuent, Inc.,
a California corporation

Dated as of May 12, 2000

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A	Second Amended and Restated Certificate of Incorporation
B	Employment Agreement
C	Amended and Restated Stock Option Plan
D	Common Stock Certificate
E	Series AA Preferred Stock Certificate
F	Assignment and Acceptance of Lease
G	Opinion of Gibson, Haglund & Paulsen
H	Bill of Sale, Assignment and Assumption Agreement
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K	Appraisal
L	Intellectual Property Rights Assignment(Trademark)
M	Intellectual Property Rights Assignment(Patent)
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PURCHASER'S SCHEDULES

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of May 12, 2000 by and between iEngineer.com, Inc., a Delaware corporation ("Purchaser") and Vuent, Inc., a California corporation ("Seller").

RECITALS

A. Seller is engaged in the business of designing, developing and marketing web-centric visualization and collaboration software that helps businesses leverage graphical design and information over the Internet (excluding the Excluded Assets, as defined below, the "Business").

B. Purchaser is engaged in the business of developing and marketing complete project collaboration application services for engineers, manufacturers, their suppliers, partners and customers ("Purchaser's Business"); and

C. The parties hereto desire to combine the Business and Purchaser's Business into an integrated collaboration platform that can help enterprises leverage graphic design collaboration information over the Internet, all according to the terms and subject to the conditions set forth in this Agreement.

D. The parties desire that the Acquisition of the Assets by Purchaser and liquidation of Seller following the Acquisition constitute a tax-free reorganization pursuant to Section 368(a)(1)(C) of the Code.

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NOW, THEREFORE, in consideration of the representations, warranties and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth or referenced below:

1.1 "Accounts Payable" shall mean all amounts owing by Seller under Assumed Contracts or otherwise arising in connection with the Business including those liabilities listed on Schedule 1.1.

1.2 "Accounts Receivable" shall mean the accounts receivable of or amounts owing or payable to Seller in connection with or relating to the Business as set forth on the Closing Date Balance Sheet, including those set forth on Schedule 1.2.

1.3 "Acquisition" shall have the meaning set forth in Section 2.1(a)(iii) hereof.

1.4 "Affiliate" shall mean a Person that directly or indirectly, through one or more intermediaries, is controlled by, or is under common control with another Person.

1.5 "Ancillary Agreements" shall mean those certain documents in the forms attached hereto as Exhibits A through S, the final forms of which shall be mutually agreed to by the parties and attached to this Agreement prior to Closing.

1.6 "Assets" shall have the meaning set forth in Section 2.2 hereof.

1.7 "Assumed Contracts" shall mean only those Contracts listed on Schedule 4.13, including that certain Convertible Promissory Note by Seller in favor of Seligman Investment Opportunities (Master) Fund – NTV II Portfolio, dated April 27, 2000 in the principal amount of One Million Dollars(\$1,000,000) and certain maintenance contracts previously delivered to Purchaser.

1.8 "Assumed Liabilities" shall have the meaning set forth in Section 2.4 hereof.

1.9 "Business" shall have the meaning set forth in Recital A.

1.10 "Business Day" shall mean any day except a Saturday, Sunday or other day on which commercial banks in the State of California are authorized by law to close.

1.11 "Business Financial Statements" shall have the meaning set forth in Section 4.9.

1.12 "Business Records" shall mean any and all books, records, files, drawings, documentation, data or information that have been or now are used in or with respect to, in connection with or otherwise relating to the Business, the Assets or the Assumed Liabilities, except for Seller's Articles of Incorporation, stock books, minute books, employee personnel files and other corporate records having to do with the corporate organization and capitalization of Seller.

1.13 "Capital Stock" means Purchaser common stock and Purchaser Series AA Convertible Preferred Stock.

1.14 "Closing" shall have the meaning set forth in Section 3.1 hereof.

1.15 "Closing Date" shall have the meaning set forth in Section 3.1 hereof.

1.16 "Closing Date Balance Sheet" shall have the meaning set forth in Section 9.3(f)(viii) hereof.

1.17 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.18 "Common Warrants" shall have the meaning set forth in Section 10.3 hereof.

1.19 "Confidentiality Agreement" shall have the meaning set forth in Section 8.1 hereof.

1.20 "Contracts" shall mean all those contracts and arrangements relating to the Business.

1.21 "Encumbrances" shall mean any and all restrictions on or conditions to transfer or assignment, claims, liabilities, liens, pledges, mortgages, restrictions, and encumbrances of any kind, whether accrued, absolute, contingent or otherwise affecting the Assets.

1.22 "Environmental Laws" shall mean any and all applicable civil, criminal, and administrative laws (including common law), statutes, codes, rules, regulations, ordinances, orders, decrees, judgments, permits, licenses, approvals, authorizations, and other requirements, directives, consents and obligations lawfully imposed by any Governmental Entity pertaining to the protection of the environment, protection of ecology, protection of public health, protection of worker health and safety, and/or the treatment, emission and/or discharge of gaseous, particulate and/or effluent pollutants, and/or the Handling of Hazardous Materials, and regulations, guidelines, and policies promulgated under any of the foregoing, all as amended from time to time.

1.23 "Equipment Leases" shall mean leases related to any of the Tangible Assets.

1.24 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.25 "Excluded Assets" shall mean the assets of Seller as of the Closing set forth in Schedule 2.3.

1.26 "Excluded Liabilities" shall have the meaning set forth in Section 2.5 hereof.

1.27 "Expiration Date" shall have the meaning set forth in Section 12.1 hereof.

1.28 "Facility" shall mean any facility or real property, including without limitation any improvement, equipment, structure, building, or fixture, that is or was owned, used, operated, occupied, controlled, or leased, in connection with the Business with respect to Seller and Purchaser's Business with respect to Purchaser.

1.29 "Funding Event" means the acquisition of an outside capital investment in Purchaser exceeding Thirty Million Dollars (\$30,000,000), based upon Purchaser (following Closing) receiving the cash at a pre-money valuation not less than One Hundred Million Dollars (\$100,000,000).

1.30 "GAAP" shall mean generally accepted accounting principles, as in effect in the United States from time to time.

1.31 Governmental Contracts. All contracts listed on Schedule 4.13 or Schedule 5.13 under which Seller or Purchaser, respectively, is required to provide services to the United States Government.

1.32 "Governmental Entity" shall mean any court, or any federal, state, municipal, provincial or other governmental authority, department, commission, board, service, agency, political subdivision or other instrumentality.

1.33 "Handling" or "Handled" shall mean used, generated, manufactured, processed, contained, transferred, recycled, stored, treated, loaded, transported, removed or Released.

1.34 "Hazardous Materials" shall mean any substance, waste, material, chemical, compound or mixture which is defined, listed, designated, described or characterized under Environmental Laws or under any rules, guidances, policies, or regulations promulgated thereunder, as hazardous, toxic, a contaminant, a pollutant or words of similar import, and includes without limitation any asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or distillate thereof), natural gas, natural gas liquids, and liquefied natural gas.

1.35 "Intangibles" shall mean guarantees, rights, warranties, defenses and claims, choses in action, causes of action, demands, rights of recovery, suits, covenants not to compete and other rights in favor of Seller relating to the Assets, the Assumed Liabilities or the Business.

1.36 "Intellectual Property" shall have the meaning set forth in Section 4.11(a) hereof.

1.37 "Key Employees" shall mean those persons listed on Schedule 1.37 attached hereto.

1.38 "Knowledge" or "Known" shall mean the current actual knowledge of any of the officers, directors or employees of a Person.

1.39 "Laws or Decrees" shall mean all applicable federal, state, provincial and local laws, ordinances, rules, statutes, regulations and all orders, writs, injunctions, awards, judgments or decrees.

1.40 "Liability" shall mean any direct or indirect liability, indebtedness, obligation, guarantee or endorsement, whether known or unknown, whether accrued or unaccrued, whether absolute or contingent, whether due or to become due, or whether liquidated or unliquidated.

1.41 "Losses" shall mean any loss, demand, action, cause of action, assessment, damage, Liability, cost or expense, including without limitation, interest, penalties and reasonable attorneys' and other professional fees and expenses incurred in the investigation, prosecution, defense or settlement thereof, but excluding special or consequential damages (including without limitation loss of profits or revenues) related to any such loss, demand, action, cause of action, assessment, damage, liability, cost or expense, other than special or consequential damages actually awarded to a third party and paid or payable to such third party by a party hereto.

1.42 "Material Adverse Change" shall mean any material adverse change in the Business, operations, properties, Assets, Intellectual Property, financial condition, Assumed Liabilities, results of operations or prospects, whether or not occurring in the ordinary course of business.

1.43 "Material Adverse Effect" shall mean any material adverse effect on the business, operations, properties, the Assets, financial condition, the Assumed Liabilities, results of operations or prospects, whether or not occurring in the ordinary course of business.

1.44 "Other Intellectual Property" shall have the meaning set forth in Section 5.11(d) hereof.

1.45 "Patents" shall have the meaning set forth in Section 4.11(a) hereof.

1.46 "Permits" shall mean any and all licenses, permits, authorizations, certificates, franchises, variances, waivers, consents and other approvals from any Governmental Entity relating to the Business, the Assets or the Assumed Liabilities as listed on Schedule 4.8.

1.47 "Permitted Encumbrances" shall mean (a) liens for current taxes which are not past due, (b) liens described in any schedule hereto which secure Assumed Liabilities and (c) easements, covenants, rights-of-way or other similar restrictions and imperfections of title.

1.48 "Person" shall mean an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, a limited liability company an unincorporated organization or a Governmental Entity.

1.49 "Prepaid Expenses" shall mean all prepaid expenses, advances, deposits, and rights to volume and other rebates due from suppliers, as well as performance bonds, including those listed on Schedule 1.49, excluding deposits relating to fixed asset leases which are to be paid off by Seller at Closing.

1.50 "Prospective New Purchaser Employee" shall have the meaning set forth in Section 10.1 hereof.

1.51 "Purchase Price" shall have the meaning set forth in Section 2.6 hereof.

1.52 "Purchase Price Consideration" shall have the meaning set forth in Section 2.6 hereof.

1.53 "Purchaser Assets" shall mean all right, title and interest in and to all of the assets, properties, rights and claims owned or primarily employed or held for use in the conduct of Purchaser's Business.

1.54 "Purchaser's Business" shall have the meaning set forth in Recital B.

1.55 "Purchaser Compliance Certificate" shall have the meaning set forth in Section 9.2(a).

1.56 "Purchaser Contracts" shall mean all of those contracts and arrangements relating to Purchaser's Business.

1.57 "Purchaser Copyrights" shall have the meaning set forth in Section 5.11(a)(ii) hereof.

1.58 "Purchaser Employee Plans" shall have the meaning set forth in Section 5.20(a) hereof.

1.59 "Purchaser Encumbrance" shall mean any and all restrictions on or conditions to transfer or assignment, claims, liabilities, liens, pledges, mortgages, restrictions and encumbrances of any kind, whether accrued, absolute, contingent or otherwise affecting the Purchaser Assets.

1.60 "Purchaser ERISA Affiliate" shall have the meaning set forth in Section 5.20(a) hereof.

1.61 "Purchaser Facility" shall mean any facility or real property, including without limitation any improvement, equipment, structure, building, or fixture, that is or was owned, used operated, occupied, controlled or leased, in connection with Purchaser's Business.

1.62 "Purchaser Financial Statements" shall have the meaning set forth in Section 5.9(a) hereof.

1.63 "Purchaser Group" shall have the meaning set forth in Section 12.2.

1.64 "Purchaser Intellectual Property" shall have the meaning set forth in Section 5.11 hereof.

1.65 "Purchaser Indemnifiable Losses" shall have the meaning set forth in Section 12.2 hereof.

1.66 "Purchaser Material Adverse Change" shall have the meaning set forth in Section 5.10(b) hereof.

1.67 "Purchaser Material Adverse Effect" shall mean, with respect to Purchaser, any material adverse effect on the business, operations, properties, the Purchaser Assets, financial condition, results of operations or prospects, whether or not occurring in the ordinary course of business.

1.68 "Purchaser Note" Shall mean those certain promissory notes, as amended, by Purchaser in favor of Seller evidencing the financial obligation of Purchaser to seller in the principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000), plus accrued interest attached hereto as Schedule 1.68.

1.69 "Purchaser Patents" shall have the meaning set forth in Section 5.11(a) hereof.

1.70 "Purchaser Permitted Encumbrance" shall mean, with respect to, Purchaser (a) liens for current taxes which are not past due, (b) liens described in any Purchaser Disclosure Schedule hereto, (c) easements, covenants, rights-of-way or other similar restrictions and imperfections of title and (d) liens for taxes not yet due and payable.

1.71 "Purchaser's Business" shall have the meaning set forth in Recital B.

1.72 "Purchaser Tangible Asset" shall have the meaning set forth in Section 5.6 hereof.

1.73 "Purchaser Trademarks" shall have the meaning set forth in Section 5.11(a)(iii) hereof.

1.74 "Released" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, or in a manner or with a consequence not authorized by Environmental Laws.

1.75 "Seller Compliance Certificate" shall have the meaning set forth in Section 9.3(a) hereof.

1.76 "Seller Group" shall have the meaning set forth in Section 12.3 hereof.

1.77 "Seller Losses" shall have the meaning set forth in Section 12.3 hereof.

1.78 "Seller Option" shall have the meaning set forth in Section 10.2 hereof.

1.79 "Seller Stock Option Plan" shall mean the Seller's 1996 Stock Option Plan, as amended.

1.80 "Seller Warrants" shall have the meaning set forth in Section 10.3 hereof.

1.81 "Substitute Preferred Warrant" shall have the meaning set forth in Section 10.3 hereof.

1.82 "Tangible Assets" shall mean all tangible assets, equipment and other fixed assets, including all computer hardware, service tools, aids, manuals, schematics, diagnostics, machinery and office furnishings, owned, primarily employed or held for use in the conduct of the Business as disclosed on the Closing Date Balance Sheet, including the tangible assets listed on Schedule 4.6.

1.83 "Tax" shall mean any federal, provincial, territorial, local, or foreign income, profits, gross receipts, capital gains taxes, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, business license, occupation, value added, goods and service, alternative or add-on minimum, estimated, or other tax or governmental charge of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, relating to the Assets or the Business with respect to Seller and relating to Purchaser Assets or the Purchaser's Business with respect to Purchaser.

1.84 "Tax Return" shall mean any return, declaration, report, estimates, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof, covering or relating to the Assets or the Business.

1.85 "Third Party Intellectual Property" shall have the meaning set forth in Section 4.11(d).

ARTICLE II

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets and Assumption of Assumed Liabilities.

(a) Upon the terms and subject to the conditions set forth in this Agreement, effective as of the Closing Date:

(i) Seller agrees to sell, assign, transfer, convey and deliver to Purchaser, and Purchaser agrees to purchase from Seller, all of Seller's right, title and interest in and to the Assets, free and clear of all Encumbrances (except Permitted Encumbrances);

(ii) Seller agrees to assign to Purchaser, and Purchaser agrees to assume from Seller, the Assumed Liabilities; and

(iii) Seller agrees to assign to Purchaser, and Purchaser shall assume from Seller, all of Seller's rights and obligations under the Assumed Contracts, subject to the obtaining of all necessary consents by the other parties thereto (the "Acquisition").

(b) In connection with the Acquisition, on the Closing Date, Seller shall take (and shall cause its Affiliates to take) any and all actions that may be required, or reasonably requested by Purchaser, to transfer good and marketable title to all of the Assets free and clear of all Encumbrances (except Permitted Encumbrances) to Purchaser. Seller shall deliver possession of all of the Assets to Purchaser on the Closing Date at the location and by such means as are reasonably designated by Purchaser, and Seller shall further deliver to Purchaser proper assignments, bills of sale, conveyances and other instruments of sale and/or transfer in forms reasonably satisfactory to Purchaser in order to convey to Purchaser good and marketable title to all Assets, free and clear of all Encumbrances (except Permitted Encumbrances), as well as such other instruments of sale and/or transfer as counsel to Purchaser may reasonably request (whether at or after the Closing Date) to evidence and effect the Acquisition contemplated herein. Seller agrees that, to the extent any Assets are owned or held by any Affiliate of Seller, Seller shall also cause good and marketable title to such Assets to be transferred and assigned to Purchaser free and clear of all Encumbrances (except Permitted Encumbrances) on the Closing Date.

2.2 Assets. As used in this Agreement, the term "Assets" means, collectively, all right, title and interest in and to all of the assets, properties, rights and claims owned or primarily employed or held for use in the conduct of the Business as reflected on the Closing Date Balance Sheet, including the following, but excluding the Excluded Assets (as defined below):

(a) Assumed Contracts. All rights and benefits of Seller in existence on the Closing Date or arising from and after the Closing Date under the Assumed Contracts;

(b) Intellectual Property. All Intellectual Property owned by, primarily employed in or held for use in the Business;

(c) Tangible Assets. All Tangible Assets;

(d) Business Records. All Business Records;

(e) Prepaid Expenses. All Prepaid Expenses;

(f) Permits. All Permits to the extent transferable by Seller;

(g) Accounts Receivable. All Accounts Receivable that have remained uncollected as of the Closing Date;

(h) Intangibles. All Intangibles; and

(i) Telephone and Fax Numbers; Websites. The telephone and fax numbers and websites set forth on Schedule 2.2(i).

2.3 Excluded Assets. Notwithstanding anything herein to the contrary, Seller shall retain all of its right, title and interest in and to, and Purchaser shall not acquire any interest in, the assets identified on Schedule 2.3 (the "Excluded Assets"), including cash and cash equivalents, the Purchaser Note and the deposits on fixed asset leases.

2.4 Assumption of Liabilities. Subject to and upon the terms and conditions of this Agreement, effective as of the Closing Date, Purchaser agrees to assume from Seller and to pay, perform and discharge according to their terms only the following Liabilities of Seller (the "Assumed Liabilities"):

(a) Liabilities arising from and after the Closing Date under the Assumed Contracts.

(b) Liabilities for accrued vacation payments as identified on Schedule 2.4.

2.5 Liabilities Not Assumed. Except as and to the extent specifically set forth in Section 2.4, Purchaser is not assuming any Liabilities of Seller, and all such Liabilities shall be and remain the responsibility of Seller. Notwithstanding the provisions of Section 2.4, Purchaser is not assuming and Seller shall not be deemed to have transferred to Purchaser the following liabilities of Seller ("Excluded Liabilities"):

(a) Income and Franchise Taxes. Any liability for any unpaid Taxes, including, but not limited to, taxes which are or may become due as a result of Seller's liquidation.

(b) Insured Claims. Any liability of Seller insured against, to the extent such liability is or will be paid by an insurer.

(c) Product Liability. Any liability of Seller arising out of or in any way relating to or resulting from any product produced, distributed, serviced, manufactured, assembled or sold by Seller prior to the Closing Date (including any liability of Seller for claims made for injury to person, damage to property or other damage, whether made in product liability, tort, breach of warranty or otherwise), except only that Purchaser is assuming liabilities under and pursuant to Seller's standard written product warranty on products currently produced by the Seller as set forth in Schedule 4.17.

(d) Litigation Matters. Any liability with respect to any action, suit, proceeding, arbitration, investigation or inquiry, whether civil, criminal or administrative ("Litigation"), whether or not described in Schedule 4.7.

(e) Infringements. Any liability to a third party for infringement of such third party's Intellectual Property.

(f) Transaction Expenses. All liabilities incurred by Seller or any of Seller's Affiliates in connection with this Agreement and the transactions contemplated herein.

(g) Liabilities to Affiliates. Liabilities of Seller to its present or former Affiliates, except obligations for compensation for services rendered as an employee pursuant to plans or practices disclosed in Schedule 4.21(a).

(h) Violation of Laws or Decrees. Liabilities of Seller of any violation of or failure to comply with any Law or Decrees.

(i) Liabilities For Breach of Contract. Any liabilities related to or arising from any breach or default by Seller or its Affiliates, whether before or after the Closing Date, of any Contract or related to or arising from any tort, infringement or violation of Laws or Decrees by Seller, in each case to the extent occurring or arising from facts occurring on or prior to the Closing Date;

(j) Liabilities For Breach of This Agreement. Any liability of Seller or any of Seller's Affiliates incurred in connection with or under this Agreement (including, without limitation, with respect to any of Seller's or its Affiliates' representations, warranties, agreements, covenants or indemnities hereunder) relating to the execution or performance of this Agreement and the transactions contemplated herein;

(k) Employee Plans. Except as provided in Section 2.4, any Liability of Seller under any of Seller's Employee Plans with respect to any obligation of Seller to contribute or to make payments to or provide benefits on behalf of Seller's employees;

(l) Borrowed Money. Any outstanding obligations of Seller for borrowed money due and owing to banks or other lenders, other than obligations under the Assumed Contracts to the extent assumed pursuant to Section 2.4.

2.6 Purchase Price. The purchase price (the "Purchase Price") for the Assets shall be (i) the assumption of the Assumed Liabilities and (ii) Eleven Million (11,000,000) shares, in the aggregate, of Purchaser common stock, convertible preferred stock (initially convertible at the

rate of one share of common for one share of convertible preferred), and common stock and convertible preferred stock reserved for issuance upon exercise of the Seller Options, Seller Warrants and/or Common Warrants, which Purchase Price equal to a fifty percent (50%) interest in the equity securities of Purchaser, on a fully diluted basis, on the Closing Date ("Purchase Price Consideration") as set forth in Section 2.7.

2.7 Payment of Purchase Price. The Purchase Price shall be paid by Purchaser as follows:

(a) Assumption of Liabilities. At the Closing, Seller shall deliver to Purchaser such documents and instruments as are reasonably required to evidence the assumption of the Assumed Liabilities.

(b) Common Stock. At the Closing, Purchaser shall deliver to the Seller a stock certificate evidencing issuance of 1,847,545 shares of Purchaser common stock.

(c) Series AA Convertible Preferred Stock. At the Closing, Purchaser shall deliver to Seller a stock certificate evidencing 6,375,607 shares of Purchaser Series AA Convertible Preferred Stock.

(d) Seller Options; Warrants. At the Closing, Purchaser shall deliver to Seller a Certificate of Secretary certifying the reservation of an aggregate of 2,776,848 shares of Purchaser common stock and Series AA Convertible Preferred Stock for issuance upon exercise of the Seller Options, Common Warrants and Seller Warrants.

ARTICLE III

THE CLOSING

3.1 The Closing. The consummation of the Acquisition will take place at a closing to be held at the offices of Gray Cary Ware & Freidenrich LLP, 400 Hamilton Avenue, Palo Alto, California (the "Closing") on May 31, 2000, or at such other time, place or date as may be agreed to by the parties to this Agreement (the "Closing Date").

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as otherwise set forth in the Seller Disclosure Schedule provided to Purchaser, a copy of which is attached hereto as Schedule IV, the following representations and warranties are made by Seller each of which is true and correct on the date hereof and shall remain true and correct through and including the Closing Date:

4.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of California. Seller is duly qualified or licensed to do business as a foreign corporation in each state of the United States in which it is required to be so qualified or licensed, except in states which the failure to qualify, in the aggregate, would not have a Material

Adverse Effect on the Business. The states in which Seller is licensed or qualified to do business are listed in Schedule 4.1.

4.2 Subsidiaries. The Seller owns no equity interest, directly or indirectly, in any corporation, partnership, limited liability company, joint venture, business, trust or other entity, whether or not incorporated, which is engaged primarily in the Business.

4.3 Authorization. This Agreement and all of the Ancillary Agreements to which Seller is or will be a party have been, or upon their execution and delivery hereunder will have been, duly and validly executed and delivered by Seller and constitute, or will constitute, valid and binding agreements of Seller enforceable against Seller in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by general equitable principles or the exercise of judicial discretion in accordance with such principles. Seller has all requisite power and authority to execute and deliver this Agreement and, at the time of the Closing, will have all requisite power and authority to carry out the transactions contemplated in this Agreement and the Ancillary Agreements to which it is or will be a party. All requisite corporate action on the part of Seller has been taken to authorize the execution and delivery of this Agreement and the Ancillary Agreements to which Seller is or will be a party, subject only to the approval of the Acquisition and this Agreement by Seller's stockholders.

4.4 No Conflicts; Consents. The execution and the delivery of this Agreement and the Ancillary Agreements to which Seller is or will be a party, by Seller, do not, and the consummation of the transactions contemplated herein and therein and compliance with the provisions hereof and thereof will not, conflict with, result in a breach of, constitute a default (with or without notice or lapse of time, or both) under or violation of, or result in the creation of any lien, charge or Encumbrance pursuant to, (a) any provision of the Articles of Incorporation or Bylaws of Seller, (b) any Law or Decree or (c) any provision of any agreement, instrument or understanding to which Seller is a party or by which Seller or any of its properties or assets is bound or affected, nor will such actions give to any other Person or entity any interests or rights of any kind, including rights of termination, acceleration or cancellation, in or with respect to the Business, any of the Assets, the Assumed Liabilities or the Assumed Contracts. Except as set forth on Schedule 4.4, no consent of any third party or any Governmental Entity is required to be obtained on the part of Seller to permit the consummation of the transactions contemplated in this Agreement or the Ancillary Agreements to which Seller is or will be a party.

4.5 Title to Assets. Seller has good and marketable title to all of the Assets, free and clear of all Encumbrances (except for Permitted Encumbrances). At the Closing, Seller will sell, convey, assign, transfer and deliver to Parent and Purchaser good, valid and marketable title and all Seller's respective right and interest in and to all of the Assets, free and clear of any Encumbrances, (except for Permitted Encumbrances). The Assets include all property, tangible and intangible, and all agreements and rights used in the Business.

4.6 Tangible Assets. Schedule 4.6 sets forth a complete and accurate list of the tangible assets used in the Business. Except as set forth in Schedule 4.6, each Tangible Asset is, and as of the Closing Date will be and are usable in the ordinary course of business.

4.7 Litigation and Claims. Except as disclosed in Schedule 4.7, there are no claims, actions, suits, proceedings or, to Seller's Knowledge, investigations, pending before any Governmental Entity, or to Seller's Knowledge, threatened or reasonably expected, against Seller (a) relating to the Business, the Assets, the Assumed Liabilities or the Intellectual Property, (b) which questions or challenges the validity of this Agreement or any of the Ancillary Agreements to which either Seller is or will be a party, or any of the transactions contemplated herein or therein or (c) which would have a Material Adverse Effect on Seller. Seller is not a party to or subject to any decree, order or arbitration award (or agreement entered into in any administrative, judicial or arbitration proceeding with any Governmental Entity) with respect to or affecting the Business, or any of the Assets, the Assumed Liabilities or the Intellectual Property.

4.8 Compliance with Laws and Regulations: Governmental Licenses, Etc. Seller is in compliance with all applicable Laws or Decrees with respect to or affecting the Business or the Assets, the Assumed Liabilities or the Intellectual Property. Seller is not subject to any order, injunction or decree issued by any Governmental Entity which could impair the ability of Seller to consummate the transactions contemplated herein or which could adversely affect Purchaser's conduct of the Business or its use and enjoyment of the Assets or the Intellectual Property from and after the Closing Date. Seller possesses all Permits which are required in order for Seller to operate the Business as presently conducted, and is in compliance with all such Permits. Schedule 4.8 to this Agreement contains a complete list of such Permits held by Seller relating to the Business, the date of expiration and whether each such Permit is transferable. Neither the sale and transfer of the Assets pursuant to this Agreement, nor Purchaser's possession and use thereof from and after the Closing Date because of such sale and transfer will: (a) violate any law pertaining to bulk sales or transfers or to the effectiveness of bulk sales or transfers as against creditors of Seller or (b) result in the imposition of any liability upon Purchaser for appraisal rights or other liability owing to any shareholder of Seller.

4.9 Financial Statements. Seller has delivered to Purchaser copies of (i) Seller's audited balance sheets pertaining to the Business as of June 30, 1997, June 30, 1998 and June 30, 1999 and related statements of operations and cash flows pertaining to the Business for the years then ended (including the notes contained therein or annexed thereto) and (ii) an unaudited balance sheet of Seller as of March 31, 2000 and related unaudited statements of operations and cash flow for the 9 months then ended (collectively, the "Business Financial Statements"). The Business Financial Statements have been prepared in accordance with GAAP, and present fairly the financial position of the Business as of their respective dates and the results of operations and changes in financial position of the Business for the periods indicated, except that the unaudited Business Financial Statements do not contain all footnotes and other information required by GAAP.

4.10 Absence of Certain Changes or Events. Except as disclosed in the Business Financial Statements, or in Schedule 4.10 since March 31, 2000, Seller has conducted the Business in the ordinary and usual course consistent with past practices and, without limiting the generality of the foregoing, has not:

(a) suffered any Material Adverse Change in the results of operation, financial condition, Assets, Intellectual Property, business, operation or prospects relating to the Business;

(b) suffered any damage, destruction or loss, whether or not covered by insurance, having a Material Adverse Change in the Assets, the Intellectual Property or the Business;

(c) effected any acquisition, sale or transfer of any material asset of Seller other than in the ordinary course of business and consistent with past practice;

(d) entered into any Contract, other than in the ordinary course of business or amended or terminated, or defaulted, any material Contract to which Seller is a party or by which it is bound;

(e) granted any increase in the compensation payable or to become payable by Seller to any Seller employees employed in the Business, except those occurring in the ordinary course of business, consistent with Seller's past practices;

(f) granted any exclusive license with respect the Intellectual Property;

(g) incurred any liabilities relating to the Business except in the ordinary course of business and consistent with past practice;

(h) permitted or allowed any of the Assets to be subjected to any Encumbrance of any kind (other than a Permitted Encumbrance) other than in the ordinary course of business consistent with past practices;

(i) waived any rights under or terminated any Assumed Contract relating to the Business;

(j) with respect to the Business or the Assumed Contracts incurred any contingent liability as guarantor or otherwise with respect to the obligations of others other than in the ordinary course, consistent with past practices; or

(k) agreed to take any action described in this Section 4.10 or outside of its ordinary course of business or which would constitute a breach of any of the representations or warranties of Seller contained in this Agreement.

4.11 Intellectual Property.

(a) For purposes of this Agreement, "Intellectual Property" means:

(i) all issued patents, reissued or reexamined patents, revivals of patents, utility models, certificates of invention, registrations of patents and extensions thereof, regardless of country or formal name and all published or unpublished nonprovisional and provisional patent applications, reexamination proceedings, invention disclosures and records of invention (collectively, the "Patents");

(ii) all copyrights, copyrightable works, semiconductor topography and mask work rights, including all rights of authorship, use, publication, reproduction, distribution, performance transformation, moral rights and rights of ownership of copyrightable

works, semiconductor topography works and mask works, and all rights to register and obtain renewals and extensions of registrations, together with all other interests accruing by reason of international copyright, semiconductor topography and mask work conventions (collectively, "Copyrights");

(iii) trademarks, registered trademarks, applications for registration of trademarks, service marks, registered service marks, applications for registration of service marks, trade names, registered trade names and applications for registrations of trade names (collectively, "Trademarks");

(iv) all technology, ideas, inventions, designs, proprietary information, manufacturing and operating specifications, know-how, formulae, trade secrets, technical data, computer programs, hardware, software and processes, and Internet domain names and addresses; and

(v) all other intangible assets, properties and rights (whether or not appropriate steps have been taken to protect, under applicable law, such other intangible assets, properties or rights).

(b) Except as disclosed in Schedule 4.11, Seller owns and has good and marketable title to, or possess legally enforceable rights to use, all Intellectual Property used or currently proposed to be used in the Business as currently conducted or as proposed to be conducted by Seller. Except as disclosed in Schedule 4.11, the Intellectual Property owned by and licensed to Seller collectively constitute all of the Intellectual Property necessary to enable Seller to conduct the Business as the Business is currently being conducted. To Seller's Knowledge, no current or former officer, director, stockholder, employee, consultant or independent contractor of Seller has any right, claim or interest in or with respect to any Intellectual Property used in the Business. To Seller's Knowledge, there is no unauthorized use, disclosure or misappropriation of any Intellectual Property used in the Business by any employee or, to Seller's Knowledge, former employee of Seller or, to Seller's Knowledge, by any other third party.

(c) With respect to each item of Intellectual Property used in the Business (except "off the shelf" or other software widely available through regular commercial distribution channels at a cost not exceeding \$10,000 on standard terms and conditions, as modified for Seller's operations) ("Seller Intellectual Property"), Schedule 4.11 lists all Patents and all registered Trademarks, and trademark applications and all registered Copyrights, including the jurisdictions in which each such Intellectual Property has been issued or registered or in which any such application for such issuance and registration has been filed.

(d) Schedule 4.11 contains an accurate list as of the date of this Agreement of all licenses, sublicenses and other agreements to which Seller is a party and pursuant to which Seller is authorized to use any Intellectual Property owned by any third party, excluding "off the shelf" or other software at a cost not exceeding \$10,000 and widely available through regular commercial distribution channels on standard terms and conditions ("Third Party Intellectual Property").

(e) To Seller's Knowledge, there is no unauthorized use, disclosure, infringement or misappropriation of any Seller Intellectual Property, including any Third Party Intellectual Property by any employee of Seller.

(f) To Seller's Knowledge, Seller is not in breach of any license, sublicense or other agreement relating to the Seller Intellectual Property or Third Party Intellectual Property.

(g) All Patents, registered Trademarks, registered service marks and registered Copyrights held by Seller are valid and subsisting. All maintenance and annual fees have been fully paid. To Seller's Knowledge, Seller is not infringing, misappropriating or making unlawful use of any proprietary asset owned or used by any third party. Seller has not received any notice or other communication (in writing or otherwise) of any actual, alleged, possible or potential infringement, misappropriation or unlawful use of any proprietary asset owned or used by any third party. Except as disclosed in Schedule 4.11, there is no proceeding pending or threatened to the Knowledge of Seller, nor has any claim or demand been made, which challenges the legality, validity, enforceability or ownership of any item of Seller Intellectual Property or Third Party Intellectual Property or alleges a claim of infringement of any Patents, Trademarks, service marks, Copyrights or violation of any trade secret or other proprietary right of any third party.

(h) A complete list of Seller's proprietary software ("Seller Software"), is set forth in Schedule 4.11. Seller Software conform in all material respects with any specification, documentation, performance standard, representation or statement provided with respect thereto by or on behalf of Seller.

4.12 Facilities. Schedule 4.12 provides an accurate and complete list of Facilities currently owned, occupied, leased or operated by Seller. Seller will provide Purchaser true and complete copies of (i) the leases for any rented Facilities, and (ii) any acquisition agreements, loan documents, and title reports applicable to any currently owned Facilities or applicable to any Facilities which Seller has contracted to acquire in connection with the Business before the Closing Date. Seller enjoys peaceful and undisturbed possession of all current Facilities. Except as set forth on Schedule 4.12, there exists no event of default by Seller (nor any event which with notice or lapse of time would constitute an event of default by Seller) with respect to any agreement or instrument with regard to any current Facility, and to Seller's Knowledge there exists no event of default by any of the other parties thereto (nor any event which with notice or lapse of time would constitute an event of default by any of the other parties thereto) with respect to any such agreement or instrument, except where such default would not have a Material Adverse Effect on the Business. Except as set forth on Schedule 4.12, all such agreements and instruments are in full force and effect.

4.13 Contracts and Arrangements.

(a) Schedule 4.13 hereto contains a true and accurate list of all material contracts to which Purchaser is a party. Each of the Assumed Contracts is valid, binding and in full force and effect and enforceable by Seller in accordance with its terms, except as enforcement may be limited by general equitable principles and the exercise of judicial discretion in accordance with such principles. Seller is not in default under any Assumed Contract, and there are no existing disputes or claims of default relating thereto, or any facts or

conditions Known to Seller which, if continued, will result in a default or claim of default thereunder, which default could reasonably be expected to have a Material Adverse Effect on the Business, the Assets, the Assumed Contracts or the Assumed Liabilities. Except as set forth on Schedule 4.13 attached hereto, no consents are necessary for the effective assignment to and assumption by Parent or Purchaser of any of the Assumed Contracts.

(b) To Seller's Knowledge, there are no unresolved claims between Seller and any of the principal licensors, vendors, suppliers, distributors, representatives or customers of the Business, no event which could reasonably be expected to result in (i) a material breach of an Assumed Contract, (ii) a request for a material accommodation or concession in connection with the sale of services, distributors, representatives or customers or (iii) a significant impairment of the relationships of any Business with its principal licensors, vendors, suppliers, distributors, representatives, or customers and none of such persons has advised Seller of its intention to cease doing business with Seller or with Parent or the Purchaser following the Closing Date, whether as a result of the transactions contemplated hereunder or otherwise.

(c) Each accepted and unfilled order entered into by Seller for the provision of services by Seller, and each agreement, contract or commitment for the purchase of supplies included in the Assumed Contracts was made in the ordinary course of the Business.

4.14 Insurance. Seller maintains insurance policies relating to the Business providing coverage described on Schedule 4.14, which coverage is of the type and in amounts customarily carried by persons conducting businesses or owning assets similar to those of Seller. There is no material claim pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies have been paid and Seller is in compliance with the terms of such policies. Seller has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies. All of such policies are in full force and effect, and Seller is not in default with respect to any material provision of any of such policies. Seller has not received notice from any issuer of any such policies of its intention to cancel, terminate or refuse to renew any policy issued by it.

4.15 Brokers. Neither Seller nor any of its directors, officers, employees or agents have retained, employed or used any broker or finder in connection with the transactions provided for herein or the negotiation thereof.

4.16 Accounts Receivable. Subject to any reserves set forth in the Business Financial Statements, the accounts receivable shown on the Business Financial Statements are valid and genuine, have arisen solely out of bona fide sales and deliveries of goods, performance of services, and other business transactions in the ordinary course of business consistent with past practices, are not subject to any prior assignment, lien or security interest and are not subject to valid defenses, set-offs or counter claims. The accounts receivable will be collected in accordance with their terms at their recorded amounts, subject only to the reserve for doubtful accounts on the Business Financial Statements.

4.17 Warranties and Service Obligations. Schedule 4.17 sets forth copies of all forms of warranties or warranty agreements or obligations now in effect with respect to any of the

services or products provided, or to be provided, by Seller in connection therewith and, except as stated therein, there are no other warranties, commitments or obligations, express or implied, with respect to the return, repair or replacement of any product or the performance of any service.

4.18 Business Records. The Business Records to be delivered to Purchaser are complete, true and accurate in all material respects and accurately reflect all actions and transactions referred to in such Business Records.

4.19 Environmental Matters. The Business is conducted and at all times has been conducted in compliance with Environmental Laws, including without limitation, as may be applicable to the ownership, use, occupation, control, possession and rental of all prior and current Facilities. No civil, criminal or administrative actions, proceedings, directives, inquiries, or investigations are pending, or to the Knowledge of Seller threatened, pertaining to Seller or the Business and brought by any Governmental Entity or Person, regarding any alleged non-compliance by the Business or any Facility with Environmental Laws, or regarding any alleged Release of Hazardous Materials. No Governmental Entity or Person has, currently or in the past, alleged or, to the Knowledge of Seller threatened to allege, against Seller, an affiliate of Seller, or the Business, in connection with the Business or any Facility, that Hazardous Materials have been Handled improperly or in violation of Environmental Laws or in such a manner as to harm or threaten to harm human health, ecology, or the environment. Seller has not received any notice with respect to any Facility, and is not aware of the issuance, at any time, to any Person of any notice with respect to any Facility, alleging that (i) a Release of Hazardous Materials occurred, or is suspected of having occurred, at any time at a Facility, or (ii) a Facility has been listed or is proposed to be listed on any list, registry or inventory maintained by any Governmental Entity of sites where a Release of Hazardous Materials has occurred or is suspected of having occurred. No Release of Hazardous Materials has occurred at any time in connection with the Business or during any period that Seller owned, used, occupied, controlled, or rented any current or prior Facility. There are no conditions existing at any Facility in connection with the Business which require any remedial action, removal action, corrective action, closure action, or other environmental response action under Environmental Laws or Licenses. There are no past or present (or, to the best of Seller's Knowledge, future) events, conditions, circumstances, activities, practices, incidents, actions, omissions or plans which may interfere with or prevent compliance or continued compliance with the Environmental Laws or which may give rise to any Liability or otherwise form the basis of any Litigation, hearing, notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Materials.

4.20 Taxes.

(a) Seller has prepared and timely filed all returns, estimates, information statements and reports required to be filed with any taxing authority ("Returns") relating to any and all Taxes concerning or attributable to Seller or its operations with respect to Taxes for any period ending on or before the Closing Date and such Returns are true and correct in all material respects and have been completed in accordance with applicable law.

(b) Seller, as of the Closing Date: (i) will have paid all Taxes shown to be payable on such Returns covered by Section 4.20(a) and (ii) will have withheld with respect to its employees all Taxes required to be withheld.

(c) There is no Tax deficiency outstanding or assessed or, to Seller's Knowledge, proposed against Seller that is not reflected as a liability on the Seller Balance Sheet nor has Seller executed any agreements or waivers extending any statute of limitations on or extending the period for the assessment or collection of any Tax.

(d) Seller has no liabilities for unpaid Taxes that have not been accrued for or reserved on the Business Financial Statements, whether asserted or unasserted, contingent or otherwise and Seller has no knowledge of any basis for the assertion of any such liability attributable to Seller, its assets or operations.

(e) Seller is not a party to any tax-sharing agreement or similar arrangement with any other party, and Seller has not assumed to pay any Tax obligations of, or with respect to any transaction relating to, any other person or agreed to indemnify any other person with respect to any Tax.

(f) Seller's federal and state income tax returns have never been audited by a government or taxing authority, nor is any such audit in process or pending, and Seller has not been notified of any request for such an audit or other examination.

(g) Seller has never been a member of an affiliated group of corporations filing a consolidated federal income tax return.

(h) Seller has disclosed to Purchaser (i) any Tax exemption, Tax holiday or other Tax sparing arrangement that Seller has in any jurisdiction, including the nature, amount and lengths of such Tax exemption, Tax holiday or other Tax-sparing arrangement and (ii) any expatriate tax programs or policies affecting Seller. Seller is in compliance with all terms and conditions required to maintain such Tax exemption, Tax holiday or other Tax-sparing arrangement or order of any governmental entity and the consummation of the transactions contemplated hereby will not have any adverse effect on the continuing validity and effectiveness of any such Tax exemption, Tax holiday or other Tax-sparing arrangement or order.

(i) Seller has not filed any consent agreement under Section 341(f) of the Code or agreed to have Section 341(f)(4) apply to any disposition of assets owned by Seller.

(j) Seller has not been at any time a United States Real Property Holding Corporation within the meaning of Section 897(c)(2) of the Code.

(k) Seller is not a party to any contract, agreement, plan or arrangement, including but not limited to the provisions of this Agreement, covering any employee or former employee of Seller that, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G, 464 or 162(m) of the Code.

4.21 Employee Benefit Plans.

(a) Schedule 4.21 contains a complete and accurate list of each plan, program, policy, practice, contract, agreement or other arrangement providing for employment, compensation, retirement, deferred compensation, loans, severance, separation, relocation, repatriation, expatriation, visas, work permits, termination pay, performance awards, bonus, incentive, stock option, stock purchase, stock bonus, phantom stock, stock appreciation right, supplemental retirement, fringe benefits, cafeteria benefits, or other benefits, whether written or unwritten, including, without limitation, each "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") which is or has been sponsored, maintained, contributed to, or required to be contributed to by Seller and, with respect to any such plans which are subject to Code Section 401(a), any trade or business (whether or not incorporated) which is or, at any relevant time, was treated as a single employer with Seller within the meaning of Section 414(b), (c), (m) or (o) of the Code, (an "ERISA Affiliate") for the benefit of any person who performs or who has performed services for Seller or with respect to which Seller or ERISA Affiliate has or may have any liability (including, without limitation, contingent liability) or obligation (collectively, the "Seller Employee Plans").

(b) Documents. Seller has furnished to Purchaser true and complete copies of documents embodying each of the Seller Employee Plans and related plan documents, including (without limitation) trust documents, group annuity contracts, plan amendments, insurance policies or contracts, participant agreements, employee booklets, administrative service agreements, summary plan descriptions, compliance and nondiscrimination tests for the last three plan years, standard COBRA forms and related notices, registration statements and prospectuses, and, to the extent still in its possession, any material employee communications relating thereto. With respect to each Seller Employee Plan which is subject to ERISA reporting requirements, Seller has furnished Purchaser with the most recent Internal Revenue Service determination or opinion letter issued with respect to each such Seller Employee Plan, and nothing has occurred since the issuance of each such letter which could reasonably be expected to cause the loss of the tax-qualified status of any Seller Employee Plan subject to Code Section 401(a).

(c) Compliance. Except as disclosed on Schedule 4.21: (i) Each Seller Employee Plan has been administered in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code), except as would not have, in the aggregate, a Material Adverse Effect, and Seller or ERISA Affiliate have performed all material obligations required to be performed by them under, are not in material respect in default under or violation of and have no knowledge of any material default or violation by any other party to, any of the Seller Employee Plans; (ii) any Seller Employee Plan intended to be qualified under Section 401(a) of the Code has either obtained from the Internal Revenue Service a favorable determination letter as to its qualified status under the Code, including all amendments to the Code which are currently effective, or has time remaining to apply under applicable Treasury Regulations or Internal Revenue Service pronouncements for a determination or opinion letter and to make any amendments necessary to obtain a favorable determination or opinion letter; (iii) none of the Seller Employee Plans promises or provides retiree medical or other retiree welfare benefits to any person; (iv) there has been no "prohibited transaction," as such term is defined in Section 406 of ERISA or

Section 4975 of the Code, with respect to any Seller Employee Plan; (v) none of Seller, any subsidiary or any ERISA Affiliate is subject to any liability or penalty under Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any Seller Employee Plan; (vi) all contributions required to be made by Seller or ERISA Affiliate to any Seller Employee Plan have been paid or accrued; (vii) with respect to each Seller Employee Plan, no "reportable event" within the meaning of Section 4043 of ERISA (excluding any such event for which the thirty (30) day notice requirement has been waived under the regulations to Section 4043 of ERISA) nor any event described in Section 4062, 4063 or 4041 of ERISA has occurred; (viii) each Seller Employee Plan subject to ERISA, has prepared in good faith and timely filed all requisite governmental reports (which were true and correct as of the date filed) and has properly and timely filed and distributed or posted all notices and reports to employees required to be filed, distributed or posted with respect to each such Seller Employee Plan; (ix) no suit, administrative proceeding, action or other litigation has been brought, or to the knowledge of Seller is threatened, against or with respect to any such Seller Employee Plan, including any audit or inquiry by the IRS or United States Department of Labor; and (x) there has been no amendment to, written interpretation or announcement by Seller, any subsidiary or ERISA Affiliate which would materially increase the expense of maintaining any Seller Employee Plan above the level of expense incurred with respect to that Plan for the most recent fiscal year included in Seller's financial statements.

(d) No Title IV or Multiemployer Plan. Neither Seller nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, contributed to, or is obligated to contribute to, or otherwise incurred any obligation or liability (including, without limitation, any contingent liability) under any "multiemployer plan" (as defined in Section 3(37) of ERISA) or to any "pension plan" (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA or Section 412 of the Code. None of Seller, any subsidiary or any ERISA Affiliate has any actual or potential withdrawal liability (including, without limitation, any contingent liability) for any complete or partial withdrawal (as defined in Sections 4203 and 4205 of ERISA) from any multiemployer plan.

(e) COBRA, FMLA, HIPAA, CANCER RIGHTS. With respect to each Seller Employee Plan, Seller has complied with (i) the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") and the regulations thereunder or any state law governing health care coverage extension or continuation; (ii) the applicable requirements of the Family and Medical Leave Act of 1993 and the regulations thereunder; (iii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and (iv) the applicable requirements of the Cancer Rights Act of 1998, except to the extent that such failure to comply would not in the aggregate have a Material Adverse Effect. Seller has no material unsatisfied obligations to any employees, former employees, or qualified beneficiaries pursuant to COBRA, HIPAA, or any state law governing health care coverage extension or continuation.

(f) Effect of Acquisition. Except as disclosed on Schedule 4.21, the consummation of the transactions contemplated by this Agreement will not (i) entitle any current or former employee or other service provider of Seller or any ERISA Affiliate to severance benefits or any other payment (including, without limitation, unemployment compensation, golden parachute, bonus or benefits under any Seller Employee Plan), except as expressly

provided in this Agreement or (ii) accelerate the time of payment or vesting of any such benefits or increase the amount of compensation due any such employee or service provider. No benefit payable or which may become payable by Seller pursuant to any Seller Employee Plan or as a result of or arising under this Agreement shall constitute an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code) which is subject to the imposition of an excise Tax under Section 4999 of the Code or the deduction for which would be disallowed by reason of Section 280G of the Code. Each Seller Employee Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without material liability to Acquirer or Seller (other than ordinary administration expenses typically incurred in a termination event).

4.22 Employee Matters. Seller is in compliance with all currently applicable laws and regulations respecting terms and conditions of employment including, without limitation, applicant and employee background checking, immigration laws, discrimination laws, verification of employment eligibility, employee leave laws, classification of workers as employees and independent contractors, wage and hour laws, and occupational safety and health laws. There are no proceedings pending or, to Seller's Knowledge, reasonably expected or threatened, between Seller, on the one hand, and any or all of its current or former employees, on the other hand, including, but not limited to, any claims for actual or alleged harassment or discrimination based on race, national origin, age, sex, sexual orientation, religion, disability, or similar tortious conduct, breach of contract, wrongful termination, defamation, intentional or negligent infliction of emotional distress, interference with contract or interference with actual or prospective economic disadvantage. There are no claims pending, or, to Seller's knowledge, reasonably expected or threatened, against Seller under any workers' compensation or long term disability plan or policy. Seller is not a party to any collective bargaining agreement or other labor union contract, nor does Seller know of any activities or proceedings of any labor union to organize its employees.

4.23 Securities Matters. At the Closing, Purchaser will execute and deliver an investor representation letter, the form of which will be attached as Exhibit Q. Seller understands that the Capital Stock is being transferred to Seller in reliance on an exception from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act") and has not been registered under the Securities Act or with any securities regulatory authority of any state of the United States or other jurisdiction and, therefore, that such Capital Stock cannot be resold in the absence of such registration except pursuant to an exemption from, or in a transaction not subject to, such registration requirements. The Capital Stock shall be "restricted securities" with the meaning of Rule 144 under the Securities Act, shall carry no rights of registration and shall bear a restricted securities legend substantially in the form of Exhibit P hereto.

4.24 Accuracy of Material Facts; Copies of Materials. No representation, warranty or covenant of Seller contained in this Agreement or in any certificate, schedule or exhibit delivered pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein, taken as a whole, not misleading in light of the circumstances under which such statements were made. Seller has delivered to Purchaser complete and accurate copies of each contract, agreement, license, lease and similar document (or, if oral, summaries of same) referred to in any schedule hereto or included in the Assets or the Assumed Contracts, or the Assumed Liabilities.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as otherwise set forth in the Purchaser Disclosure Schedule provided to Seller, a copy of which is attached hereto as Schedule V, the following representations and warranties are made by Purchaser each of which is true and correct on the date hereof and shall remain true and correct through and including the Closing Date:

5.1 Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Purchaser is duly qualified or licensed to do business as a foreign corporation in each state of the United States in which it is required to be so qualified or licensed, except in states which the failure to qualify, in the aggregate, would not have a Purchaser Material Adverse Effect on Purchaser's Business. The states in which Purchaser is licensed or qualified to do business are listed in Schedule 5.1.

5.2 Subsidiaries. Except as listed on Schedule 5.2, the Purchaser owns no equity interest, directly or indirectly, in any corporation, partnership, limited liability company, joint venture, business, trust or other entity, whether or not incorporated, which is engaged primarily in Purchaser's Business.

5.3 Authorization. This Agreement and all of the Ancillary Agreements to which Purchaser is or will be a party have been, or upon their execution and delivery hereunder will have been, duly and validly executed and delivered by Purchaser and constitute, or will constitute, valid and binding agreements of Purchaser enforceable against Purchaser in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by general equitable principles or the exercise of judicial discretion in accordance with such principles. Purchaser has all requisite power and authority to execute and deliver this Agreement and, at the time of the Closing, will have all requisite power and authority to carry out the transactions contemplated in this Agreement and the Ancillary Agreements to which it is or will be a party. All requisite corporate action on the part of Purchaser has been taken to authorize the execution and delivery of this Agreement and the Ancillary Agreements to which Purchaser is or will be a party, subject only to the approval of the Acquisition and this Agreement by Purchaser's stockholders.

5.4 No Conflicts; Consents. The execution and the delivery of this Agreement and the Ancillary Agreements to which Purchaser is or will be a party, by Purchaser, do not, and the consummation of the transactions contemplated herein and therein and compliance with the provisions hereof and thereof will not, conflict with, result in a breach of, constitute a default (with or without notice or lapse of time, or both) under or violation of, or result in the creation of any lien, charge or Purchaser Encumbrance pursuant to, (a) any provision of the Certificate of Incorporation or Bylaws of Purchaser, (b) any Law or Decree or (c) any provision of any agreement, instrument or understanding to which Purchaser is a party or by which Purchaser or any of its properties or assets is bound or affected, nor will such actions give to any other Person or entity any interests or rights of any kind, including rights of termination, acceleration or cancellation, in or with respect to Purchaser's Business. Except as set forth on Schedule 5.4, no

consent of any third party or any Governmental Entity is required to be obtained on the part of Purchaser to permit the consummation of the transactions contemplated in this Agreement or the Ancillary Agreements to which Purchaser is or will be a party.

5.5 Title to Assets. Purchaser has good and marketable title to all of the Purchaser Assets, free and clear of all Purchaser Encumbrances except for Purchaser Permitted Encumbrances. The Purchaser Assets include all property, tangible and intangible, and all agreements and rights used in Purchaser's Business.

5.6 Tangible Assets. Schedule 5.6 sets forth a complete and accurate list of the tangible assets used in Purchaser's Business ("Purchaser Tangible Asset"). Except as set forth in Schedule 5.6, each Purchaser Tangible Asset is, and as of the Closing Date will be usable in the ordinary course of business.

5.7 Litigation and Claims. Except as disclosed in Schedule 5.7, there are no claims, actions, suits, proceedings or, to Purchaser's Knowledge, investigations, pending before any Governmental Entity, or to Purchaser's Knowledge, threatened or reasonably expected, against Purchaser (a) relating to Purchaser's Business, the Purchaser Assets or the Purchaser Intellectual Property, (b) which questions or challenges the validity of this Agreement or any of the Ancillary Agreements to which either Purchaser is or will be a party, or any of the transactions contemplated herein or therein or (c) which might be reasonably expected to have a Purchaser Material Adverse Effect. Purchaser is not a party to or subject to any decree, order or arbitration award (or agreement entered into in any administrative, judicial or arbitration proceeding with any Governmental Entity) with respect to or affecting Purchaser's Business, or any of the Purchaser Assets or the Purchaser Intellectual Property.

5.8 Compliance with Laws and Regulations; Governmental Licenses, Etc. Purchaser is in compliance with all applicable Laws or Decrees with respect to or affecting Purchaser's Business or the Purchaser Assets or the Purchaser Intellectual Property. Purchaser is not subject to any order, injunction or decree issued by any Governmental Entity which could impair the ability of Purchaser to consummate the transactions contemplated herein or which could adversely affect Purchaser's conduct of Purchaser's Business or its use and enjoyment of the Purchaser Assets or the Purchaser Intellectual Property from and after the Closing Date. Purchaser possesses all permits which are required in order for Purchaser to operate Purchaser's Business as presently conducted, and is in compliance with all such permits. Schedule 5.8 to this Agreement contains a complete list of such permits held by Purchaser relating to Purchaser's Business and the date of expiration.

5.9 Financial Statements.

(a) Purchaser has delivered to Seller copies of (i) Purchaser's unaudited balance sheet pertaining to the Business as of December 31, 1999 and related statements of operations and cash flows pertaining to Purchaser's Business for the year then ended (including the notes contained therein or annexed thereto) and (ii) an unaudited balance sheet of Purchaser as of March 31, 2000 and related unaudited statements of income and cash flow for the three months then ended (collectively, the "Purchaser Financial Statements"). The Purchaser Financial Statements have been prepared in accordance with GAAP, and present fairly the

financial position of the Business as of their respective dates and the results of operations and changes in financial position of the Business for the periods indicated, except that the unaudited Purchaser Financial Statements do not contain all footnotes and other information required by GAAP. At or prior to closing, Purchaser shall deliver: (i) Purchaser's audited balance sheet at December 31, 1999 and related statements of operation and cash flows pertaining to Purchaser's Business for the year ended (including the notes contained therein or annexed thereto) or (ii) a draft of the foregoing issued by Ernst & Young LLP.

5.10 Absence of Certain Changes or Events. Except as disclosed in the Purchaser Financial Statements, or in Schedule 5.10 since March 31, 2000, Purchaser has conducted Purchaser's Business in the ordinary and usual course consistent with past practices and, without limiting the generality of the foregoing, has not:

(a) suffered any Material Adverse Change in the results of operation, financial condition, Purchaser Assets, Purchaser Intellectual Property, business, operation or prospects relating to Purchaser's Business;

(b) suffered any damage, destruction or loss, whether or not covered by insurance, having a Purchaser Material Adverse Change in the Purchaser Assets, the Purchaser Intellectual Property or Purchaser's Business ("Purchaser Material Adverse Change");

(c) effected any acquisition, sale or transfer of any material asset of Purchaser other than in the ordinary course of business and consistent with past practice;

(d) entered into any contract, other than in the ordinary course of business or amended or terminated, or defaulted, any material contract to which Purchaser is a party or by which it is bound;

(e) granted any increase in the compensation payable or to become payable by Purchaser to any Purchaser employees employed in Purchaser's Business, except those occurring in the ordinary course of business, consistent with Purchaser's past practices;

(f) granted any exclusive license with respect to the Purchaser Intellectual Property;

(g) incurred any liabilities relating to the Purchaser's Business except in the ordinary course of business and consistent with past practice;

(h) permitted or allowed any of the Assets to be subjected to any Purchaser Encumbrance of any kind (other than a Purchaser Permitted Encumbrance) other than in the ordinary course of business consistent with past practices;

(i) with respect to Purchaser's Business incurred any contingent liability as guarantor or otherwise with respect to the obligations of others other than in the ordinary course, consistent with past practices; or

(j) agreed to take any action described in this Section 5.10 or outside of its ordinary course of business or which would constitute a breach of any of the representations or warranties of Purchaser contained in this Agreement.

5.11 Intellectual Property.

(a) For purposes of this Agreement, "Purchaser Intellectual Property" means:

(i) all issued patents, reissued or reexamined patents, revivals of patents, utility models, certificates of invention, registrations of patents and extensions thereof, regardless of country or formal name and all published or unpublished nonprovisional and provisional patent applications, reexamination proceedings, invention disclosures and records of invention (collectively, the "Purchaser Patents");

(ii) all copyrights, copyrightable works, semiconductor topography and mask work rights, including all rights of authorship, use, publication, reproduction, distribution, performance transformation, moral rights and rights of ownership of copyrightable works, semiconductor topography works and mask works, and all rights to register and obtain renewals and extensions of registrations, together with all other interests accruing by reason of international copyright, semiconductor topography and mask work conventions (collectively, "Purchaser Copyrights");

(iii) trademarks, registered trademarks, applications for registration of trademarks, service marks, registered service marks, applications for registration of service marks, trade names, registered trade names and applications for registrations of trade names (collectively, "Purchaser Trademarks");

(iv) all technology, ideas, inventions, designs, proprietary information, manufacturing and operating specifications, know-how, formulae, trade secrets, technical data, computer programs, hardware, software and processes, and Internet domain names and addresses; and

(v) all other intangible assets, properties and rights (whether or not appropriate steps have been taken to protect, under applicable law, such other intangible assets, properties or rights).

(b) Purchaser owns and has good and marketable title to, or possess legally enforceable rights to use, all Purchaser Intellectual Property used or currently proposed to be used in the Business as currently conducted or as proposed to be conducted by Purchaser. The Purchaser Intellectual Property owned by and licensed to Purchaser collectively constitute all of the Purchaser Intellectual Property necessary to enable Purchaser to conduct Purchaser's Business as Purchaser's Business is currently being conducted. To Purchaser's Knowledge, no current or former officer, director, stockholder, employee, consultant or independent contractor of Purchaser has any right, claim or interest in or with respect to any Purchaser Intellectual Property used in Purchaser's Business. To Purchaser's Knowledge, there is no unauthorized use, disclosure or misappropriation of any Purchaser Intellectual Property used in Purchaser's Business by any employee or, to Purchaser's Knowledge, former employee of Purchaser or, to Purchaser's Knowledge, by any other third party.

(c) With respect to each item of Intellectual Property used in Purchaser's Business (except "off the shelf" or other software widely available through regular commercial distribution channels at a cost not exceeding \$10,000 on standard terms and conditions, as modified for Purchaser's operations) ("Purchaser Intellectual Property"), Schedule 5.11 lists all Purchaser Patents and all registered Purchaser Trademarks, and trademark applications and all registered Purchaser Copyrights, including the jurisdictions in which each such Purchaser Intellectual Property has been issued or registered or in which any such application for such issuance and registration has been filed.

(d) Schedule 5.11 contains an accurate list as of the date of this Agreement of all licenses, sublicenses and other agreements to which Purchaser is a party and pursuant to which Purchaser is authorized to use any Purchaser Intellectual Property owned by any third party, excluding "off the shelf" or other software at a cost not exceeding \$10,000 and widely available through regular commercial distribution channels on standard terms and conditions ("Other Intellectual Property").

(e) To Purchaser's Knowledge, there is no unauthorized use, disclosure, infringement or misappropriation of any Purchaser Intellectual Property, including any Other Intellectual Property by any employee of Purchaser. Purchaser has not entered into any agreement to indemnify any person against any charge of infringement of any Other Intellectual Property. There are no royalties, fees or other payments payable by Purchaser to any Person by reason of the ownership, use, sale or disposition of Other Intellectual Property.

(f) To Purchaser's Knowledge, Purchaser is not in breach of any license, sublicense or other agreement relating to the Purchaser Intellectual Property or Other Intellectual Property.

(g) All of Purchaser's Patents, registered Purchaser Trademarks, registered service marks and registered Purchaser Copyrights held by Purchaser are valid and subsisting. All maintenance and annual fees have been fully paid and all fees paid during prosecution and after issuance of any patent comprising or relating to such item have been paid in the correct entity status amounts. Purchaser is not infringing, misappropriating or making unlawful use of, or received any notice or other communication (in writing or otherwise) of any actual, alleged, possible or potential infringement, misappropriation or unlawful use of any proprietary asset owned or used by any third party. There is no proceeding pending or threatened to the Knowledge of Purchaser, nor has any claim or demand been made, which challenges the legality, validity, enforceability or ownership of any item of Purchaser Intellectual Property or Other Intellectual Property or alleges a claim of infringement of any Purchaser Patents, Trademarks, service marks, Purchaser Copyrights or violation of any trade secret or other proprietary right of any third party.

(h) A complete list of Purchaser's proprietary software ("Purchaser Software"), is set forth in Schedule 5.11. Purchaser Software conforms in all material respects with any specification, documentation, performance standard, representation or statement provided with respect thereto by or on behalf of Purchaser.

5.12 Facilities. Schedule 5.12 provides an accurate and complete list of the current Facilities. Purchaser has provided Seller true and complete copies of (i) the leases for any Purchaser Facilities, and (ii) any acquisition agreements, loan documents, and title reports applicable to any currently owned Purchaser Facilities or applicable to any Purchaser Facilities which Purchaser has contracted to acquire in connection with Purchaser's Business. Purchaser enjoys peaceful and undisturbed possession of all current Purchaser Facilities. Except as set forth on Schedule 5.12, there exists no event of default by Purchaser (nor any event which with notice or lapse of time would constitute an event of default by Purchaser) with respect to any agreement or instrument with regard to any current Purchaser Facility, and to Purchaser's Knowledge there exists no event of default by any of the other parties thereto (nor any event which with notice or lapse of time would constitute an event of default by any of the other parties thereto) with respect to any such agreement or instrument, except where such default would not have a Purchaser Material Adverse Effect on the Business. Except as set forth on Schedule 5.12, all such agreements and instruments are in full force and effect.

5.13 Contracts and Arrangements.

(a) Schedule 5.13 hereto contains a true and accurate list of all material contracts to which Purchaser is a party. Each of the Purchaser Contracts is valid, binding and in full force and effect and enforceable by Purchaser in accordance with its terms, except as enforcement may be limited by general equitable principles and the exercise of judicial discretion in accordance with such principles. Purchaser is not in default under any Purchaser Contract, and there are no existing disputes or claims of default relating thereto, or any facts or conditions Known to Purchaser which, if continued, will result in a default or claim of default thereunder, which default could reasonably be expected to have a Material Adverse Effect on Purchaser's Business, the Purchaser Assets or the Purchaser Contracts.

(b) To Purchaser's Knowledge, there are no unresolved claims between Purchaser and any of the principal licensors, vendors, suppliers, distributors, representatives or customers of Purchaser's Business, no event which could reasonably be expected to result in (i) a material breach of a Purchaser Contract, (ii) a request for a material accommodation or concession in connection with the sale of services, distributors, representatives or customers or (iii) a significant impairment of the relationships of Purchaser's Business with its principal licensors, vendors, suppliers, distributors, representatives, or customers and none of such persons has advised Purchaser of its intention to cease doing business with Purchaser following the Closing Date, whether as a result of the transactions contemplated hereunder or otherwise.

(c) Each accepted and unfilled order entered into by Purchaser for the provision of services by Purchaser, and each agreement, contract or commitment for the purchase of supplies included in the Purchaser Contracts was made in the ordinary course of Purchaser's Business.

5.14 Insurance. Purchaser maintains insurance policies relating to Purchaser's Business providing coverage described on Schedule 5.14, which coverage is of the type and in amounts customarily carried by persons conducting businesses or owning assets similar to those of Purchaser. There is no material claim pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds.

All premiums due and payable under all such policies have been paid and Purchaser is in compliance with the terms of such policies. Purchaser has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies. All of such policies are in full force and effect, and Purchaser is not in default with respect to any material provision of any of such policies. Purchaser has not received notice from any issuer of any such policies of its intention to cancel, terminate or refuse to renew any policy issued by it.

5.15 Brokers. Neither Purchaser nor any of its directors, officers, employees or agents have retained, employed or used any broker or finder in connection with the transactions provided for herein or the negotiation thereof.

5.16 Accounts Receivable. Subject to any reserves set forth in the Purchaser Financial Statements, the accounts receivable shown on the Purchaser Financial Statements are valid and genuine, have arisen solely out of bona fide sales and deliveries of goods, performance of services, and other business transactions in the ordinary course of business consistent with past practices, are not subject to any prior assignment, lien or security interest and are not subject to valid defenses, set-offs or counter claims. The accounts receivable will be collected in accordance with their terms at their recorded amounts, subject only to the reserve for doubtful accounts on the Purchaser Financial Statements.

5.17 Warranties and Service Obligations. Schedule 5.17 sets forth copies of all forms of warranties or warranty agreements or obligations now in effect with respect to any of the services or products provided, or to be provided, by Purchaser in connection therewith and, except as stated therein, there are no other warranties, commitments or obligations, express or implied, with respect to the return, repair or replacement of any product or the performance of any service.

5.18 Environmental Matters. Purchaser's Business is conducted and at all times has been conducted in compliance with Environmental Laws, including without limitation, as may be applicable to the ownership, use, occupation, control, possession and rental of all prior and current Purchaser Facilities. No civil, criminal or administrative actions, proceedings, directives, inquiries, or investigations are pending, or to the Knowledge of Purchaser threatened, pertaining to Purchaser or Purchaser's Business and brought by any Governmental Entity or Person, regarding any alleged non-compliance by Purchaser's Business or any Purchaser Facility with Environmental Laws, or regarding any alleged Release of Hazardous Materials. No Governmental Entity or Person has, currently or in the past, alleged or, to the Knowledge of Purchaser threatened to allege, against Purchaser, an affiliate of Purchaser, or Purchaser's Business, in connection with Purchaser's Business or any Purchaser Facility, that Hazardous Materials have been Handled improperly or in violation of Environmental Laws or in such a manner as to harm or threaten to harm human health, ecology, or the environment. Purchaser has not received any notice with respect to any Purchaser Facility, and is not aware of the issuance, at any time, to any Person of any notice with respect to any Purchaser Facility, alleging that (i) a Release of Hazardous Materials occurred, or is suspected of having occurred, at any time at a Purchaser Facility, or (ii) a Purchaser Facility has been listed or is proposed to be listed on any list, registry or inventory maintained by any Governmental Entity of sites where a Release of Hazardous Materials has occurred or is suspected of having occurred. No Release of Hazardous Materials has occurred at any time in connection with Purchaser's Business or during

any period that Purchaser owned, used, occupied, controlled, or rented any current or prior Purchaser Facility. There are no conditions existing at any Purchaser Facility in connection with Purchaser's Business which require any remedial action, removal action, corrective action, closure action, or other environmental response action under Environmental Laws or Licenses. There are no past or present (or, to the best of Purchaser's knowledge, future) events, conditions, circumstances, activities, practices, incidents, actions, omissions or plans which may interfere with or prevent compliance or continued compliance with the Environmental Laws or which may give rise to any Liability or otherwise form the basis of any Litigation, hearing, notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Materials.

5.19 Taxes.

(a) Purchaser has prepared and timely filed, inclusive of extensions, all Returns relating to any and all Taxes concerning or attributable to Purchaser or its operations with respect to Taxes for any period ending on or before the Closing Date and such Returns are true and correct in all material respects and have been completed in accordance with applicable law.

(b) Purchaser, as of the Closing Date: (i) will have paid all Taxes shown to be payable on such Returns covered by this Section 5.19 and (ii) will have withheld with respect to its employees all Taxes required to be withheld.

(c) There is no Tax deficiency outstanding or assessed or, to Purchaser's Knowledge, proposed against Purchaser that is not reflected as a liability on the Purchaser Financial Statements nor has Purchaser executed any agreements or waivers extending any statute of limitations on or extending the period for the assessment or collection of any Tax.

(d) Purchaser has no liabilities for unpaid Taxes that have not been accrued for or reserved on the Purchaser Financial Statements, whether asserted or unasserted, contingent or otherwise and Purchaser has no knowledge of any basis for the assertion of any such liability attributable to Purchaser, its assets or operations.

(e) Purchaser is not a party to any tax-sharing agreement or similar arrangement with any other party, and Purchaser has not assumed to pay any Tax obligations of, or with respect to any transaction relating to, any other person or agreed to indemnify any other person with respect to any Tax.

(f) Purchaser's Returns have never been audited by a government or taxing authority, nor is any such audit in process or pending, and Purchaser has not been notified of any request for such an audit or other examination.

(g) Purchaser has never been a member of an affiliated group of corporations filing a consolidated federal income tax return.

(h) Purchaser has disclosed to Seller (i) any Tax exemption, Tax holiday or other Tax sparing arrangement that Purchaser has in any jurisdiction, including the nature,

amount and lengths of such Tax exemption, Tax holiday or other Tax-sparing arrangement and (ii) any expatriate tax programs or policies affecting Purchaser. Purchaser is in compliance with all terms and conditions required to maintain such Tax exemption, Tax holiday or other Tax-sparing arrangement or order of any governmental entity and the consummation of the transactions contemplated hereby will not have any adverse effect on the continuing validity and effectiveness of any such Tax exemption, Tax holiday or other Tax-sparing arrangement or order.

(i) Purchaser has not filed any consent agreement under Section 341(f) of the Code or agreed to have Section 341(f)(4) apply to any disposition of assets owned by Purchaser.

(j) Purchaser has not been at any time a United States Real Property Holding Corporation within the meaning of Section 897(c)(2) of the Code.

5.20 Employee Benefit Plans.

(a) Schedule 5.20 contains a complete and accurate list of each plan, program, policy, practice, contract, agreement or other arrangement providing for employment, compensation, retirement, deferred compensation, loans, severance, separation, relocation, repatriation, expatriation, visas, work permits, termination pay, performance awards, bonus, incentive, stock option, stock purchase, stock bonus, phantom stock, stock appreciation right, supplemental retirement, fringe benefits, cafeteria benefits, or other benefits, whether written or unwritten, including, without limitation, each "employee benefit plan" within the meaning of ERISA which is or has been sponsored, maintained, contributed to, or required to be contributed to by Purchaser and, with respect to any such plans which are subject to Code Section 401(a), any trade or business (whether or not incorporated) which is or, at any relevant time, was treated as a single employer with Purchaser within the meaning of Section 414(b), (c), (m) or (o) of the Code, (a "Purchaser ERISA Affiliate") for the benefit of any person who performs or who has performed services for Purchaser or with respect to which Purchaser or Purchaser ERISA Affiliate has or may have any liability (including, without limitation, contingent liability) or obligation (collectively, the "Purchaser Employee Plans").

(b) Documents. Purchaser has furnished to Seller true and complete copies of documents embodying each of the Purchaser Employee Plans and related plan documents, including (without limitation) trust documents, group annuity contracts, plan amendments, insurance policies or contracts, participant agreements, employee booklets, administrative service agreements, summary plan descriptions, compliance and nondiscrimination tests for the last three plan years, standard COBRA forms and related notices, registration statements and prospectuses, and, to the extent still in its possession, any material employee communications relating thereto. With respect to each Purchaser Employee Plan which is subject to ERISA reporting requirements, Purchaser has furnished Seller with the most recent Internal Revenue Service determination or opinion letter issued with respect to each such Purchaser Employee Plan, and nothing has occurred since the issuance of each such letter which could reasonably be expected to cause the loss of the tax-qualified status of any Purchaser Employee Plan subject to Code Section 401(a).

(c) Compliance. (i) Each Purchaser Employee Plan has been administered in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code), except as would not have, in the aggregate, a Purchaser Material Adverse Effect, and Purchaser or Purchaser ERISA Affiliate have performed all material obligations required to be performed by them under, are not in material respect in default under or violation of and have no knowledge of any material default or violation by any other party to, any of the Purchaser Employee Plans; (ii) any Purchaser Employee Plan intended to be qualified under Section 401(a) of the Code has either obtained from the Internal Revenue Service a favorable determination letter as to its qualified status under the Code, including all amendments to the Code which are currently effective, or has time remaining to apply under applicable Treasury Regulations or Internal Revenue Service pronouncements for a determination or opinion letter and to make any amendments necessary to obtain a favorable determination or opinion letter; (iii) none of the Purchaser Employee Plans promises or provides retiree medical or other retiree welfare benefits to any person; (iv) there has been no "prohibited transaction," as such term is defined in Section 406 of ERISA or Section 4975 of the Code, with respect to any Purchaser Employee Plan; (v) neither Purchaser nor any Purchaser ERISA Affiliate is subject to any liability or penalty under Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any Purchaser Employee Plan; (vi) all contributions required to be made by Purchaser or Purchaser ERISA Affiliate to any Purchaser Employee Plan have been paid or accrued; (vii) with respect to each Purchaser Employee Plan, no "reportable event" within the meaning of Section 4043 of ERISA (excluding any such event for which the thirty (30) day notice requirement has been waived under the regulations to Section 4043 of ERISA) nor any event described in Section 4062, 4063 or 4041 of ERISA has occurred; (viii) each Purchaser Employee Plan subject to ERISA, has prepared in good faith and timely filed all requisite governmental reports (which were true and correct as of the date filed) and has properly and timely filed and distributed or posted all notices and reports to employees required to be filed, distributed or posted with respect to each such Purchaser Employee Plan; (ix) no suit, administrative proceeding, action or other litigation has been brought, or to the knowledge of Purchaser is threatened, against or with respect to any such Purchaser Employee Plan, including any audit or inquiry by the IRS or United States Department of Labor; and (x) there has been no amendment to, written interpretation or announcement by Purchaser, any subsidiary or Purchaser ERISA Affiliate which would materially increase the expense of maintaining any Purchaser Employee Plan above the level of expense incurred with respect to that Plan for the most recent fiscal year included in Purchaser's Financial Statements.

(d) No Title IV or Multiemployer Plan. Neither Purchaser nor any Purchaser ERISA Affiliate has ever maintained, established, sponsored, participated in, contributed to, or is obligated to contribute to, or otherwise incurred any obligation or liability (including, without limitation, any contingent liability) under any "multiemployer plan" (as defined in Section 3(37) of ERISA) or to any "pension plan" (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA or Section 412 of the Code. None of Purchaser, any subsidiary or any Purchaser ERISA Affiliate has any actual or potential withdrawal liability (including, without limitation, any contingent liability) for any complete or partial withdrawal (as defined in Sections 4203 and 4205 of ERISA) from any multiemployer plan.

(e) COBRA, FMLA, HIPAA, CANCER RIGHTS. With respect to each Purchaser Employee Plan, Purchaser has complied with (i) the applicable health care

continuation and notice provisions of COBRA and the regulations thereunder or any state law governing health care coverage extension or continuation; (ii) the applicable requirements of the Family and Medical Leave Act of 1993 and the regulations thereunder; (iii) the applicable requirements of the HIPAA; and (iv) the applicable requirements of the Cancer Rights Act of 1998, except to the extent that such failure to comply would not in the aggregate have a Purchaser Material Adverse Effect. Purchaser has no material unsatisfied obligations to any employees, former employees, or qualified beneficiaries pursuant to COBRA, HIPAA, or any state law governing health care coverage extension or continuation.

5.21 Employee Matters. Purchaser is in compliance with all currently applicable laws and regulations respecting terms and conditions of employment including, without limitation, applicant and employee background checking, immigration laws, discrimination laws, verification of employment eligibility, employee leave laws, classification of workers as employees and independent contractors, wage and hour laws, and occupational safety and health laws. There are no proceedings pending or, to Purchaser's Knowledge, reasonably expected or threatened, between Purchaser, on the one hand, and any or all of its current or former employees, on the other hand, including, but not limited to, any claims for actual or alleged harassment or discrimination based on race, national origin, age, sex, sexual orientation, religion, disability, or similar tortious conduct, breach of contract, wrongful termination, defamation, intentional or negligent infliction of emotional distress, interference with contract or interference with actual or prospective economic disadvantage. There are no claims pending, or, to Purchaser's knowledge, reasonably expected or threatened, against Purchaser under any workers' compensation or long term disability plan or policy. Purchaser is not a party to any collective bargaining agreement or other labor union contract, nor does Purchaser know of any activities or proceedings of any labor union to organize its employees.

5.22 Post-Closing Operation. Purchaser does not plan to dispose of the Assets other than in the ordinary course of Purchaser's Business and Purchaser does not plan or intend to reacquire any of the Capital Stock to be issued pursuant to this Agreement other than repurchases in the ordinary course of business from employee shareholders terminating employment with Purchaser. It is the intent of Purchaser to continue the historic use of the Assets acquired pursuant to the terms of this Agreement in Purchaser's Business.

5.23 Capital Structure. The authorized capital stock of Purchaser consists of 90,000,000 shares of common stock, \$.001 par value, and 10,000,000 shares of preferred stock, \$.001 par value, of which there were issued and outstanding as of the date of this Agreement no more than 7,575,000 shares of common stock and 2,363,500 shares of preferred stock. There are options and warrants to purchase up to 1,061,500 shares of Purchaser common stock. Other than disclosed above, there are no other outstanding shares of capital stock or voting securities of Purchaser, and, other than as described in this Agreement, there are no outstanding rights to acquire Purchaser's securities evidenced in, any agreement, whether oral or written. All outstanding shares of Purchaser capital stock and preferred stock have been duly authorized, validly issued, fully paid and are nonassessable. The shares of Capital Stock to be issued pursuant to the Agreement will be duly authorized, validly issued, fully paid, and nonassessable.

5.24 Accuracy of Material Facts; Copies of Materials. No representation, warranty or covenant of Purchaser contained in this Agreement or in any certificate, schedule or exhibit

delivered pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein, taken as a whole, not misleading in light of the circumstances under which such statements were made. Purchaser has delivered to Purchaser complete and accurate copies of each contract, agreement, license, lease and similar document (or, if oral, summaries of same) referred to in any schedule hereto or included in the Purchaser Assets or the Purchaser Contracts.

ARTICLE VI

PRE-CLOSING COVENANTS OF SELLER

6.1 Advice of Changes. Seller will promptly notify Purchaser in writing of (a) any event occurring subsequent to the date of this Agreement that would render any representation or warranty of Seller contained in this Agreement, if made on or as of the date of that event or the Closing Date, untrue or inaccurate in any material respect and (b) any Material Adverse Change in the Assets, Assumed Liabilities, the Intellectual Property or the financial condition, results of operations, business or prospects of the Business.

6.2 Conduct of Business. During the period on and from the date of this Agreement through and including the Closing Date, Seller will conduct the Business in the ordinary course consistent with past practices and will use its reasonable commercial efforts to retain Seller's employees employed in the Business, protect and preserve the Assets and the Intellectual Property, and maintain and preserve intact Seller's relationships with its consultants, independent contractors, licensors, suppliers, vendors, representatives, distributors and other customers and all others with whom it deals, all in accordance with the ordinary course of business. During the period on and from the date of this Agreement through and including the Closing Date, Seller will not without the prior written consent of Purchaser:

(a) mortgage, pledge, subject to a lien, or grant a security interest in, or suffer to exist or otherwise encumber, any of the Assets;

(b) sell, dispose of or license any of the Assets to any Person, except in the ordinary course of business consistent with past practices;

(c) fail to pay and discharge any trade payables relating to the Assets or the Business promptly as they become due;

(d) enter into any agreement or arrangement to increase the salary of any Seller employee employed in the Business (other than discretionary bonuses, amounts paid to Seller employees who, at the time of such agreement or arrangement, have not been extended an offer to become employees of Purchaser, cash incentives paid to retain Seller employees who accept offers to become employees of Purchaser and increases in compensation in the ordinary course of business);

(e) change accounting methods relating to or affecting the Assets, the Assumed Liabilities or the Business;

- (f) amend, terminate or waive any rights under any Contract, except in the ordinary course of the Business;
- (g) waive or release any right or claim relating to any Assets, except in the ordinary course of business consistent with past practices;
- (h) enter into any agreements or other obligations or commitments other than in the ordinary course of business, consistent with past practices of Seller with respect to the Business;
- (i) fail to comply in any material respect with any Law or Decree applicable to the Business;
- (j) take any action to terminate or modify, or permit the lapse of termination of, the present insurance policies and coverages of Seller relating to or applicable to Seller, the Business or the Assets;
- (k) incur, with respect to the Business or the Assets, any Liabilities other than Liabilities incurred in the ordinary course of business consistent with past practices; or
- (l) agree to do any of the things described in the preceding clauses of this Section 6.2.

6.3 Access to Information. Until the Closing, Seller will allow Purchaser and its agents free access upon reasonable notice and during normal working hours to the Business Records and Facilities relating to the Assets, all aspects of the Business and its financial and legal affairs and the financial condition of the Seller. Until the Closing, Seller shall cause its accountants to cooperate with Purchaser and Purchaser's agents in making available all financial information requested, including without limitation the right to examine all working papers pertaining to all Business Financial Statements prepared or audited by such accountants.

6.4 Obtaining Necessary Consents. Seller shall use its reasonable commercial efforts to obtain any and all consents necessary for the effective assignment to and assumption by Purchaser of the Assumed Contracts, which consents are set forth on Schedule 6.4 hereto.

6.5 Satisfaction of Conditions Precedent. Seller will use its reasonable commercial efforts to satisfy or cause to be satisfied all the conditions precedent to the Closing hereunder, and to cause the transactions contemplated herein to be consummated, and, without limiting the generality of the foregoing, to obtain all consents and authorizations of third parties and to make all filings with, and give all notices to, third parties, which may be necessary or reasonably required on its part in order to effect the transactions contemplated herein.

6.6 Shareholder Approval. Seller shall take all commercially reasonable action necessary under all applicable law to have Seller's shareholders vote to approve this Agreement and the Acquisition.

6.7 Satisfaction by Seller of Liabilities. From and after the Closing Date, Seller shall timely pay, perform and comply with (i) in all material respects all Excluded Liabilities, and any

other Liability which is not an Assumed Liability, of Seller unless contested by Seller in good faith and (ii) all covenants and obligations of this Agreement imposed on Seller.

ARTICLE VII

PRE-CLOSING COVENANTS OF PURCHASER

7.1 Advice of Changes. Purchaser will promptly notify Seller in writing of any event occurring subsequent to the date of this Agreement that would render any representation or warranty of Purchaser, as applicable, contained in this Agreement, if made on or as of the date of that event or the Closing Date, untrue or inaccurate in any material respect.

7.2 Conduct of Business. During the period on and from the date of this Agreement through and including the Closing Date, Purchaser will conduct Purchaser's Business in the ordinary course consistent with past practices and will use its reasonable commercial efforts to retain its employees, protect and preserve Purchaser Assets, and maintain and preserve intact its relationships with its consultants, independent contractors, licensors, suppliers, vendors, representatives, distributors and other customers and all others with whom it deals, all in accordance with the ordinary course of business. During the period on and from the date of this Agreement through and including the Closing Date, Purchaser will not without the prior written consent of Seller:

(a) mortgage, pledge, subject to a lien, or grant a security interest in, or suffer to exist or otherwise encumber, any of the Purchaser Assets, except in the ordinary course of business consistent with past practices;

(b) sell, dispose of or license any of its assets to any Person, except in the ordinary course of business consistent with past practices;

(c) fail to pay and discharge any trade payables as they become due;

(d) enter into any agreement or arrangement to increase the salary of any Purchaser employee (other than discretionary bonuses, cash incentives to retain Purchaser employees and increases in compensation in the ordinary course of business);

(e) change accounting methods relating to Purchaser's Assets or Purchaser's Business;

(f) amend, terminate or waive any rights under any contract, except in the ordinary course of Purchaser's Business;

(g) waive or release any right or claim relating to any Purchaser Asset, except in the ordinary course of business consistent with past practices;

(h) enter into any agreements or other obligations or commitments other than in the ordinary course of business, consistent with past practices of Purchaser with respect to Purchaser's Business;

(i) fail to comply in any material respect with any Law or Decree applicable to Purchaser's Business;

(j) take any action to terminate or modify, or permit the lapse of termination of, the present insurance policies and coverages of Purchaser relating to or applicable to Purchaser, the Purchaser Assets, or Purchaser's Business;

(k) incur, with respect to Purchaser's Business or the Purchaser Assets, any Liabilities other than Liabilities incurred in the ordinary course of business consistent with past practices; or

(l) agree to do any of the things described in the preceding clauses of this Section 7.2.

7.3 Access to Information. Until the Closing, Purchaser will allow Seller and its agents free access upon reasonable notice and during normal working hours to Purchaser's business records and facilities, all aspects of the business and its financial and legal affairs and the financial condition of the Purchaser. Until the Closing, Purchaser shall cause its accountants to cooperate with Seller and Seller's agents in making available all financial information requested, including without limitation the right to examine all working papers pertaining to all Purchaser's Financial Statements prepared or audited by such accountants.

7.4 Shareholder Approval. Purchaser shall take all commercially reasonable action necessary under all applicable law to have Purchaser's shareholders vote to approve this Agreement, the transactions contemplated by this Agreement, the Purchaser Amended and Restated Option Plan, Purchaser Second Amended and Restated Certificate of Incorporation, the election of the directors listed in Section 9.2(d) and the Acquisition.

7.5 Satisfaction of Conditions Precedent. Purchaser will use its reasonable commercial efforts to satisfy or cause to be satisfied all the conditions precedent to the Closing hereunder, and to cause the transactions contemplated herein to be consummated, and, without limiting the generality of the foregoing, to obtain all consents and authorizations of third parties and to make all filings with, and give all notices to, third parties which may be necessary or reasonably required on its part in order to effect the transactions contemplated herein.

ARTICLE VIII

MUTUAL COVENANTS

8.1 Confidentiality. The parties acknowledge that the Confidentiality Agreement attached hereto as Exhibit S ("Confidentiality Agreement") is binding upon the parties hereto and in full force and effect, except to the extent that the provisions to similar effect contained in the Confidentiality Agreement. The terms of the Confidentiality Agreement (exclusive of such superseded provisions) are incorporated in this Agreement by this reference.

8.2 Regulatory Filings; Consents; Reasonable Efforts. Subject to the terms and conditions of this Agreement, each of Seller and Purchaser shall use its respective reasonable commercial efforts to (a) obtain all consents, waivers, approvals, authorizations and orders

required in connection with the authorization, execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Acquisition and (d) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated in this Agreement as promptly as practicable.

8.3 Governmental Filings. As promptly as practicable after the execution of this Agreement, each of Seller and Purchaser shall make any and all required governmental filings required with respect to the transactions contemplated in this Agreement and the Ancillary Agreements, and shall use its respective best efforts to respond promptly to all inquiries or requests for additional information or documentation from any Governmental Entity.

8.4 Further Assurances. Prior to and following the Closing, each party to this Agreement agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements, and to give such further written assurances, as may be reasonably requested by any other party to better evidence and reflect the transactions described herein and the Ancillary Agreements and contemplated herein and therein and to carry into effect the intent and purposes of this Agreement.

ARTICLE IX

CONDITIONS TO CLOSING

9.1 Conditions to Each Party's Obligations. The respective obligations of each party to this Agreement to effect the transactions to be performed by such party at the Closing are, at the option of such party, subject to the satisfaction at, prior to or simultaneously with, the Closing, of the following conditions:

(a) No Orders. No order shall have been entered, and not vacated, by a court or administrative agency of competent jurisdiction, in any action or proceeding which enjoins, restrains or prohibits the Acquisition or the consummation of any other transaction contemplated herein.

(b) Permits, Authorizations and Approvals. All permits, authorizations, approvals and orders required to be obtained under all applicable Laws or Decrees in connection with the transactions contemplated herein shall have been obtained and shall be in full force and effect at the Closing Date.

(c) No Litigation. There shall be no litigation pending or threatened by any Governmental Entity in which (i) an injunction is or may be sought against the transactions contemplated herein or (ii) relief is or may be sought against any party hereto as a result of this Agreement and in which, in the good faith judgment of the board of directors of either Purchaser or Seller (relying on the advice of their respective legal counsel), such Governmental Entity has the probability of prevailing and such relief would have a Material Adverse Effect upon such party.

(d) Stockholder Approval. This Agreement and the transactions contemplated hereby shall be approved by the shareholders of Seller and Purchaser by the requisite vote under

applicable law and the Seller's and Purchaser's Articles of Incorporation and Certificate of Incorporation, respectively.

(e) Funding Event. A Funding Event shall have occurred or shall occur simultaneously with the Closing.

(f) Ancillary Agreements and Schedules. Mutually agreed forms of all Ancillary Agreements and schedules shall have been attached to this Agreement.

9.2 Conditions to Obligations of Seller. The obligations of Seller to effect the transactions to be performed by it at the Closing are, at the option of Seller, subject to the satisfaction at or prior to the Closing of the following additional conditions:

(a) Representations and Warranties. All of the representations and warranties of Purchaser set forth in ARTICLE V hereof shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if such representations and warranties had been made at the Closing, and Purchaser shall have delivered to Seller a certificate (the "Purchaser Compliance Certificate") to such effect dated as of the Closing Date and signed by the appropriate officer of Purchaser.

(b) Performance. All of the terms, covenants and conditions of this Agreement to be complied with and performed by Purchaser, at or prior to the Closing shall have been duly complied with and performed in all material respects, and Purchaser shall have delivered to Seller the Purchaser Compliance Certificate to such effect.

(c) Purchase Price Consideration. Purchaser shall have delivered the Purchase Price Consideration to Seller in accordance with Section 2.6 hereof.

(d) Appointment of Directors and Corporate Officers. Purchaser shall have caused (i) each of Michael S. Pliner ("Pliner"), Derek W. Smith ("Smith"), James Egide, Joseph Prang, Joseph P. Walkush, (SAIC) and Mark DeNino to be elected to the Purchaser Board of Directors and (ii) each of Pliner, Smith, Chett B. Paulsen and Jerry P. Machle, to be appointed Chief Executive Officer, President, Chief Operating Officer and Chief Financial Officer of Purchaser, respectively, effective as of the Closing.

(e) Appointment of Seventh Director. Smith shall have the right to appoint a seventh (7th) director to the Purchaser board of directors at the Closing or within a reasonable period after the Closing, and the seventh (7th) director shall not be an employee of Purchaser and shall have broad industry knowledge directly related to the Purchaser's Business.

(f) Purchaser's Closing Deliverables. At the Closing, Purchaser will deliver to Seller the following items:

(i) the Purchase Price;

(ii) the Purchaser Compliance Certificate in accordance with Section 9.2(a) and (b) hereof;

(iii) each of the following Ancillary Agreements executed by

Purchaser:

(1) Second Amended and Restated Certificate of Incorporation. Purchaser Amended and Restated Certificate of Incorporation, authorizing Series AA Preferred Stock, Series BB Preferred Stock and providing that Purchaser's Board of Directors shall consist of no greater than seven (7) members, among other things, the form of which will be attached as Exhibit A hereto certified as filed in the office of the Delaware Secretary of State;

(2) Employment Agreements. Employment Agreements, the form of which will be attached as Exhibit B hereto, by and between Purchaser and each of Pliner and Jerry P. Machle ("Machle");

(3) Amended and Restated Stock Option Plan. Amended and Restated Stock Option Plan, the form of which will be attached as Exhibit C hereto, which shall have been adopted by the Purchaser Board of Directors and Purchaser shareholders;

(4) Common Stock Certificate. Common Stock Certificate in the form of which will be attached as Exhibit D hereto;

(5) Series AA Convertible Preferred Stock Certificate. Series AA Convertible Preferred Stock Certificate in the form of which will be attached as Exhibit E hereto;

(6) Certificate of Secretary. Purchaser Certificate of Secretary certifying the reservation of an aggregate of 2,776,848 shares of Purchaser common stock and Series AA Convertible Preferred Stock for issuance upon exercise of the Seller Options, Common Warrants and Seller Warrants, the form of which will be attached as Exhibit R hereto;

(7) Assignment and Acceptance of Lease. Assignment and Acceptance of Lease with respect to each facility lease being assigned to Purchaser, the form of which will be attached as Exhibit F hereto;

(8) Purchaser Notes. Amendment to the Purchaser Notes reflecting the suspension of the conversion rights contained therein through Closing and the termination (upon Closing) of the conversion rights, the form of which will be attached as Exhibit Q hereto; and

(iv) Purchaser's unaudited balance sheet as of April 30, 2000 which shall represent a reasonable estimate of the financial condition of the Purchaser, on the Closing Date, prepared in accordance with GAAP consistent in every respect with the Purchaser Financial Statements;

(v) a certificate, signed by the Secretary of Purchaser, certifying as to and accuracy of, and attaching copies of, Purchaser's respective charter documents, all board of directors and shareholder resolutions adopted in connection with the Acquisition by Purchaser and incumbency of Purchaser's signatories;

(vi) a written opinion of Gibson, Haglund & Paulsen, counsel to Purchaser, dated as of the Closing Date, addressed to Seller, the form of which will be attached as Exhibit G hereto; and

(vii) all other documents required to be delivered to Seller under this Agreement.

9.3 Conditions to Obligations of Purchaser. The obligations of Purchaser to effect the transactions to be performed by it at the Closing are, at the option of Purchaser, subject to the satisfaction at or prior to the Closing of the following additional conditions:

(a) Representations and Warranties. All the representations and warranties of Seller set forth in ARTICLE IV hereof shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if such representations and warranties had been made at the Closing, and Seller shall have delivered to Purchaser a certificate (the "Seller Compliance Certificate") to such effect dated as of the Closing Date and signed by the appropriate officer of Seller.

(b) Performance. All of the terms, covenants and conditions of this Agreement to be complied with and performed by Seller at or prior to the Closing shall have been duly complied with and performed in all material respects, and Seller shall have delivered to Purchaser the Seller Compliance Certificate to such effect.

(c) Required Consents. Any and all required consents from third parties to the Assumed Contracts and other instruments required to allow the consummation of the Acquisition and the other transactions contemplated herein.

(d) Material Adverse Change. There shall have been no Material Adverse Change relating the Assumed Liabilities, to the Assets, the Intellectual Property or the Business.

(e) Employees. As of the Closing Date, the Key Employees shall become Purchaser employees and shall have accepted offers of employment extended by Purchaser.

(f) Seller's Closing Deliverables. At the Closing, Seller will deliver to Purchaser the following items:

(i) a Bill of Sale, Assignment and Assumption Agreement in the form of Exhibit H hereof;

(ii) all Business Records;

(iii) the Seller Compliance Certificate in accordance with Section 9.3(a) and (b) hereof;

(iv) all required consents from third parties to the Contracts in accordance with Section 9.3(c) hereof;

(v) a written opinion of Gray Cary Ware & Freidenrich, counsel to Seller, dated as of the Closing Date, addressed to Purchaser, the form of which will be attached as Exhibit I;

(vi) each of the following Ancillary Agreements:

(1) Employment Agreements. Employment Agreements by and between Purchaser and each of Pliner and Machle the form of which will be attached as Exhibit B hereto, executed by Pliner and Machle;

(2) Assignment and Acceptance of Lease. Assignment and Acceptance of Lease with respect to each facility lease being assigned to Purchaser substantially, the form of which will be attached as Exhibit F hereto, executed by Seller;

(3) Estoppel Certificates. Estoppel Certificates executed by each landlord with respect to each lease being assigned to Purchaser in the form of Exhibit J;

(4) Appraisal. An appraisal of the Assets conducted by a mutually agreed valuation firm, the form of which will be attached as Exhibit K;

(5) Intellectual Property Rights Assignment (Trademark). Intellectual Property Rights Assignment, with respect to Seller's trademarks, the form of which will be attached as Exhibit L hereto, executed by Seller;

(6) Intellectual Property Rights Assignment (Patent). Intellectual Property Rights Assignment, with respect to Seller's patents, the form of which will be attached as Exhibit M hereto, executed by Seller; and

(7) Purchaser Notes. Amendment to the Purchaser Notes waiving the conversion rights contained therein through the Closing and the termination (upon Closing) of the conversion rights, the form of which will be attached as Exhibit Q hereto; and

(vii) Seller's unaudited balance sheet as of April 30, 2000 which shall represent a reasonable estimate of the financial condition of the Seller, as of the Closing Date, prepared in accordance with GAAP consistent in every respect with the Business Financial Statements ("Closing Date Balance Sheet");

(viii) a certificate, signed by the Secretary of Seller, certifying as to the truth and accuracy of, and attaching copies of, Seller's charter documents, composition of Seller's board of directors, effectiveness of shareholder resolutions adopted in connection with the Acquisition and incumbency of Seller's signatories; and

(ix) all other documents required to be delivered to Purchaser under the provisions of this Agreement.

ARTICLE X

OTHER MATTERS

10.1 Employees.

(a) Employment Offer and Employment Terms and Conditions. On or prior to the Closing Date an offer of employment shall be made by Purchaser to Seller employees employed by the Business each as listed on Exhibit N, that have been mutually agreed to by Seller and Purchaser ("Prospective New Purchaser Employees").

(b) Seller's Obligations and Liabilities.

(i) Seller shall be solely responsible for any withholding or employment Taxes with respect to any Seller employee, through the Closing Date, which accrue or become payable with respect to such employee's employment with Seller or arise as a consequence of such employee's termination of employment with Seller, including any termination arising out of such employee's employment with Purchaser pursuant to this Agreement. Seller shall be solely responsible for issuing Forms W-2 for wages paid through the termination date of Seller's employees and for filing all tax returns with respect to its employment of any Seller employee through the Closing Date.

(ii) Seller shall be solely liable for and obligated to pay, any and all liabilities with respect to (A) any of Seller's obligations under this Section 10.1, (B) Seller's termination of employment of any employee on or before the Closing Date (C) any claims or obligations to the extent that they arise out of the employment of any Prospective New Purchaser Employee by Seller on or before the Closing Date, including claims or obligations for salary, wages, bonuses, commissions, severance, vacation, sick pay, workers' compensation, or mortgage assistance.

(iii) Seller shall be responsible for any liability for claims filed with respect to any employee of Seller eligible for coverage, reimbursement and/or benefits under the terms of any of Seller's Employee Plans, provided such liability (A) accrued or became payable during the period of such employee's employment with Seller on or before the Closing Date or (B) arose out of Seller's termination of such employee's employment on or before the Closing Date. Additionally, Seller shall be responsible for any liability for accrued benefits with respect to any Prospective New Purchaser Employee who, as a result of employment with Seller on or before the Closing Date, was a participant in any of Seller's Employee Plan.

(c) Employee Benefits. Effective as of the Closing Date, Purchaser shall (i) adopt the Seller Employee Plans for the benefit of the Key Employees and the Prospective New Purchaser Employees or (ii) provide to Key Employees and the Prospective New Purchaser Employees, employee benefits that are identical to or substantially similar to the Seller Employee Plans, in each case only as such Seller Employee Plans relate to medical insurance, dental insurance, life insurance, vision insurance, Seller's 401(k) Plan and Seller's Flexible Spending Plan.

10.2 Seller's Options. At the Closing, Purchaser shall grant to each holder of a Seller Option, a substantially equivalent option to purchase shares of Purchaser common stock pursuant to Purchaser's 1999 Stock Option and Incentive Plan (a "Substitute Option"). Schedule 10.2 hereto sets forth a true and complete list as of the Closing Date of all holders of outstanding options to purchase shares of Seller common stock ("Seller Options"), including the number of shares of Seller common stock subject to each such option, the exercise or vesting schedule, the exercise price per share and the term of each such option. Each Substitute Option shall be subject to the same terms and conditions substantially similar to those set forth in the Seller Stock Option Plan and any other document governing such option immediately prior to the Closing Date, except that (i) such option will be exercisable for that number of whole shares of Purchaser common stock equal to the product of the number of shares of Seller common stock that were issuable upon exercise of such option immediately prior to the Closing Date multiplied by .193936 and rounded down to the nearest whole number of shares of Purchaser common stock, (ii) the per share exercise price for the shares of Purchaser common stock issuable upon exercise of such assumed option will be equal to the quotient determined by dividing the exercise price per share of Seller common stock at which such option was exercisable immediately prior to the Closing Date by .193936 rounded up to the nearest whole tenth of a cent and (iii) any restriction on the exercisability of such Seller Option shall continue in full force and effect, and the term, exercisability, vesting schedule and other provisions of such Seller Option shall remain unchanged. It is the intention of the parties that the options so assumed by Purchaser following the Closing Date will remain incentive stock options as defined in Section 422 of the Code to the extent such options qualified as incentive stock options prior to the Closing Date. Within 20 Business Days after the Closing Date, Purchaser will deliver to each person who, immediately prior to the Closing Date, was a holder of an outstanding option under the Seller Stock Option Plan a document in form and substance satisfactory to Seller evidencing the Substitute Option. The total number of Substitute Options to be granted by Purchaser pursuant to this Section 10.2 shall be 2,690,546. As a condition to granting each Substitute Option, the Seller shall cancel the Seller Option which the Substitute Option replaces.

10.3 Seller's Warrants-Preferred. At the Closing, Purchaser shall grant each holder of a Seller Warrant, a substantially similar warrant to purchase shares of Purchaser Series AA Convertible Preferred Stock ("Substitute Preferred Warrant"). Schedule 10.3 hereto sets forth a true and complete list as of the Closing Date of all holders of outstanding warrants to purchase shares of Seller Series D Preferred Stock ("Seller Warrants"), including the number of shares of Seller Series D Preferred Stock subject to each such warrant. Each Substitute Preferred Warrant shall be subject to the same terms and conditions substantially similar to those set forth in the warrant and any other document governing such warrant immediately prior to the Closing Date, except that (i) such warrant will be exercisable for that number of whole shares of Purchaser Series AA Convertible Preferred Stock equal to the product of the number of shares of Seller Series D Preferred Stock that were issuable upon exercise of such warrant immediately prior to the Closing Date multiplied by the .193936 and rounded down to the nearest whole number of shares of Purchaser Series AA Convertible Preferred Stock, (ii) the per share exercise price for the shares of Purchaser Series AA Convertible Preferred Stock issuable upon exercise of such assumed warrant will be equal to the quotient determined by dividing the exercise price per share of Seller Series D Preferred Stock at which such warrant was exercisable immediately prior to the Closing Date by .193936, rounded up to the nearest whole tenth of a cent and (iii) any restriction on the exercisability of such Seller Warrant shall continue in full force and effect, and

the term, exercisability and other provisions of such Seller Warrant shall remain unchanged. Within 20 Business Days after the Closing Date, Purchaser will deliver to each person who, immediately prior to the Closing Date, was a holder of a Seller Warrant a document in form and substance satisfactory to Seller evidencing the Substitute Preferred Warrant. The total number of Substitute Preferred Warrants to be granted by Purchaser pursuant to this Section 10.4 shall be 66,908. As a condition to granting each Substitute Preferred Warrant, the Seller shall cancel the Seller Warrant which the Substitute Preferred Warrant replaces.

10.4 Seller's Warrants-Common. At the Closing Purchaser shall grant each holder of a Common Warrant a substantially equivalent warrant to purchase Purchaser Common Stock. Schedule 10.4 hereto sets forth a true and complete list as of the Closing Date of all holders of outstanding warrants to purchase shares of Seller stock ("Common Warrants"), including the number of shares of Seller common stock subject to each such warrant. Each Substitute Warrant shall be subject to, the same terms and conditions substantially similar to those set forth in the warrant and any other document governing such warrant immediately prior to the Closing Date, except that (i) such warrant will be exercisable for that number of whole shares of Purchaser common stock equal to the product of the number of shares of Seller common stock that were issuable upon exercise of such warrant immediately prior to the Closing Date multiplied by .193936 and rounded down to the nearest whole number of shares of Purchaser common stock, (ii) the per share exercise price for the shares of Purchaser common stock issuable upon exercise of such assumed warrant will be equal to the quotient determined by dividing the exercise price per share of Seller common stock at which such warrant was exercisable immediately prior to the Closing Date by the .193936, rounded up to the nearest whole tenth of a cent and (iii) any restriction on the exercisability of such Common Warrant shall continue in full force and effect, and the term, exercisability and other provisions of such Common Warrant shall remain unchanged. Within 20 Business Days after the Closing Date, Purchaser will deliver to each person who, immediately prior to the Closing Date, was a holder of a Common Warrant a document in form and substance satisfactory to Seller evidencing the Substitute Warrant. The total number of Substitute Warrants to be granted by Purchaser pursuant to this Section 10.4 shall be 19,394. As a condition to granting each Substitute Warrant, the Seller shall cancel the Common Warrant of which the Substitute Warrant replaces.

10.5 Collection of Accounts Receivable. To the extent Seller receives any payment after the Closing Date from a customer on account of an Account Receivable, Seller shall hold such payment in trust for the benefit of Purchaser, promptly notify Purchaser and remit such funds to Purchaser.

10.6 Capital Structure. At or prior to Closing, Purchaser shall rearrange its capital structure so that, with respect to Purchaser's shareholders immediately prior to the Closing, the total number of its Series AA Convertible Preferred Stock, Purchaser's issued and outstanding common stock and stock options and warrants issued and outstanding shall not exceed: (i) 2,363,500 with respect to Series AA Convertible Preferred Stock, (ii) 7,575,000 with respect to Purchaser common stock, (iii) 836,500 with respect to options granted to purchase Purchaser common stock, (iv) 225,000 with respect to warrants to purchase Series AA Convertible Preferred stock, and (v) 0 with respect to ungranted options to purchase Purchaser common stock (collectively, "Purchaser Shareholder Interest"). Immediately following the Closing, the Purchaser Shareholder Interest shall equal Eleven Million (11,000,000) shares, in the aggregate

of Purchaser common stock, convertible preferred stock and reserved common stock and convertible preferred stock which shall constitute a fifty percent (50%) interest in Purchaser, on a fully diluted basis.

ARTICLE XI

TERMINATION OF AGREEMENT

11.1 Termination. This Agreement may be terminated prior to the Closing (whether before or after approval of this Agreement by Seller's and/or Purchaser's stockholders):

(a) by mutual written consent of Purchaser and Seller;

(b) by either Purchaser or Seller (i) if the Closing shall not have occurred by June 30, 2000 (unless the failure to consummate the Acquisition is attributable to a failure on the part of the party seeking to terminate this Agreement to perform any material obligation required to be performed by such party at or prior to the Closing) or (ii) if the Ancillary Agreements and/or the disclosure schedules have not been mutually approved.;

(c) by either Purchaser or Seller if a court of competent jurisdiction or other Governmental Entity shall have issued a final and nonappealable order, decree or ruling, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Acquisition;

(d) by either party if the other party's shareholders shall have taken a final vote on a proposal, if required, to adopt this Agreement and this Agreement shall not have been adopted thereby; *provided, however*, that (A) a party shall not be permitted to terminate this Agreement pursuant to this Section 11.1(d) if the failure to obtain such shareholder approval is attributable to a failure on the party to perform any material obligation required to be performed by such party at or prior to the Closing Date (the "Failing Party") and (B) the Failing Party shall not be permitted to terminate this Agreement pursuant to this Section 11.1(d) unless the Failing Party shall have made the payment required to be made to the non-failing party ("Non-Failing Party") pursuant to Section 11.3(a) and Section 11.3(b);

(e) by Purchaser if (i) any of Seller's representations and warranties contained in this Agreement shall be materially inaccurate as of the date of this Agreement, or shall have become materially inaccurate as of a date subsequent to the date of this Agreement (as if made on such subsequent date), such that the condition set forth in Section 9.3(a) would not be satisfied or (ii) any of Seller's covenants contained in this Agreement shall have been breached such that the condition set forth in Section 9.3(b) would not be satisfied; *provided, however*, that if an inaccuracy in Seller's representations and warranties or a breach of a covenant by Seller is curable by Seller and Seller is continuing to exercise all reasonable efforts to cure such inaccuracy or breach, then Purchaser may not terminate this Agreement under this Section 11.1(e) on account of such inaccuracy or breach; or

(f) by Seller if (i) any of Purchaser's representations and warranties contained in this Agreement shall be materially inaccurate as of the date of this Agreement, or shall have become materially inaccurate as of a date subsequent to the date of this Agreement (as if made

on such subsequent date), such that the condition set forth in Section 9.2(a) would not be satisfied or (ii) if any of Purchaser's covenants contained in this Agreement shall have been breached such that the condition set forth in Section 9.2(b) would not be satisfied; *provided, however*, that if an inaccuracy in Purchaser's representations and warranties or a breach of a covenant by Purchaser is curable by Purchaser and Purchaser is continuing to exercise all reasonable efforts to cure such inaccuracy or breach, then Seller may not terminate this Agreement under this Section 11.1(f) on account of such inaccuracy or breach.

11.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 11.1, this Agreement shall be of no further force or effect; *provided, however*, that (i) this Section 11.2, Section 11.3, Section 8.1 and ARTICLE XIII shall survive the termination of this Agreement and shall remain in full force and effect, and (ii) the termination of this Agreement shall not relieve any party from any liability for any willful breach of any representation, warranty or covenant contained in this Agreement.

11.3 Expenses and Termination Fees.

(a) All fees and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such expenses, whether or not the Acquisition is consummated; *provided, however*, that if this Agreement is terminated pursuant to Sections 11.1(d), 11.1(e) or 11.1(f) by the Non-Failing Party, the Purchaser or the Seller, respectively, then the Failing Party, the Seller or the Purchaser, respectively, shall make a nonrefundable cash payment to the Non-Failing Party, Purchaser and the Seller, respectively, at the time specified in Section 11.3(b), in an amount equal to the aggregate amount of all fees and expenses (including professional fees and filing fees) that have been paid or that may become payable in connection with the preparation and negotiation of this Agreement and otherwise in connection with the Acquisition; and

(b) If this Agreement is terminated by: (A) the Non-Failing party or the Failing Party pursuant to Section 11.1(d), then, the Failing Party shall pay to the Non-Failing party, in cash at the time specified in the next sentence (in addition to any payment required to be made pursuant to Section 11.3(a)), a nonrefundable fee in the amount of \$1,500,000; (B) the Purchaser pursuant to Section 11.1(e), then the Seller shall pay the Purchaser, in cash, at the time specified in the next sentence (in addition to any payment required to be made pursuant to Section 11.3(a)), a nonrefundable fee in the amount of \$1,500,000; or (C) the Seller pursuant to Section 11.1(f), then the Purchaser shall pay the Seller, in cash, at the time specified in the next sentence (in addition to any payment required to be made pursuant to Section 11.3(a)), a nonrefundable fee in the amount of \$1,500,000. In the case of termination of this Agreement by either party, the fees referred to in this Section 11.3 shall be paid within five business days after such termination.

ARTICLE XII

SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

12.1 Survival of Representations and Warranties. (a) The representations and warranties made by Seller or Purchaser herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall in no manner be limited by any investigation of the subject matter thereof made by or on behalf of either party or by the waiver or satisfaction of any condition to closing and shall survive the Closing and continue in full force for ninety (90) days following the Closing Date (the "Expiration Date").

(b) The obligations of either Seller or Purchaser to indemnify the other is subject to the condition that the party from which indemnification is sought shall have received an indemnification claim for which indemnity is sought on or before the Expiration Date.

12.2 Indemnification by Seller.

(a) Subject to the terms and conditions of this ARTICLE XII, Seller agrees to indemnify, defend and hold harmless Purchaser, its shareholders, officers, directors, employees, attorneys and affiliates of Purchaser, and the respective officers, directors, employees and attorneys of such entities (all such persons and entities being collectively referred to as the "Purchaser Group") from, against, for and in respect of any and all Losses asserted against, relating to, imposed upon or incurred by the Purchaser Group by reason of, resulting from, based upon or arising out of any of the following (collectively, "Purchaser Indemnifiable Losses"):

(i) the breach, inaccuracy, untruth or incompleteness of any representation or warranty of Seller contained in or made pursuant to this Agreement or any certificate, schedule or exhibit delivered by Seller in connection with this Agreement;

(ii) the breach or nonperformance of any covenant or agreement of Seller contained in or made pursuant to this Agreement or any of the Ancillary Agreements to which Seller is a party; or

(iii) any breach by Seller of this ARTICLE XII.

(b) Subject to Section 12.2(c), Seller shall not be required to indemnify Purchaser and/or any other member of the Purchaser Group for any Purchaser Indemnifiable Losses under Section 12.2(a) until the aggregate amount of all Purchaser Indemnifiable Losses under all individual Indemnification Claims shall exceed \$10,000 (the "Seller's Indemnification Floor"); *provided, however*, that if the aggregate amount of Purchaser Indemnifiable Losses in respect of such Indemnification Claims shall exceed the Seller's Indemnification Floor, Seller shall indemnify Purchaser for all Purchaser Indemnifiable Losses in respect of such Indemnification Claims, subject to the further limitations set forth in this ARTICLE XII. The aggregate amount for which Seller may be liable under this ARTICLE XII shall not exceed \$150,000.

(c) Purchaser's sole and exclusive remedy against Seller for any Losses shall be indemnification under this ARTICLE XII.

12.3 Indemnification by Purchaser.

(a) Subject to the terms and conditions of this ARTICLE XII, Purchaser agrees to indemnify, defend and hold harmless Seller, its shareholders, officers, directors, employees, attorneys and affiliates of Purchaser, and the respective officers, directors, employees and attorneys of such entities (all such persons and entities being collectively referred to as the "Seller Group") from, against, for and in respect of any and all Losses asserted against, relating to, imposed upon or incurred by the Seller Group by reason of, resulting from, based upon or arising out of any of the following (collectively, "Indemnifiable Seller Losses"):

(i) the breach, inaccuracy, untruth or incompleteness of any representation or warranty of Purchaser contained in or made pursuant to this Agreement or any certificate, schedule or exhibit delivered by Purchaser in connection with this Agreement;

(ii) the breach or nonperformance of any covenant or agreement of Purchaser contained in or made pursuant to this Agreement or any of the Ancillary Agreements to which Purchaser is a party; or

(iii) any breach by Purchaser of this ARTICLE XII.

(b) Subject to Section 12.3(c), Purchaser shall not be required to indemnify Seller and/or any other member of the Seller Group for any Indemnifiable Seller Losses under Section 12.3(a) until the aggregate amount of all Indemnifiable Seller Losses under all individual Indemnification Claims shall exceed \$10,000 (the "Purchaser's Indemnification Floor"); *provided, however*, that if the aggregate amount of Indemnifiable Seller Losses in respect of such Indemnification Claims shall exceed the Purchaser's Indemnification Floor, Purchaser shall indemnify Purchaser for all Indemnifiable Losses in respect of such Indemnification Claims, subject to the further limitations set forth in this ARTICLE XII. The aggregate amount for which Purchaser may be liable under this ARTICLE XII shall not exceed \$150,000.

(c) Seller's sole and exclusive remedy against Purchaser for any Losses shall be indemnification under this ARTICLE XII.

12.4 Third-Party Claims. In the event either party becomes aware of a third-party claim for indemnification, it shall notify the other party of such claim, and each of the Purchaser and the Seller shall be entitled, at their own expense, to participate in any defense of such claim. The decision to settle any claim shall be made by mutual consent.

ARTICLE XIII

GENERAL

13.1 Governing Law; Jurisdiction; Venue. It is the intention of the parties hereto that the internal laws of the State of California (irrespective of its choice of law principles) shall govern the validity of this Agreement, the construction of its terms, and the interpretation and

enforcement of the rights and duties of the parties hereto. Any action to enforce, or which arises out of or in any way relates to, any of the provisions of this Agreement, or any of the Ancillary Agreements shall be brought and prosecuted exclusively in the United States District Court, Northern District of California (or, in the event such court does not have jurisdiction, the courts of the State of California located in such district), and the parties hereto hereby consent to the jurisdiction of such court or courts and to service by process by registered mail, return receipt requested, or by any other manner provided by the law of the State of California and the rules of such courts.

13.2 Assignment; Binding upon Successors and Assigns. None of the parties hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld; *provided, however*, that Purchaser may assign its rights under this Agreement to any successor of Purchaser through any merger or consolidation, or purchase of all or substantially all of Purchaser's stock or all or substantially all of Purchaser's assets. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

13.3 Severability. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be held to be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto. The parties further agree to replace such invalid or unenforceable provision of this Agreement with a valid and enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the invalid or unenforceable provision.

13.4 Entire Agreement. This Agreement, the exhibits and schedules hereto, the certificates referenced herein and the exhibits thereto constitute the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto and thereto including, without limitation, that certain letter of intent between the parties dated March 13, 2000.

13.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Facsimile signature pages shall be deemed original.

13.6 Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on such party, and the exercise of any one remedy shall not preclude the exercise of any other.

13.7 Amendment and Waivers. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound thereby. The waiver by a party of any breach hereof for default in payment of

any amount due hereunder or default in the performance hereof shall not be deemed to constitute a waiver of any other default or any succeeding breach or default.

13.8 Waiver. Each party hereto may, by written notice to the others: (a) waive any of the conditions to its obligations hereunder or extend the time for the performance of any of the obligations or actions of the others, (b) waive any inaccuracies in the representations of the others contained in this Agreement or in any documents delivered pursuant to this Agreement, (c) waive compliance with any of the covenants of the others contained in this Agreement or (d) waive or modify performance of any of the obligations of the others. No action taken pursuant to this Agreement, including without limitation any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, condition or agreement contained herein. Waiver of the breach of any one or more provisions of this Agreement shall not be deemed or construed to be a waiver of other breaches or subsequent breaches of the same provisions.

13.9 Notices. All notices and other communications hereunder will be in writing and will be deemed given (a) upon receipt if delivered personally (or if mailed by registered or certified mail), (b) the day after dispatch if sent by overnight courier, (c) upon dispatch if transmitted by telecopier or other means of facsimile transmission (and confirmed by a copy delivered in accordance with clause (a) or (b)), properly addressed to the parties at the following addresses:

Seller: Vuent, Inc.
477 Portrero Avenue
Sunnyvale, California 94086
Attention: Dr. Michael S. Pliner
Facsimile: (408) 616-1199

with a required copy to: Gray Cary Ware & Freidenrich LLP
400 Hamilton Avenue
Palo Alto, California 94301
Attention: Andrew D. Zeif
Facsimile No.: (650) 327-3699

Purchaser: iEngineer.com., Inc.
183 Fremont Street
San Francisco, California 94105
Attention: Derek W. Smith
Facsimile: (415) 358-4027

with a required copy to: Gibson, Haglund & Paulsen
Plaza 1, Suite 11
12226 South 1100 East
Draper, Utah 84020
Attention: Edward (Ted) B. Paulsen
Facsimile: (801) 501-7844

Either party may change its address for such communications by giving notice thereof to the other party in conformity with this Section.

13.10 Construction and Interpretation of Agreement.

(a) This Agreement has been negotiated by the parties hereto and their respective attorneys, and the language hereof shall not be construed for or against either party by reason of its having drafted such language.

(b) The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement, which shall be considered as a whole.

(c) As used in this Agreement, any reference to any state of facts, event, change or effect being "material" with respect to any entity means a state of facts that is material to the current condition (financial or otherwise), properties, assets, liabilities, business or operations of such entity. Whenever the term "enforceable in accordance with its terms" or like expression is used in this Agreement, it is understood that excepted therefrom are any limitations on enforceability under applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting the enforcement of creditor's rights.

13.11 Press Release and Public Announcements. No party to this Agreement shall issue any press release or make any public announcement relating to the subject matter of this Agreement without prior written approval of the other parties and whenever practicable all such communications shall be joint; provided, however, that each of the Seller and Purchaser may make any public disclosure it believes in good faith is required by applicable law (in which case the disclosing party will advise the other parties to this Agreement prior to making the disclosure.


13.12 No Joint Venture. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between any of the parties hereto. No party is by virtue of this Agreement authorized as an agent, employee or legal representative of any other party. No party shall have the power to control the activities and operations of any other and their status is, and at all times, will continue to be, that of independent contractors with respect to each other. No party shall have any power or authority to bind or commit any other. No party shall hold itself out as having any authority or relationship in contravention of this Section.

13.13 Taxes; Expenses. Purchaser shall pay any sales, use, excise, transfer or other similar tax imposed with respect to the transactions provided for in this Agreement, and any interest or penalties related thereto. Except as otherwise provided herein, each of the parties shall bear its own expenses and the expenses of its counsel and other agents in connection with the transaction contemplated hereby.

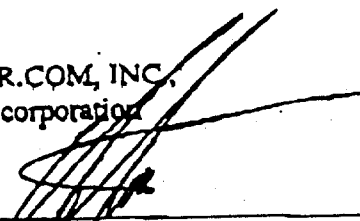
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of
May 12, 2000.

VUENT, INC.,
a California corporation

By: 
Title: President CEO

iENGINEER.COM, INC.,
a Delaware corporation

By: 
Title: CEO

SCHEDULE 4.11 INTELLECTUAL PROPERTY

(c)

- SEE ATTACHED

Gray Cary\PA\10044607.2
1010737-900000

Status/Overview

REF	Lead Inventor	Serial No.	Filed	Title	Status/Overview
AMT-001 234545	Kalra	08/768,114	12/17/1996	METHOD & APPARATUS THAT PROVIDES A SCALABLE MEDIA DELIVERY SYSTEM	Issued: No. 5,953,506 9/14/99
AMT-001C 259687		09/340,624	06/28/99		Continuation filed and pending, awaiting Patent Office action
AMT-001 PCT 124453		US97/22844			National EP application filed based on PCT; PCT now abandoned
AMT-001 EP 125684					Pending, awaiting EPO action
AMT-002 239317	Burr			DYNAMIC FAN PARTITIONING	Invention identified. Application dropped per T. Burr in 1998.
AMT-003 239316	Burr	09/003,863	1/7/98	METHOD & APPARATUS FOR PROVIDING CONTINUOUS LEVEL OF DETAIL	Responded to Office Action
AMT-003 PCT 125176		US99/00406			Abandoned
AMT-004 239315	Burr			OPTIMIZED VIEW DEPENDENT PROGRESSIVE MESHES	Invention identified. Application dropped per T. Burr in 1998.
AMT-005 238260	Cooper	054,338	04/02/1998	METHOD & APPARATUS CAPABLE OF PRIORITIZING AND STREAMING OBJECTS WITHIN A THREE-DIMENSIONAL VIRTUAL ENVIRONMENT	Issue fee paid, awaiting issued patent
AMT-006 239334	Ramamoorthy			METHOD & APPARATUS FOR SCALABLE MPEG LAYER II AUDIO CODER	Never filed per client

VUENT, INC. PATEL, J. LAN - June 1, 2000

REF	Lead Inventor	Serial No.	Filed	Title	Status/Overview
AMT-007 219335	Guruswami			INDEXED FILE FORMAT FOR STORING STREAMABLE THREE-DIMENSIONAL OBJECTS	Invention identified, but application never prepared. Now barred.
AMT-008 219642	Guruswami	09/288,944	4/9/99	SPACE & TIME EFFICIENT ENCODING OF ARBITRARY TREE STRUCTURES IN A RELATIONAL DATABASE	Pending, awaiting Patent Office action
AMT-011 219616	Kalra			METHOD AND APPARATUS FOR ADVANCED COLLABORATION USING NETWORK COMPUTERS	Received disclosure 3/99, draft application to client 4/99; meetings thereafter requesting information from client; received some but not all information. Need to determine if barred before proceeding further.

Page 2 of 2

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To-PILLSBURY

Page 04

PATENT ASSIGNMENT

This is an Agreement having an effective date of June __, 2000 from VUENT, INC., a California corporation ("Assignor"), to iEngineer.com, Inc., a Delaware corporation ("Assignee").

WHEREAS, Assignor is the owner of certain patent rights and the inventions and discoveries covered thereby as set forth in attached Exhibit A (the "Patents");

WHEREAS, Assignee desires to acquire all right, title, and interest in and to said Patents;

WHEREAS, pursuant to an Asset Purchase Agreement effective as of even date herewith, Assignor has agreed to sell, and Assignee has agreed to purchase, said Patents.

NOW, THEREFORE, for consideration previously provided and hereby acknowledged, Assignor hereby:

1. Assigns, transfers and conveys to Assignee the entire right, title and interest together with the benefits and privileges in and to said Patents or similar forms of protection of the United States of America, and all other applications for patents on said inventions and discoveries in whatsoever countries, including all divisional, renewal, substitute, continuation and convention applications based in whole or in part upon said inventions or discoveries, or upon said application, and any and all patents, reissues and extensions of patents or similar forms of protection granted for said Patents or upon said applications, and every priority right that is or may be predicated upon or arise from said Patents;
2. Authorizes Assignee to file patent applications in any or all countries or groups of countries on any or all of said inventions and discoveries in our name or in the name of Assignee or otherwise as Assignee may deem advisable, under the International Convention or any other relevant convention or treaty or otherwise;
3. Authorizes and requests the Commissioner of Patents and Trademarks of the United States of America and the empowered officials of all other governments to issue or transfer said Patents to Assignee, as assignee of the entire right, title and interest therein, or otherwise as Assignee may direct;
4. Warrants that Assignor has not knowingly conveyed to others any rights in said inventions, discoveries, applications or patents or any license to use the same or to make, use or sell anything embodying or utilizing any of said inventions or discoveries; and that Assignor has good right to assign the same to Assignee without encumbrance;
5. Bind its heirs, legal representatives and assigns, as well as Assignor, to do, upon Assignee's request and at Assignee's expense, but without additional consideration to Assignor, all acts reasonable serving to assure that said inventions and discoveries, said patent applications and said Patents shall be held and enjoyed by Assignee as fully and entirely as the same could have been held and enjoyed by Assignor, its heirs, legal representatives and assigns if this assignment had not been made; and particularly to execute and deliver to Assignee all lawful

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application documents including petitions, specifications, and oaths, and all assignments, disclaimers, and lawful affidavits in form and substance as may be requested by Assignee; to communicate to Assignee all facts known to Assignor relating to said inventions and discoveries or the history thereof; and to furnish Assignee with any and all documents, photographs, models, samples and other physical exhibits in Assignor's control or in the control of its heirs, legal representatives or assigns which may be useful for establishing any facts of our conceptions, disclosures, and reduction to practice of said inventions or discoveries.

IN WITNESS WHEREOF, Assignor hereby has caused its name to be signed by its duly authorized representative.

ATTEST:

VUENT, INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____, Notary Public, personally appeared _____, personally known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to be within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Notary Public

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