FORM PTO-1619A
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RECORDATION FORM COVER SHI
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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- [X] New
- [ ] Resubmission (Non-Recordation) Document ID #
- [ ] Correction of PTO Error Reel # Frame #
- [ ] Corrective Document Reel # Frame #

Conveyance Type

- [X] Assignment
- [ ] Security Agreement
- [ ] License
- [ ] Change of Name
- [ ] Merger
- [ ] Other

U.S. Government

(For Use ONLY by U.S. Government Agencies)

- [ ] Departmental File
- [ ] Secret File

Conveying Party(ies)

- [ ] Mark if additional names of conveying parties attached

Name (line 1): Tantau Software, Inc.

Execution Date (Month Day Year): 01 17 2001

Name (line 2):

Second Party

Name (line 1):

Execution Date (Month Day Year):

Name (line 2):

Receiving Party

- [ ] Mark if additional names of receiving parties attached

Name (line 1): 724 Solutions, Inc.

Name (line 2):

Address (line 1): 10 York Mills Road

Address (line 2): Suite 300

Address (line 3): Ontario (City) Toronto, Canada (State/Country) M2P 1N6 (Zip Code)

- [ ] If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. *(Designation must be a separate document from Assignment.)*

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

FOR OFFICE USE ONLY

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments , Washington, D.C. 20231

Correspondent Name and Address Area Code and Telephone Number 512-469-6100

Name: Chad Anson

Address (line 1): Thompson & Knight L.L.P.

Address (line 2): 98 San Jacinto Blvd.

Address (line 3): Suite 1200

Address (line 4): Austin, Texas 78701-4081

Pages

Enter the total number of pages of the attached conveyance document including any attachments # 96

Application Number(s) or Patent Number(s) ☐ Mark if additional numbers attached.

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)			Patent Number(s)		
08/680,270	08/680,266	08/680,202	6,157,959	6,065,045	5,943,674
08/678,681	08/678,680	08/678,317	5,897,636	5,860,072	
08/678,295					

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor. Month Day Year

Patent Cooperation Treaty (PCT)

Enter PCT application number only if a U.S. Application Number as not been assigned.

PCT PCT PCT

PCT PCT PCT

Number of Properties

Enter the total number of properties involved. # 12

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): $ 480

Method of Payment: Enclosed ☐ Deposit Account ☒

Deposit Account

Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: # 20-0821/ 021329.000001

Authorization to charge additional fees: Yes ☒ No ☐

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. Charges to deposit account are authorized, as indicated herein.

Chad Anson, Reg. No. 44,510 — **Name of Person Signing**

Signature

6-7-2001 — **Date**

EXECUTION COPY

Assignment from Tantau to 724 Solutions

AGREEMENT AND PLAN OF MERGER

Among

724 SOLUTIONS INC.,

SATURN MERGER SUB, INC.

and

TANTAU SOFTWARE, INC.

Dated as of November 29, 2000

TABLE OF CONTENTS

AGREEMENT AND PLAN OF MERGER dated as of November 29, 2000 (this "Agreement"), by and among 724 SOLUTIONS INC., a corporation amalgamated under the Business Corporations Act of the Province of Ontario ("Parent"), SATURN MERGER SUB, INC., a Delaware corporation and a wholly owned subsidiary of Parent ("Sub"), and TANTAU SOFTWARE, INC., a Delaware corporation (the "Company").

WHEREAS the respective Boards of Directors of the Company and Sub have approved and declared advisable, and the Board of Directors of Parent has approved, this Agreement and the Merger (as defined in Section 1.03), upon the terms and subject to the conditions set forth herein, all in accordance with the General Corporation Law of the State of Delaware (the "DGCL") and the Business Corporations Act of the Province of Ontario (the "OBCA");

WHEREAS, for U.S. Federal income tax purposes, it is intended that (a) the Merger will qualify as a reorganization under the provisions of Section 368(a)(1)(B) of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder (the "Code"), (b) this Agreement constitutes a plan of reorganization, (c) Parent, Sub and the Company will each be a party to such reorganization within the meaning of Section 368(b) of the Code and (d) U.S. holders of stock of the Company who will not be "five percent transferee shareholders" as defined in Treasury Regulation Section 1.367(a)-3(c)(5)(ii) or who enter into five-year gain recognition agreements in the form provided in Treasury Regulation Section 1.367(a)-8(b) ("Eligible Company Shareholders") and who exchange Company Capital Stock (as defined in Section 3.03) for Parent Common Stock (as defined in Section 2.01(c)) pursuant to the Merger will not recognize taxable gain with respect to the Merger pursuant to Section 367(a) of the Code;

WHEREAS, concurrently with the execution of this Agreement and as a condition to the willingness of Parent to enter into this Agreement, each of the persons identified on Schedule A have entered into voting agreements dated as of the date of this Agreement (the "Company Voting Agreements") with Parent pursuant to which each such person has agreed, among other things, to vote all shares of Company Capital Stock held by such person in favor of the adoption of this Agreement;

WHEREAS, concurrently with the execution of this Agreement and as a condition to the willingness of Parent to enter into this Agreement, the employees of the Company

identified on Schedule B have entered into employment agreements, conditioned on the consummation of the Merger (each, an "Employment Agreement"), pursuant to which Parent has agreed to employ such individuals following the Effective Time (as defined in Section 1.01) and such individuals have agreed to be subject to certain non-compete and non-solicitation obligations, in each case upon the terms and conditions set forth in the applicable Employment Agreement;

WHEREAS, concurrently with the execution of this Agreement and as a condition to the willingness of Parent to enter into this Agreement, each employee of the Company identified on Schedule C has entered into a letter agreement dated as of the date of this Agreement and conditioned on the consummation of the Merger (each, an "Employment Terms Letter") with Parent and the Company setting forth certain modifications to the terms and conditions of such employees' employment arrangements with the Company; and

WHEREAS, concurrently with execution of this Agreement and as a condition to the willingness of Parent to enter into this Agreement, each of the persons identified on Schedules A, B and C have entered into Resale Restriction Agreements with Parent dated as of the date of this Agreement and conditioned on the consummation of the Merger, which agreements are in the form of Exhibit A hereto (together with all such agreements entered into between Parent and holders of outstanding shares of Company Capital Stock, Stock Options (as defined in Section 3.03) or Warrants (as defined in Section 3.03) after the date of this Agreement, the "Resale Restriction Agreements"), pursuant to which, among other things, such holders have agreed (i) to certain restrictions on their ability to transfer and sell any shares of Parent Common Stock to be received by such holders in connection with the Merger or pursuant to the exercise of Adjusted Options (as defined in Section 6.04) and (ii) to be deemed to be a party to, and to be bound by the terms of, the Escrow Agreement (as defined in Section 2.01(e)).

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

The Merger

SECTION 1.01. Effective Time of the Merger. Subject to the provisions of this Agreement, as soon as practicable on the Closing Date (as defined in Section 1.02), a certificate of merger and all other appropriate documents (collectively, the "Certificate of Merger") shall be duly prepared, executed, acknowledged and filed with the Secretary of State of the State of Delaware by the parties hereto as provided in the DGCL. The Merger shall become effective upon the filing of the Certificate of Merger with the Secretary of State of the State of Delaware or at such time thereafter as is agreed upon by Parent and the Company and provided in the Certificate of Merger (the "Effective Time").

SECTION 1.02. Closing. The closing of the Merger (the "Closing") will take place at 10:00 a.m., New York time, on a date to be specified by the parties, which shall be not later than the second business day after satisfaction or waiver (to the extent permitted by applicable law) of the conditions set forth in Article VII (other than those conditions that by their terms are to satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), at the offices of Cravath, Swaine & Moore, 825 Eighth Avenue, New York, New York 10019, unless another time, date or place is agreed to in writing by Parent and the Company; provided, however, that if all the conditions set forth in Article VII shall not have been satisfied or (to the extent permitted by applicable law) waived on such second business day, then the Closing will take place on the first business day on which all such conditions shall have been satisfied or (to the extent permitted by applicable law) waived. The date on which the Closing occurs is referred to in this Agreement as the "Closing Date".

SECTION 1.03. Effect of the Merger. At the Effective Time, Sub shall be merged with and into the Company (the "Merger"), and the Company shall continue as the surviving corporation in the Merger (the "Surviving Corporation"). The Merger shall have the effects set forth in Section 259 of the DGCL.

SECTION 1.04. Certificate of Incorporation and By-laws. (a) The Certificate of Incorporation of Sub, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

(b) The By-laws of Sub as in effect immediately prior to the Effective Time shall be the By-laws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

SECTION 1.05. Directors. The directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

SECTION 1.06. Officers. The officers of the Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

ARTICLE II

Conversion of Securities

SECTION 2.01. Conversion of Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of Company Capital Stock or any shares of capital stock of Parent or Sub:

(a) Capital Stock of Sub. Each issued and outstanding share of common stock, par value $0.01 per share, of Sub shall be converted into and become one fully paid and nonassessable share of common stock, par value $0.01 per share, of the Surviving Corporation.

(b) Cancelation of Treasury Stock and Parent-Owned Stock. All shares of Company Capital Stock that are owned by the Company, as treasury stock, or by Parent or Sub immediately prior to the Effective Time shall automatically be canceled and retired and shall cease to exist and no consideration shall be delivered in exchange therefor.

(c) Conversion of Company Capital Stock. (i) Subject to Sections 2.01(e), 2.01(f), 2.01(g), 2.02(e) and 2.03, each share of common stock, par value $0.001 per share, of the Company (the "Company Common Stock") issued and outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 2.01(b)) shall be converted

into the right to receive from the Surviving Corporation a number of fully paid and nonassessable Common Shares, no par value per share, of Parent (the "Parent Common Stock") equal to the Common Exchange Ratio. For purposes of this Agreement, "Common Exchange Ratio" shall mean the number of shares of Parent Common Stock (rounded to three decimal places) obtained by dividing (x) 19,000,000 (the "Merger Share Number") by (y) the sum of (A) the aggregate number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time (assuming for this purpose the exercise in full for cash of all Warrants to purchase shares of Company Common Stock outstanding immediately prior to the Effective Time), (B) the aggregate number of shares of Company Common Stock into which the shares of Company Preferred Stock (as defined in Section 3.03) outstanding immediately prior to the Effective Time are convertible at such time (assuming for this purpose the exercise in full for cash of all Warrants to purchase shares of Company Preferred Stock outstanding immediately prior to the Effective Time) and (C) the aggregate number of shares of Company Common Stock that may be acquired pursuant to the exercise of Stock Options (other than Permitted Interim Period Stock Options (as defined in Section 5.01(a)(xii))) outstanding immediately prior to the Effective Time.

(ii) Subject to Sections 2.01(e), 2.01(f), 2.01(g), 2.02(e) and 2.03, if immediately prior to the Effective Time there are any shares of Company Preferred Stock issued and outstanding, each such share (other than shares to be canceled in accordance with Section 2.01(b)) shall be converted into the right to receive from the Surviving Corporation a number of fully paid and nonassessable shares of Parent Common Stock equal to the product of (x) the Common Exchange Ratio and (y) the number of shares of Company Common Stock into which such share is convertible immediately prior to the Effective Time.

(iii) The shares of Parent Common Stock into which the shares of Company Capital Stock are converted into the right to receive pursuant to the Merger are referred to herein collectively as the "Merger Consideration". At the Effective Time, all such shares of Company Capital Stock shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a certificate that immediately prior to the Effective Time represented any such shares (a "Certificate") shall cease to have any

rights with respect thereto, except the right to receive the Merger Consideration with respect thereto and any cash in lieu of fractional shares of Parent Common Stock to be issued or paid in consideration therefor upon surrender of such Certificate in accordance with Section 2.02 (subject, in the case of such shares, to the terms of the Escrow Agreement), without interest.

(d) [Intentionally omitted.]

(e) Escrow of Merger Shares. At the Closing, on behalf of the holders of all outstanding shares of Company Capital Stock (the "Stockholders") and pursuant to the terms of an Indemnification and Escrow Agreement to be entered into by and among Parent, the Company, an escrow agent to be named therein (the "Escrow Agent") and the Representative (as defined therein), which agreement shall be in the form of Exhibit B hereto (the "Escrow Agreement"), Parent will cause the Surviving Corporation to deposit with the Escrow Agent a number of shares of Parent Common Stock (which are part of, and not in addition to, the number of shares which would otherwise have been issuable pursuant to Section 2.01(c)) issuable in the Merger pursuant to Section 2.01(c) equal to 1,900,000 less 10% of the number of shares of Parent Common Stock underlying Adjusted Options (other than Permitted Interim Period Stock Options) held at the Effective Time by holders of Stock Options (the "Optionholders") that have consented in writing to be bound by the terms of the Escrow Agreement. Such deposit shall be on behalf of the Stockholders and with the same effect as if the Surviving Corporation had delivered such shares to the Stockholders and the Stockholders had delivered such shares to the Escrow Agent.

(f) Anti-Dilution Provisions. In the event Parent changes (or establishes a record date for changing) the number of shares of Parent Common Stock issued and outstanding prior to the Effective Time as a result of a stock split, stock dividend, recapitalization, subdivision, reclassification, combination, exchange of shares or similar transaction with respect to the outstanding Parent Common Stock and the record date therefor shall be prior to the Effective Time, the Merger Share Number shall be appropriately adjusted to reflect such stock split, stock dividend, recapitalization, subdivision, reclassification, combination, exchange of shares or similar transaction; provided, however, if such stock

split, stock divided, recapitalization, subdivision, reclassification, combination, exchange of shares or similar transaction is abandoned prior to the Effective Time, the Merger Share Number shall be again adjusted to be the Merger Share Number that was in effect prior to such initial adjustment.

(g) Appraisal Rights. Notwithstanding anything in this Agreement to the contrary, shares (the "Appraisal Shares") of Company Capital Stock issued and outstanding immediately prior to the Effective Time that are held by any holder who is entitled to demand and properly demands appraisal of such Appraisal Shares pursuant to, and who complies in all respects with, the provisions of Section 262 of the DGCL ("Section 262") shall not be converted into the right to receive the Merger Consideration as provided in Section 2.01(c), but instead the holders of Appraisal Shares shall be entitled to payment of the fair value of such Appraisal Shares in accordance with the provisions of Section 262; provided, however, that if any such holder shall fail to perfect or otherwise shall waive, withdraw or lose the right to appraisal under Section 262 or a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262, then the right of such holder to be paid the fair value of such holder's Appraisal Shares under Section 262 shall cease and such Appraisal Shares shall be deemed to have been converted at the Effective Time into, and shall have become, the right to receive the appropriate portion of the Merger Consideration as provided in Section 2.01(c). At the Effective Time, all Appraisal Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of Appraisal Shares shall cease to have any rights with respect thereto, except, subject to the immediately preceding sentence, the right to receive the fair value of such shares in accordance with the provisions of Section 262. The Company shall serve prompt notice to Parent of any demands for appraisal of any shares of Company Capital Stock, and Parent shall have the right to participate in and direct all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, without the prior written consent of Parent, make any payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing. After the Effective Time, the Surviving Corporation shall not, without the prior written consent of the Representative, make any payment with respect to, or

settle or offer to settle, any such demands, or agree to do any of the foregoing.

SECTION 2.02. Exchange of Certificates.

(a) Exchange Agent. As of the Effective Time, Parent shall cause the Surviving Corporation to enter into an agreement with Computershare Investor Services Inc. or a bank or trust company designated by Parent and reasonably acceptable to the Company (the "Exchange Agent"), which shall provide that the Surviving Corporation shall, subject to Section 2.01(e), deposit with the Exchange Agent as of the Effective Time, for the benefit of the holders of shares of Company Capital Stock, for exchange in accordance with this Article II, through the Exchange Agent, certificates representing the shares of Parent Common Stock issuable pursuant to Section 2.01 in exchange for outstanding shares of Company Capital Stock to be converted pursuant to Section 2.01(c). Parent shall make available to the Exchange Agent from time to time as requested after the Effective Time cash necessary to pay dividends and other distributions in accordance with Section 2.02(c) and to make payments in lieu of any fractional shares of Parent Common Stock in accordance with Section 2.02(e). Such shares of Parent Common Stock and such cash are hereinafter referred to as the "Exchange Fund".

(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time, the Exchange Agent shall mail to each holder of record of a Certificate whose shares were converted into the right to receive a portion of the Merger Consideration with respect thereto pursuant to Section 2.01: (i) a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent and shall be in such form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration in respect thereof, each of such letter of transmittal and instructions to be in a form reasonably acceptable to the Company. Upon surrender of a Certificate for cancelation to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed, and such other documents as may reasonably be required by the Exchange Agent or to such other agent or agents as may be appointed by the Surviving Corporation (and which is or are reasonably acceptable to the Company), the holder of such Certificate shall receive, subject to Section 2.01(e), in exchange therefor a certificate representing that number of whole shares of Parent Common Stock that such holder has the right to receive pursuant to

the provisions of this Article II, certain dividends or other distributions as and to the extent specified in Section 2.02(c) and cash in lieu of any fractional share of Parent Common Stock as and to the extent specified in Section 2.02(e), and the Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of Company Capital Stock that is not registered in the stock transfer books of the Company, a certificate representing the proper number of shares of Parent Common Stock, certain dividends or other distributions as and to the extent specified in Section 2.02(c) and cash in lieu of any fractional share of Parent Company Stock as and to the extent specified in Section 2.02(e) may be delivered and paid to a person other than the person in whose name the Certificate so surrendered is registered if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such delivery shall pay any transfer or other taxes required by reason of the delivery of shares of Parent Common Stock and payment of such sums to a person other than the registered holder of such Certificate or establish to the satisfaction of Parent that such tax has been paid or is not applicable. Until surrendered as contemplated by this Section 2.02(b), each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration with respect thereto, certain dividends or distributions as and to the extent specified in Section 2.02(c) and cash in lieu of any fractional share of Parent Common Stock as and to the extent specified in Section 2.02(e). No interest shall be paid or will accrue on any cash payable to holders of any Certificates.

(c) Distributions with Respect to Unexchanged Shares. No dividends or other distributions with respect to Parent Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Parent Common Stock represented thereby, and no cash payment in lieu of fractional shares of Parent Common Stock shall be paid to any such holder pursuant to Section 2.02(e), in each case until the surrender of such Certificate in accordance with this Article II. Subject to the effect of applicable escheat or similar laws, following surrender of any such Certificate, there shall be paid to the holder of the certificate representing whole shares of Parent Common Stock issued in exchange therefor, without interest, (i) promptly after the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock, and the amount of any cash payable in

lieu of a fractional share of Parent Common Stock to which such holder is entitled as and to the extent specified in Section 2.02(e) and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and with a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(d) No Further Ownership Rights in Company Capital Stock. Subject to Section 2.01(e), all shares of Parent Common Stock delivered upon the surrender for exchange of Certificates in accordance with the terms of this Article II (including any cash paid pursuant to this Article II) shall be deemed to have been delivered (and paid) in full satisfaction of all rights pertaining to the shares of Company Capital Stock theretofore represented by such Certificates, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Capital Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be canceled and exchanged as provided in this Article II.

(e) No Fractional Shares. (i) No certificates or scrip representing fractional shares of Parent Common Stock shall be delivered upon the surrender for exchange of Certificates, no dividend or distribution of Parent shall relate to such fractional share interests and such fractional share interests will not entitle the owner thereof to the right to vote or to any other rights of a stockholder of Parent.

(ii) In lieu of such fractional share interests, Parent shall pay to each former holder of Company Capital Stock an amount in cash equal to the product obtained by multiplying (A) the fractional share interest to which such former holder (after taking into account all shares of Company Capital Stock held at the Effective Time by such holder) would otherwise be entitled by (B) the last quoted sale price for a share of Parent Common Stock on The Nasdaq National Market ("Nasdaq"), as reported in The Wall Street Journal, or, if not reported therein, in any other authoritative source (the "Closing Price") on the Closing Date.

(f) Termination of Exchange Fund. Any portion of the Exchange Fund that remains undistributed to the holders of the Certificates for six months after the Effective Time shall be delivered to the Surviving Corporation, upon

demand, and any holders of Certificates who have not theretofore complied with this Article II shall thereafter look only to Parent for, and Parent shall remain liable for, payment of their claim for Merger Consideration applicable thereto, any dividends and other distributions which such holder is entitled to receive to the extent specified in Section 2.02(c) and cash in lieu of any fractional share of Parent Common Stock to the extent specified in Section 2.02(e).

(g) No Liability. None of Parent, the Surviving Corporation, the Company or the Exchange Agent shall be liable to any person in respect of any shares of Parent Common Stock, any dividends or distributions with respect thereto or any cash in lieu of fractional shares of Parent Common Stock, in each case delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If any Certificates shall not have been surrendered prior to two years after the Effective Time (or immediately prior to such earlier date on which any Merger Consideration would otherwise escheat to or became the property of any Governmental Entity (as defined in Section 3.02)), any such Merger Consideration in respect thereof shall, to the extent permitted by applicable law, become the property of the Parent, free and clear of all claims or interest of any person previously entitled thereto.

(h) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such person of a bond in such reasonable amount as Parent may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration with respect thereto and, if applicable, any unpaid dividends and distributions on shares of Parent Common Stock as and to the extent specified in Section 2.02(c) and any cash in lieu of fractional shares of Parent Common Stock as and to the extent specified in Section 2.02(e).

(i) Withholding Rights. The Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable to any holder of Company Capital Stock pursuant to this Agreement (including Section 2.01(g)) such amounts as may be required to be deducted and withheld with respect to the making of such payment under the Code, or under any provision of state, local or foreign Tax (as

defined in Section 3.07) law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority (as defined in Section 3.07), the Exchange Agent will be treated as though it withheld an appropriate amount of the type of consideration otherwise payable pursuant to this Agreement to any holder of Company Capital Stock, sold such consideration for an amount of cash equal to the fair market value of such consideration at the time of such deemed sale and paid such cash proceeds to the appropriate Taxing Authority.

SECTION 2.03. Maximum Number of Shares to be Issued. For the avoidance of doubt, subject to Section 2.01(f), the aggregate number of shares of Parent Common Stock to be delivered as Merger Consideration and pursuant to the exercise after the Effective Time of Adjusted Options (other than Permitted Interim Period Stock Options) and Warrants shall not exceed 19,000,000.

ARTICLE III

Representations and Warranties of the Company

Except as set forth on the disclosure schedule (with specific reference to the Section of this Agreement to which the information stated in such disclosure relates; provided, however, that to the extent that it is reasonably apparent that such disclosure also relates to another Section of this Agreement, such other Section shall also be qualified by each such disclosure) delivered by the Company to Parent prior to the execution and delivery of this Agreement (the "Company Disclosure Schedule"), the Company represents and warrants to Parent and Sub as follows:

SECTION 3.01. Organization, Standing and Corporate Power. Each of the Company and its subsidiaries (as defined in Section 9.03) is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Each of the Company and its subsidiaries has all requisite corporate or other power and authority necessary to enable it to use its corporate name and to own, lease or otherwise hold and operate its properties or assets and to carry on its business as presently conducted and proposed to be conducted. Each of the Company and its subsidiaries is duly qualified or licensed to do business as a foreign corporation and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties or assets makes such

qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing individually or in the aggregate is not reasonably likely to have a material adverse effect (as defined in Section 9.03) on the Company. The Company has delivered to Parent true and complete copies of the Second Amended and Restated Certificate of Incorporation of the Company, as amended through the date of this Agreement (the "Company Certificate") and its By-laws and the certificates of incorporation and by-laws or other similar organizational documents of each of its subsidiaries, in each case as amended to the date hereof. The respective certificates of incorporation and by-laws or other similar organizational documents of the subsidiaries of the Company do not contain any provision limiting or otherwise restricting the ability of (i) the Company to control such subsidiaries or (ii) the Company or any of its subsidiaries to engage in any lawful business or activity. The Company has made available to Parent and its representatives (i) true and complete copies of the share certificate and stock transfer books of the Company and each of its subsidiaries and (ii) copies of the minutes of all meetings of the stockholders, the Board of Directors and each committee of the Board of Directors of the Company and each of its subsidiaries held since their respective dates of incorporation or organization, which, in the case of this clause (ii), are true and complete in all material respects.

SECTION 3.02. Authority; Noncontravention.
(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby (subject to obtaining the Company Stockholder Approval (as defined in Section 3.20)) and to comply with the provisions of this Agreement. The execution, delivery and performance of this Agreement by the Company, the consummation by the Company of the transactions contemplated hereby and the compliance by the Company with the provisions of this Agreement have been duly authorized by all necessary corporate action on the part of the Company, subject to obtaining the Company Stockholder Approval, and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement, to consummate the transactions contemplated hereby or to comply with the provisions of this Agreement. This Agreement has been duly executed and delivered by the Company and, when executed and delivered by Parent and Sub, will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting creditors' rights generally from time

to time in effect and to general principles of equity). The Board of Directors of the Company, at a meeting duly called and held at which all directors of the Company were present, duly and unanimously adopted resolutions (i) approving and declaring advisable this Agreement, the Merger and the other transactions contemplated hereby, (ii) declaring that it is in the best interests of the Stockholders that the Company enter into this Agreement and consummate the Merger on the terms and subject to the conditions set forth in this Agreement, (iii) declaring that the consideration to be received by the Stockholders in the Merger is fair to the Stockholders, (iv) directing that this Agreement be submitted to a vote at a meeting of the Stockholders and (v) recommending that the Stockholders adopt this Agreement. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated by this Agreement and compliance with the provisions of this Agreement will not, conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result in, termination, cancelation or acceleration of any obligation or to loss of a material benefit under, or result in the creation of any pledge, claim, lien, charge, use restriction, encumbrance or security interest of any kind or nature whatsoever (a "Lien") in or upon any of the properties or assets of the Company or any of its subsidiaries under, or give rise to any increased, additional, accelerated or guaranteed rights or entitlements under, any provision of (i) the Company Certificate or the By-laws of the Company or the certificates of incorporation or by-laws or other similar organizational documents of any of its subsidiaries, in each case as amended through the date hereof, (ii) any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease or other contract, commitment, agreement, arrangement, understanding, obligation, undertaking, instrument, permit, concession, franchise or license, whether oral or written, to which the Company or any of its subsidiaries is a party or any of their respective properties or assets is subject or (iii) subject to obtaining the Company Stockholder Approval and to the governmental filings and other matters referred to in the following sentence, any (A) statute, law, ordinance, rule or regulation or (B) order, writ, injunction, decree, judgment or stipulation, in each case, applicable to the Company or any of its subsidiaries or any of their respective properties or assets, other than, in the case of clauses (ii) and (iii), any such conflicts, violations, breaches, defaults, rights, losses or Liens that individually or in the aggregate are not reasonably likely to (x) have a material adverse effect (without giving effect to the exception in clause (B) of the definition thereof in

Section 9.03) on the Company, (y) impair in any material respect the ability of the Company to perform its obligations under or comply with the provision of this Agreement or (z) prevent or materially impede, interfere with, hinder or delay the consummation of any of the transactions contemplated by this Agreement. No consent, approval, order or authorization of, or registration, declaration or filing with, any Federal, state or local, domestic or foreign, government or any court, administrative agency or commission or other governmental or regulatory authority or agency, domestic, foreign or supranational (a "Governmental Entity"), is required by or with respect to the Company or any of its subsidiaries in connection with the execution and delivery of this Agreement by the Company, the consummation by the Company of the Merger or the other transactions contemplated by this Agreement or compliance by the Company with the provisions of this Agreement, except for (1) the filing of a premerger notification and report form by the Company under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (2) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and the filing of appropriate documents with the relevant authorities of other states in which the Company or any of its subsidiaries is qualified to do business, (3) filings with the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended, (the "Securities Act"), including pursuant to rules relating to the Form F-4 and Rules 135, 165 and 425 promulgated under the Securities Act and (4) such other consents, approvals, orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made individually or in the aggregate are not reasonably likely to (x) have a material adverse effect on the Company (without giving effect to the exception in clause (B) of the definition thereof in Section 9.03), (y) impair in any material respect the ability of the Company to perform its obligations under or comply with the provision of this Agreement or (z) prevent or materially impede, interfere with, hinder or delay the consummation of any of the transactions contemplated by this Agreement.

SECTION 3.03. Capitalization. The authorized capital stock of the Company consists of 39,000,000 shares of Company Common Stock and 21,000,000 shares of Preferred Stock, par value $0.001 per share, 14,000,000 of which have been designated as Series A Preferred Stock, par value $0.001 per share ("Company Series A Preferred Stock"), and 6,816,290 have been designated as Series B Preferred Stock, par value $0.001 per share ("Company Series B Preferred Stock", and, together with the Company Series A Preferred Stock, the "Company Preferred Stock", with the Company

Common Stock and the Company Preferred Stock being referred to together as the "Company Capital Stock"). As of the date of this Agreement (i) 7,700,916 shares of Company Common Stock are issued and outstanding, (ii) 210,884 shares of Company Common Stock are held by the Company in its treasury, (iii) 12,850,000 shares of Company Series A Preferred Stock are issued and outstanding, (iv) no shares of Company Series A Preferred Stock are held by the Company in its treasury, (v) 6,472,785 shares of Company Series B Preferred Stock are issued and outstanding, (vi) no shares of Company Series B Preferred Stock are held by the Company in its treasury, (vii) warrants to acquire (A) 20,000 shares of Company Common Stock from the Company and (B) 310,880 shares of Company Preferred Stock from the Company, in each case pursuant to the warrant agreements set forth on Section 3.03(a) of the Company Disclosure Schedule (the "Warrants") are outstanding, (viii) options to acquire 2,829,600 shares of Company Common Stock from the Company pursuant to the Company's 1999 Stock Plan (the "Company Stock Plan") are issued and outstanding and 3,525,192 shares of Company Common Stock are reserved for issuance in connection with future grants thereunder and (ix) options to acquire 50,000 shares of Company Common Stock from the Company granted outside of the Company Stock Plan are issued and outstanding. Except as set forth above, as of the date of this Agreement no shares of capital stock or other voting securities of the Company or options, warrants or other rights to acquire any such stock or securities are issued, reserved for issuance or outstanding. There are no outstanding stock appreciation rights with respect to shares of Company Capital Stock or other rights (excluding Stock Options and Warrants) issued or granted by the Company or any of its subsidiaries that are linked to the value of Company Capital Stock. The Company has delivered to Parent true and complete copies of all Contracts (as defined in Section 3.10) relating to Warrants. If any Warrant is exercised after the Effective Time, the holder thereof shall be entitled to receive upon such exercise not more than the number of shares of Parent Common Stock that such holder would have been entitled to receive pursuant to Section 2.01(c) if such Warrant had been exercised in full for cash immediately prior to the Effective Time. There are no bonds, debentures, notes or other indebtedness of the Company or any of its subsidiaries, and except for the Company Capital Stock, no securities or other instruments or other obligations of the Company or any of its subsidiaries (I) having the right to vote (or, except for the Stock Options, the Permitted Interim Period Stock Options and Warrants, convertible into, or exchangeable or exercisable for, securities having the right to vote) on any matters on which stockholders of the Company may vote or (II) except

for Permitted Interim Period Stock Options, issued or granted by the Company or any of its subsidiaries the value of which is in any way based upon or derived from any share of Company Capital Stock, Stock Option or Warrant. Except as set forth above and except as expressly permitted by Sections 5.01(a)(ii) and 5.01(a)(xii), there are no securities, options, warrants, calls, rights or Contracts of any kind to which the Company or any of its subsidiaries is a party, or by which the Company or any of its subsidiaries is bound, obligating the Company or any of its subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, shares of capital stock or other securities of the Company or any of its subsidiaries or obligating the Company or any of its subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right or Contract. There are no outstanding contractual or other obligations of the Company or any of its subsidiaries to (i) repurchase, redeem or otherwise acquire any shares of capital stock or other securities of the Company or (ii) vote or to dispose of any shares of capital stock or other securities of any of its subsidiaries. Each Stock Option that is intended to qualify as an "incentive stock option" under Section 422 of the Code so qualifies thereunder. Section 3.03(b) of the Company Disclosure Schedule sets forth a complete and accurate list, as of the date hereof, of all outstanding stock options or other rights to purchase or receive Company Capital Stock granted under the Company Stock Plan or granted outside the Company Stock Plan (collectively, the "Stock Options"), the Warrants, the number of shares subject to each such Stock Option and Warrant, the grant dates, exercise prices and vesting periods of each such Stock Option and Warrant and the names of the holders thereof. Section 3.03(c) of the Company Disclosure Schedule sets forth a complete and accurate list, as of the date hereof, of the identity of each holder of shares of Company Capital Stock and the number of shares of each class of Company Capital Stock owned of record by such holder. No shares of Company Capital Stock are owned by a subsidiary of the Company. All outstanding shares of Company Capital Stock are, and all shares that may be issued pursuant to the Company Stock Plan, the exercise of Stock Options granted outside the Company Stock Plan and the exercise of the Warrants will be, when issued in accordance with the terms thereof, duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights. All the outstanding indebtedness for borrowed money of the Company or its subsidiaries is prepayable without prepayment penalty or premium (other than the payment of customary LIBOR breakage costs), and no indebtedness for borrowed money of the Company or its subsidiaries contains any restriction upon

the incurrence of indebtedness for borrowed money by the Company or any of its subsidiaries or restricts the ability of the Company or any of its subsidiaries to grant any Liens on its properties or assets. The Company has outstanding indebtedness for borrowed money in the aggregate principal amount of $5,000,000 as of the date of this Agreement.

SECTION 3.04. Equity Interests. Section 3.04 of the Company Disclosure Schedule lists each subsidiary of the Company. All the outstanding shares of capital stock or other voting or equity interests of each subsidiary of the Company are owned by the Company, by another wholly owned subsidiary of the Company or by the Company and another wholly owned subsidiary of the Company, free and clear of all Liens, and are duly authorized, validly issued, fully paid and nonassessable. Except for the capital stock of, or other voting or equity interests in, its subsidiaries, the Company does not own, directly or indirectly, any capital stock or other voting or equity interest in any person.

SECTION 3.05. Financial Statements. The Company has delivered to Parent the audited balance sheet of the Company as of December 31, 1999, and the related audited statement of income, statement of stockholders' equity (deficit) and statement of cash-flows of the Company and its consolidated subsidiaries for the fiscal year ended on such date (the financial statements described above are collectively referred to as the "Financial Statements"). The Financial Statements were derived from and are in accordance in all material respects with the books and records of the Company and its consolidated subsidiaries, have been prepared in conformity with generally accepted accounting principles ("GAAP") consistently applied (except as may be specifically described in the notes thereto) and fairly present the financial condition of the Company and its subsidiaries as of the dates thereof and the results of operations of the Company and its subsidiaries for the periods then ended.

The Company has also delivered to Parent unaudited balance sheets and related unaudited statements of income and statements of cash-flows of the Company and its consolidated subsidiaries as of and for the three-month periods ended March 31, June 30 and September 30, 2000 (collectively, the "Unaudited Statements"). The Unaudited Statements have been prepared in accordance in all material respects with GAAP and on a consistent basis with the Financial Statements (except that they do not contain footnotes and are subject to normal recurring year-end audit adjustments). There were no changes in the method of application of the Company's accounting policies or changes

in the method of applying the Company's use of estimates in the preparation of the Unaudited Statements as compared with the Financial Statements.

SECTION 3.06. Undisclosed Liabilities. Except as set forth or reflected on the Financial Statements or the Unaudited Statements (or specifically described in the notes thereto), none of the Company or its subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent, unasserted or otherwise) that could reasonably be expected to have a material adverse effect on the Company.

SECTION 3.07. Taxes. (a) As used in this Agreement, (i) "Taxes" shall mean all Federal, state and local, domestic and foreign, income, franchise, property, sales, excise, employment, payroll, social security, value-added, ad valorem, transfer, capital, withholding and other taxes, including taxes based on or measured by gross receipts, profits, sales, use or occupation, tariffs, levies, impositions, assessments or other governmental charges of any nature, including any interest, penalties or additions with respect thereto and any obligations under any agreements or arrangements with any other person with respect to such amounts (with "Tax" having a correlative meaning); (ii) "Taxing Authority" shall mean any Federal, state or local, domestic or foreign, governmental body (including any subdivision, agency or commission thereof), or any quasi-governmental body, in each case, exercising regulatory authority in respect of Taxes; and (iii) "Tax Return" shall mean all returns, reports and forms, including information returns, with respect to Taxes.

(b) Neither the Company nor any of its subsidiaries has ever been a member of any group of corporations with which the Company or any of its subsidiaries was required to file an affiliated, consolidated, combined, unitary or aggregate Tax Return. The Company and each of its subsidiaries has timely filed or caused to be filed all income and franchise Tax Returns and all other material Tax Returns required to be filed by each such entity. All such Tax Returns are true and complete in all material respects. The Company and each of its subsidiaries has timely paid or caused to be timely paid (or the Company has timely paid on its subsidiaries' behalf) all Taxes due from it or them with respect to the taxable periods covered by such Tax Returns, and, in accordance with GAAP, the balance sheets of the Company as of December 31, 1999 and September 30, 2000, each reflect an adequate reserve for all Taxes payable by the Company and each of its subsidiaries for all taxable periods and portions thereof

through its date. Neither the Company nor any of its subsidiaries has requested any extension of time within which to file any Tax Return which Tax Return has not yet been filed.

(c) No income or franchise or other material Tax Return of the Company or any of its subsidiaries is or has ever been under audit or examination by any Taxing Authority, and no written or, to the knowledge of the Company, unwritten notice of such an audit or examination has been received by the Company or any of its subsidiaries. Each material deficiency, if any, resulting from any audit or examination relating to Taxes by any Taxing Authority has been timely paid. The Company has not received notice of any material issues relating to Taxes from the relevant Taxing Authority during any presently pending audit or examination, nor has the Company received notice of any material issues relating to Taxes from the relevant Taxing Authority in any completed audit or examination that can reasonably be expected to recur in a later taxable period. The relevant statute of limitations is open with respect to all Federal income Tax Returns of the Company and each of its subsidiaries. The Company has made available to Parent documents, if any, setting forth the years in which the statute of limitations has not yet expired for the income, franchise and other material Tax Returns of the Company or any of its subsidiaries and listing the last year in which the Company or any of its subsidiaries is subject to audit with respect to all income, franchise and other material Tax Returns.

(d) There is no currently effective agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes and no power of attorney with respect to any Taxes has been executed or filed with any Taxing Authority.

(e) No material Liens for Taxes exist with respect to any assets or properties of the Company or any of its subsidiaries, except for statutory Liens for Taxes not yet due.

(f) None of the Company or any of its subsidiaries is a party to or bound by any Tax sharing agreement, Tax indemnity obligation or similar agreement, arrangement or practice with respect to Taxes (including any advance pricing agreement, closing agreement or other agreement relating to Taxes with any Taxing Authority).

(g) None of the Company or any of its subsidiaries will be required to include in a taxable period ending

after the Effective Time taxable income attributable to income that accrued in a prior taxable period but was not recognized in any prior taxable period as a result of the installment method of accounting, the completed contract method of accounting, the long-term contract method of accounting, the cash method of accounting or Section 481 of the Code or any comparable provision of any other Tax law or for any other reason.

(h) No amount or other entitlement or economic benefit that could be received (whether in cash or property or the vesting of property) as a result of any of the transactions contemplated by this Agreement or the Resale Restriction Agreement by any current or former officer, director, employee or consultant of the Company or its subsidiaries who is a "disqualified individual" (as such term is defined in proposed Treasury Regulation Section 1.280G-1) would be characterized as an "excess parachute payment" or a "parachute payment" (as such terms are defined in Section 280G(b)(1) of the Code) and no disqualified individual is entitled to receive any additional payment from the Company or any of its subsidiaries or any other person in the event that the excise tax under Section 4999 of the Code is imposed on such disqualified individuals.

(i) Each of the Company and its subsidiaries has complied in all material respects with all applicable laws relating to the payment and withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 3121 and 3402 of the Code or similar provisions of state, local, domestic or foreign Tax law) and has, within the time and the manner prescribed by law, withheld from and paid over to the proper governmental authorities all amounts required to be so withheld and paid over under applicable laws.

(j) No consent under Section 341(f) of the Code has been filed with respect to the Company or any of its subsidiaries.

(k) None of the Company or any of its subsidiaries has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(l) No property owned by the Company or any of its subsidiaries (i) constitutes "tax exempt use property" within the meaning of Section 168(h)(1) of the Code or (ii) is tax exempt bond financed property within the meaning of Section 168(g) of the Code.

(m) None of the Company or any of its subsidiaries has ever (i) made an election under Section 1362 of the Code to be treated as an S corporation for Federal income tax purposes or (ii) made a similar election under any comparable provision of any state or local, domestic or foreign, Tax law.

(n) None of the Company or any of its subsidiaries is or ever has been a personal holding company within the meaning of Section 542 of the Code.

(o) Section 3.07(o) of the Company Disclosure Schedule sets forth each state or local, domestic or foreign, jurisdiction in which the Company and each of its subsidiaries files, is required or has been required to file a Tax Return relating to state and local income, franchise, license, excise, net worth property and sales and use Taxes except in a case where the Company or any of its subsidiaries is or has been required to file such a Tax Return and such failure to file is not reasonably likely to have a material adverse effect on the Company. No claim has ever been made by a Taxing Authority in a jurisdiction where any of the Company or its subsidiaries does not file a Tax Return that it is, or may be subject to, taxation in that jurisdiction.

(p) None of the Company or any of its subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in any distribution of stock qualifying for tax-free treatment under Section 355 of the Code (i) within the two-year period ending on the date of this Agreement or (ii) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the transactions contemplated by this Agreement.

(q) None of the Company or any of its subsidiaries has taken or agreed to take any action or knows of any fact, agreement, plan or other circumstance that is reasonably likely to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a)(1)(B) of the Code or reasonably likely to cause the Merger to fail to qualify for an exemption to gain recognition pursuant to Section 367(a) of the Code.

SECTION 3.08. Assets. (a) Each of the Company and its subsidiaries has good and marketable title to, or good and valid leasehold interests in, all of its material personal properties and assets (including with respect to

all real property and interests in real property leased by it), in each case free and clear of any Liens, except for such property and assets as are no longer used or useful in the conduct of its businesses and except for defects in title, easements, restrictive covenants and similar encumbrances and Liens that individually or in the aggregate are not reasonably likely to materially affect the ability of the Company and its subsidiaries to use such property or assets in their intended manner.

(b) Each of the Company and its subsidiaries has complied in all material respects with the terms of all material leases to which it is a party and under which it is in occupancy, and all such leases are in full force and effect, except for such noncompliances or failures to be in full force and effect that individually or in the aggregate are not reasonably likely to materially affect the ability of the Company to obtain the benefit of such leases. Each of the Company and its subsidiaries enjoys peaceful and undisturbed possession in all material respects under all material real property leases to which it is a party.

(c) None of the Company or any of its subsidiaries holds any fee or other ownership interest in any real property. Section 3.08 of the Company Disclosure Schedule sets forth a complete and accurate list of all real property and interests in real property leased by the Company.

SECTION 3.09. Intellectual Property, Etc.
(a) Section 3.09(a) of the Company Disclosure Schedule sets forth a complete and accurate list of all patents, patent applications, trademark applications and registrations, trade names, service marks, domain names and registered copyrights and mask work rights and applications therefor, if any, owned by or licensed to the Company or any of its subsidiaries. All patents, patent applications, trademark applications and registrations, trade names, service marks, copyrights and mask work rights of the Company or any of its subsidiaries have been duly registered and/or filed with or issued by each appropriate Governmental Entity in the jurisdictions indicated in Section 3.09(a) of the Company Disclosure Schedule, all necessary affidavits of continuing use have been filed, and all necessary maintenance fees have been paid to continue all such rights in effect, except where the failure to take such actions or pay such fees would not, individually or in the aggregate, materially adversely affect any such rights. Each of the Company and each of its subsidiaries owns or is validly licensed or otherwise has the right to use, without payment to any other person except for fees set forth in Section 3.09(b) of the Company Disclosure Schedule, all Intellectual Property (as

defined in Section 3.09(m)) used in or necessary for the conduct of its business as presently conducted or as currently proposed by management of the Company to be conducted, in each case free and clear of all Liens, except for Liens that (i) individually or in the aggregate are not reasonably likely to materially affect the ability of the Company and its subsidiaries to use such Intellectual Property in its intended manner and (ii) have been disclosed in writing to Parent in Section 3.09(a) or 3.10(h) of the Company Disclosure Schedule. The conduct of the Company's business, as presently conducted and as currently proposed by management of the Company to be conducted, does not in any material respect conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancelation or acceleration of any obligation or loss of a material benefit under, or result in the creation of any material Lien in or upon any of the properties or assets of the Company or any of its subsidiaries under, any Contract between the Company or any of its subsidiaries and any person relating to material Intellectual Property or, to the knowledge of the Company, any material Intellectual Property rights of any other person.

(b) Section 3.09(b) of the Company Disclosure Schedule sets forth a complete and accurate list of all options, rights, licenses or interests of any kind relating to Intellectual Property granted to the Company or any of its subsidiaries, other than software licenses for generally available software (such as Lotus Notes, WordPerfect and the like) and generally available system development tools, or granted by the Company to any other person.

(c) All software, other than generally available software (such as Lotus Notes, WordPerfect and the like) and generally available system development tools, that is either marketed to customers of the Company or any of its subsidiaries as a program or as part of a product or service or is used by the Company or any of its subsidiaries to support its business:

(i) either is owned by the Company or any of its subsidiaries or the Company or any of its subsidiaries has the right to use, modify, copy, sell, distribute, sublicense and make Derivative Works (as defined in Section 3.09(k)) from such software, free and clear of any limitations or Liens that would materially impair the intended use of such software; and

(ii) is free from any interest of any former or present employees of, or contractors or consultants to, the Company or any of its subsidiaries that would materially impair the intended use of such software.

Section 3.09(c) of the Company Disclosure schedule sets forth a complete and accurate list of all such software, together with a brief description by name of each product or service to which such software relates.

(d) To the extent third-party software is marketed to customers of the Company or any of its subsidiaries together with the Intellectual Property of the Company or any of its subsidiaries, (i) the third-party rights have been identified in Section 3.09(d) of the Company Disclosure Schedule, (ii) all necessary licenses have been obtained and (iii) no royalties or payments are due other than the royalties and payments that are identified in Section 3.09(d) of the Company Disclosure Schedule.

(e) No material trade secret of the Company or any of its subsidiaries has been published or disclosed by the Company or any of its subsidiaries or, to the knowledge of the Company or any of its subsidiaries, by any other person to any person except pursuant to licenses or Contracts requiring such other persons to keep such trade secrets confidential.

(f) None of the Company and its subsidiaries is, and to the knowledge of the Company, no other party to any licensing, distributorship or other similar arrangements with the Company or any of its subsidiaries relating to Intellectual Property is, in breach of or default under its obligations under such arrangements in any material respect.

(g) No person has any marketing rights to the Intellectual Property of the Company or any of its subsidiaries pursuant to a written agreement.

(h) None of the Company or any of its subsidiaries has received any written communications, and no executive officer of the Company has received any oral communication, alleging that the Company or any of its subsidiaries has infringed or violated or, by conducting its businesses as presently conducted or as currently proposed by management of the Company to be conducted by the Company or any of its subsidiaries, would infringe or violate any of the Intellectual Property of any other person.

(i) To the knowledge of the Company, no person is infringing on or otherwise violating any right of the Company or any of its subsidiaries in any material respect with respect to any material Intellectual Property owned by or licensed to the Company or any of its subsidiaries.

(j) Each of the Company and its subsidiaries has taken reasonable steps to protect its Intellectual Property consistent with industry practice.

(k) No licenses or rights have been granted to distribute the source code of, or to use source code to create Derivative Works of, any product currently marketed by, commercially available from or under development by the Company or any of its subsidiaries for which the Company or any of its subsidiaries possesses the source code. As used herein, "Derivative Work" shall mean a work that is based upon one or more preexisting works, such as a revision, enhancement, modification, abridgement, condensation, expansion or any other form in which such preexisting works may be recast, transformed or adapted, and which, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such a preexisting work as well as translations from one human language to another and from one type of code to another.

(l) None of the Company or any of its subsidiaries has assigned, sold or otherwise transferred ownership of any Intellectual Property owned by the Company.

(m) For purposes of this Agreement, "Intellectual Property" shall mean patents, trademarks (registered or unregistered), trade names, service marks, domain names brand names, trade dress, copyrights, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application; inventions, whether patented, patentable or not patentable in any jurisdiction; mask works, trade secrets and confidential proprietary information and rights in any jurisdiction to limit the use or disclosure thereof by any person; writings and other works of commercial value, whether copyrighted, copyrightable or not copyrightable in any jurisdiction; registration or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof; any similar intellectual property or proprietary rights; any computer programs or software (including source code, object code and data),

other than commercially available computer programs and software; and licenses relating to the foregoing.

SECTION 3.10. Contracts. None of the Company or any of its subsidiaries is a party to or bound by, and none of their properties or assets is bound by or subject to, any written or oral:

(a) contract, commitment, agreement, lease or similar arrangement (each, including all amendments thereto, a "Contract") not made in the ordinary course of business;

(b) employment agreement or employment Contract that is not terminable at will by the Company or such subsidiary both without any penalty and without any obligation of the Company or any of its subsidiaries to pay severance or other amounts (including any bonus) other than base salary, accrued commissions, vacation pay and legally mandated benefits;

(c)(i) employee collective bargaining agreement or other Contract with any labor union, (ii) Benefit Agreement (as defined in Section 3.12) or (iii) Contract indemnifying any current or former director or officer of the Company;

(d) Contract pursuant to which the Company or any of its subsidiaries has agreed not to compete (or which, following the consummation of the Merger, could restrict the ability of Parent or any of its subsidiaries to compete) with any person or in any geographic area or to engage in any activity or business, or pursuant to which any benefit is required to be given or lost as a result of so competing or engaging;

(e) Contract with (i) any stockholder of the Company or any of its subsidiaries, (ii) any affiliate of the Company or any of its subsidiaries or of any stockholder of the Company or any of its subsidiaries or (iii) any director, officer or employee of the Company or any of its subsidiaries or of any affiliate of the Company or any of its subsidiaries (other than agreements covered by clause (b) or (c) above);

(f) license or franchise pursuant to which the Company or any such subsidiary has agreed to refrain from granting license or franchise rights to any other person;

(g) Contract under which the Company or such subsidiary has (i) incurred any Indebtedness that is currently owing or (ii) given any Guarantee (as defined below);

(h) Contract expressly creating or granting a Lien (including Liens upon properties acquired under conditional sales, capital leases or other title retention or security devices);

(i) Contract providing for future performance by the Company or such subsidiary in consideration of amounts previously paid in excess of $35,000;

(j) Contract providing for payments of royalties to third parties;

(k) Contract granting a third party any license to Intellectual Property that is not limited to the internal use of such third party;

(l) Contract providing confidential treatment by the Company or such subsidiary of material third-party information;

(m) Contract that is material in any respect containing (whether in the Contract itself or by operation of law) any provisions dealing with a "change of control" or similar event with respect to the Company or such subsidiary;

(n) Contract granting the other party or any third person "most favored nation" status;

(o) Contract providing for monetary liquidated damages (but not including other kinds of provisions that provide for limiting the maximum amounts payable or for refunds of amounts in the event of a breach or termination of the Contract);

(p) Contract that (i) has aggregate future sums due from the Company or such subsidiary in excess of $35,000 and is not terminable by the Company or such subsidiary for a cost of less than $35,000, (ii) has aggregate future sums due to the Company or such subsidiary in excess of $35,000 or (iii) is otherwise material to the business of the Company or such subsidiary as presently conducted or as currently proposed by management of the Company to be conducted;

(q) Contract providing for future performance by the Company or such subsidiary with less than the standard Company or subsidiary charges to be due for such performance;

(r) joint venture, partnership or other similar agreement;

(s) agreement entered into in connection with the settlement or other resolution of any suit, claim, action, investigation or proceeding; or

(t) beta test agreement, trial agreement or limited license agreement the terms and conditions of which differ in any significant respect from the terms and conditions of the form of trial agreement attached as Exhibit A to Section 3.10 of the Company Disclosure Schedule (which Exhibit A also sets forth a complete and accurate list of all customers that have entered into a beta test agreement, trial agreement or limited license agreement with the Company).

Each material Contract of the Company and each of its subsidiaries is in full force and effect and is a legal, valid and binding agreement of the Company or such subsidiary and, to the knowledge of the Company or such subsidiary, of each other party thereto, enforceable against the Company or any of its subsidiaries, as the case may be, and, to the knowledge of the Company, against the other party or parties thereto, in each case, in accordance with its terms. The Company and each of its subsidiaries has performed or is performing all material obligations required to be performed by it under each of its Contracts and is not (with or without notice or lapse of time or both) in breach or default in any material respect thereunder. To the knowledge of the Company or such subsidiary, no other party to any of its Contracts is (with or without notice or lapse of time or both), as of the date hereof, in breach or default in any material respect thereunder. Neither the Company nor any of its subsidiaries knows of any circumstances that are reasonably likely to materially adversely affect its ability to perform its obligations under any material Contract.

"Guarantee" of or by any person shall mean any obligation, contingent or otherwise, of such person guaranteeing any Indebtedness of any other person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such

Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (b) to purchase property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness or (c) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; provided, however, that the term Guarantee shall not include endorsements for collection or deposit, in each case in the ordinary course of business.

"Indebtedness" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person upon which interest charges are customarily paid, (d) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (e) all obligations of such person issued or assumed as the deferred purchase price of property or services, (f) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, (g) all Guarantees by such person, (h) all capital lease obligations of such person, (i) all obligations of such person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements and (j) all obligations of such person as an account party in respect of letters of credit and bankers' acceptances to the extent of any drawdowns thereon.

SECTION 3.11. Litigation; Decrees. There is no suit, claim, action, arbitration, investigation or other proceeding ("Litigation"), other than investigations, pending or, to the knowledge of the Company, threatened, nor, to the knowledge of the Company, is there any investigation pending or threatened, in each case by or against or affecting the Company or any of its subsidiaries or any of their respective properties or assets. There is no outstanding order, writ, injunction, decree, judgment or stipulation applicable to the Company or any of its subsidiaries or any of their respective properties, assets or businesses having, or that individually or in the aggregate is reasonably likely to have, a material adverse effect on the Company. Section 3.11 of the Company Disclosure Schedule sets forth a complete and accurate list

of (a) all Litigation in respect of which legal process has been served upon the Company or any of its subsidiaries and (b) all Litigation that has been commenced by the Company or any of its subsidiaries against any third party, in each case which has not been settled or disposed as of the date hereof.

SECTION 3.12. Operation of the Business; Absence of Changes or Events. (a) Since December 31, 1999 (or, in the case of clauses (iv) and (ix), since September 30, 2000), the Company and each of its subsidiaries has conducted its business only in the ordinary course consistent with past practice, and there has not been (i) any material adverse effect on the Company, (ii) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any shares of capital stock of the Company or any of its subsidiaries except for dividends by a direct or indirect wholly owned subsidiary of the Company to its parent, or any purchase, redemption or other acquisition (other than repurchases of shares of Company Common Stock that are subject to vesting requirements, transfer restrictions and a right of repurchase in favor of the Company under specified circumstances ("Restricted Stock") pursuant to the exercise of repurchase rights in favor of the Company) of any shares of capital stock of the Company or any of its subsidiaries or any other securities of the Company or any of its subsidiaries or any options, warrants, calls or rights (other than repurchase rights in favor of the Company with respect to shares of Restricted Stock) to acquire any such shares or other securities, (iii) any split, combination or reclassification of any shares of capital stock of the Company or any of its subsidiaries or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of capital stock or other securities (other than pursuant to the exercise of Stock Options or Warrants) of the Company or any of its subsidiaries, (iv) (A) any granting by the Company or any of its subsidiaries of any increase in compensation or fringe benefits, except for normal increases of cash compensation in the ordinary course of business consistent with past practice, or any payment by (or entering into of any obligation or Contract with respect to any payment by) the Company or any of its subsidiaries of any bonus, except for bonuses made in the ordinary course of business consistent with past practice, in each case to any current or former director, officer, employee or consultant, (B) any granting by the Company or any of its subsidiaries to any current or former director, officer or employee of the right to receive severance or termination pay or any increases therein,

(C) any entry by the Company or any of its subsidiaries into, or any amendment of, (1) any employment, severance, deferred compensation, termination, indemnification or consulting agreement with any current or former director, officer, employee or consultant in effect as of the date of this Agreement or (2) any agreement with any current or former director, officer, employee or consultant the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving the Company of the nature contemplated by this Agreement or (all such agreements under this clause (C), collectively, "Benefit Agreements") or (D) any adoption of, or amendment to, a Benefit Plan (as defined in Section 3.15) (other than amendments required by law or required to maintain the qualified status of a Benefit Plan), (v) any damage, destruction or loss, whether or not covered by insurance, that individually or in the aggregate is reasonably likely to have a material adverse effect on the Company, (vi) any change in financial or tax accounting methods, principles or practices by the Company or any of its subsidiaries, except insofar as may have been required by a change in GAAP or applicable law, (vii) any material election with respect to the Tax liabilities or Tax attributes of the Company or any of its subsidiaries or any settlement or compromise with respect to any material income Tax liability or refund, (viii) any revaluation by the Company or any of its subsidiaries of any of its material assets or (ix) any Contract with regard to the acquisition or disposition of any material Intellectual Property or rights thereto other than licenses in the ordinary course of business consistent with past practice.

(b) Since September 30, 2000, each of the Company and its subsidiaries has continued all pricing, sales, receivables and payables production practices substantially in accordance with the ordinary course of business and in accordance with the Company's Contracts and has not engaged in (i) any trade loading practices or any other promotional sales or discount activity with any customers or distributors with the intent to accelerate to pre-Closing periods sales to the trade or otherwise that would otherwise be expected (based on past practice) to occur in post-Closing periods, (ii) any practice intended to have the effect of accelerating to pre-Closing periods collections of receivables that would otherwise be expected (based on past practice) to be made in post-Closing periods or (iii) any practice intended to have the effect of postponing to post-Closing periods payments by the Company or any of its subsidiaries that would otherwise be expected (based on past practice) to be made in pre-Closing periods.

SECTION 3.13. Compliance with Applicable Laws. (a) The Company and each of its subsidiaries and their respective properties, assets, operations, personnel and businesses have been and are being operated and have been and are in compliance with all applicable statutes, laws, ordinances, rules, regulations, orders, writs, injunctions, decrees, judgments and stipulations except for such failures to so comply that individually or in the aggregate are not reasonably likely to have a material adverse effect on the Company. Neither the Company nor any of its subsidiaries has received, since their respective dates of incorporation or organization, a notice or other written communication alleging or relating to a possible violation of any statute, law, ordinance, rule, regulation, order, writ, injunction, decree, judgment or stipulation of any Governmental Entity applicable to its properties, assets, operations, personnel and businesses except for such violations that individually or in the aggregate are not reasonably likely to have a material adverse effect on the Company.

(b) The Company and each of its subsidiaries has obtained and has in effect all Federal, state and local, domestic and foreign, governmental consents, approvals, orders, authorizations, certificates, filings, notices, permits, concessions, franchises, licenses and rights (collectively, "Permits") necessary for it to own, lease or operate its properties and assets and to carry on its business as presently conducted and as currently proposed by management of the Company to be conducted, and there has occurred no violation of, or default under, any such Permit, except for such failures to obtain and keep in effect Permits and except for such violations or defaults under any Permits that individually or in the aggregate are not reasonably likely to have a material adverse effect on the Company. The Merger, in and of itself, could not reasonably be expected to cause the revocations or cancelations of any such Permit except for such revocations or cancelations that individually or in the aggregate are not reasonably likely to have a material adverse effect on the Company.

(c) To the Company's knowledge, there are no past or present conditions, circumstances, activities, practices, incidents, actions or plans that are reasonably likely to (i) interfere with or prevent compliance or continued compliance by the Company or any of its subsidiaries with any environmental or health and safety laws governing the Company's or any of its subsidiaries' businesses as presently conducted or as currently proposed by management of the Company to be conducted or with any statute, law, ordinance, rule, regulation, order, writ, injunction, decree, judgment, stipulation or notice or demand letter

issued, entered, promulgated or approved thereunder or (ii) give rise to any liability of the Company or any of its subsidiaries under any environmental or health and safety laws governing the Company's or any of its subsidiaries' past, present or future operations as currently proposed by management of the Company to be conducted, other than, in each case circumstances, activities, practices, incidents, actions or plans that individually or in the aggregate are not reasonably likely to have a material adverse effect on the Company.

SECTION 3.14. Certain Employee Matters. (a) To the knowledge of the Company, no director, officer or other employee of the Company or any of its subsidiaries is a party to or bound by any Contract, or subject to any order, writ, injunction, decree, judgment or stipulation of or issued by any Governmental Entity, that may interfere with the use of such director's, officer's or other employee's best efforts to promote the interests of the Company and its subsidiaries, conflict with the business of the Company or any of its subsidiaries (as presently conducted or as currently proposed by management of the Company to be conducted) or the transactions contemplated by this Agreement or that is reasonably likely to have a material adverse effect on the Company. To the knowledge of the Company, no activity of any employee of the Company or any of its subsidiaries as or while an employee of the Company or any such subsidiary has caused a violation of any employment agreement, confidentiality agreement, patent disclosure agreement or other Contract.

(b) All former and current employees, contractors and consultants of the Company and each of its subsidiaries, including all employees, contractors and consultants involved in the development of Intellectual Property of the Company and each of its subsidiaries, have executed and delivered to the Company a confidential information agreement that is in substance substantially consistent with the the form of agreement set forth in Section 3.14(b) of the Company Disclosure Schedule restricting such person's right to use and disclose confidential information of the Company and its subsidiaries. All such persons have been party to such a proprietary rights agreement with the Company or its applicable subsidiary during the entire term of each such person's employment with or retention by the Company or by such subsidiary, pursuant to which either (i) in accordance with any applicable Federal, state or local, domestic or foreign, law, the Company or such subsidiary has been accorded full, effective, exclusive and original ownership of all material Intellectual Property thereby arising or (ii) there has been conveyed to the Company or such

subsidiary by appropriately executed instruments of assignment full, effective and exclusive ownership of all tangible and intangible property, including inventions relating to the business of the Company and its subsidiaries and thereby arising within the scope of their employment or engagement by or with the Company or such subsidiary, and true and correct copies of such agreements have been made available by the Company to Parent prior to the date of this Agreement. No employee, contractor or consultant of the Company has made any material alteration or modification to the form of agreement set forth in Section 3.14(b) of the Company Disclosure Schedule. No employee, contractor or consultant of the Company who has contributed to, or participated in, the conception and development of Intellectual Property for the Company or any of its subsidiaries has asserted or threatened any claim against the Company or such subsidiary in connection with such person's involvement in the conception and development of such Intellectual Property and, to the knowledge of the Company, no such person has a reasonable basis for any such claim.

(c) None of the officers, employees or (to the knowledge of the Company) contractors or consultants of the Company or any of its subsidiaries has any patents issued or applications pending for any device, process, method, design or invention of any kind that was developed after the date on which such person became an officer, employee, contractor or consultant of the Company or any of its subsidiaries or, to the knowledge of the Company, prior to the date on which such person became such an officer, employee, contractor or consultant in each case that is now used or needed by the Company or such subsidiary in the furtherance of its business operations as presently conducted or as currently proposed by management of the Company to be conducted by the Company or such subsidiary, which patents or applications have not been assigned to the Company or such subsidiary with such assignment duly recorded in the United States Patent and Trademark Office or with the applicable foreign Governmental Entity.

(d) None of the employees of the Company or any of its subsidiaries are represented by any union with respect to their employment by the Company or such subsidiary. Since the date of its incorporation, neither the Company nor any of its subsidiaries has experienced any labor disputes, union organization attempts or work stoppage due to labor disagreements. Each of the Company and its subsidiaries is in compliance in all material respects with all applicable statutes, laws, ordinances, rules and regulations relating to employment and employment practices,

occupational safety and health standards, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practice. The Company has not received notice of any unfair labor practice charge or complaint against the Company or any of its subsidiaries which is pending and, to the knowledge of the Company, there is no unfair labor practice charge or complaint against the Company threatened before the National Labor Relations Board or any comparable state or foreign agency or authority. There is no labor strike, dispute, request for representation, slowdown or stoppage actually pending or threatened against or affecting the Company or any of its subsidiaries. No question concerning representation has been raised or is, to the knowledge of the Company, threatened with respect to the employees of the Company or any of its subsidiaries. No employment-related grievances that are individually or in the aggregate reasonably likely to have a material adverse effect on the Company, nor any arbitration proceedings arising out of collective bargaining agreements, are pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries.

(e) Section 3.14(e) of the Company Disclosure Schedule sets forth a complete and accurate list of all current employees of the Company and each of its subsidiaries, including their title, current compensation, bonus and commission structure.

(f) Section 3.14(f) of the Company Disclosure Schedule sets forth (i) the name of each employee of the Company entitled to severance benefits (other than the acceleration of Stock Options) payable as of the Effective Time or upon termination of employment after the Effective Time pursuant to any individual employment, severance, termination or change of control agreement or arrangement between the Company or any of its subsidiaries and such employee, (ii) the category or type of each such severance benefit (other than the acceleration of Stock Options) to which such employee is entitled, (iii) the aggregate value of each such severance benefit payable as of the Effective Time and each such severance benefit that would be payable upon termination of employment after the Effective Time, other than the acceleration of Stock Options and (iv) the aggregate value of severance that would be paid to each employee set forth on Section 3.14(f) of the Company Disclosure Schedule upon termination of employment based on the terms of any severance plan or plans applicable to such employee in effect at the Effective Time, other than the acceleration of Stock Options.

SECTION 3.15. Benefit Plans. (a) Section 3.15(a) of the Company Disclosure Schedule contains a complete and accurate list of each "employee pension benefit plan" (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) (hereinafter a "Pension Plan"), "employee welfare benefit plan" (as defined in Section 3(1) of ERISA, hereinafter a "Welfare Plan"), bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock appreciation, restricted stock, stock option, phantom stock, performance, retirement, thrift, savings, stock bonus, cafeteria, paid time off, perquisite, fringe benefit, vacation, severance, disability, death benefit, hospitalization, medical, welfare benefit or other plan, program, policy, arrangement or understanding (whether or not legally binding) maintained, contributed to or required to be maintained or contributed to by the Company and its subsidiaries or any other person or entity that, together with the Company, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code (each, a "Commonly Controlled Entity") or any entity that is considered a co-employer with the Company or any Commonly Controlled Entity, in each case for the benefit of any present or former directors, officers, employees or independent contractors of the Company or any of its subsidiaries (all the foregoing being herein called "Benefit Plans"). The Company has delivered to Parent true and complete copies of (1) each Benefit Plan (or, in the case of any unwritten Benefit Plans, descriptions thereof), (2) the two most recent annual reports on Form 5500 filed with the Internal Revenue Service with respect to each Benefit Plan (if any such report was required by applicable law), (3) the most recent summary plan description for each Benefit Plan for which such a summary plan description is required by applicable law and (4) each trust agreement and insurance or annuity contract relating to any Benefit Plan. No Benefit Plan is a defined benefit plan (within the meaning of Section 3(35) of ERISA) or is subject to Title IV of ERISA or the minimum funding requirements of Section 412 of the Code or Section 302 of ERISA.

(b) Each Benefit Plan has been administered in all material respects in accordance with its terms. The Company, its subsidiaries and all the Benefit Plans are in compliance in all material respects with the applicable provisions of ERISA and the Code, and all other applicable laws and the terms of all collective bargaining agreements or other labor union contracts applicable to any employees of the Company or any of its subsidiaries. All reports, returns and similar documents with respect to all Benefit Plans required to be filed with any Governmental Entity or

distributed to any Benefit Plan participant have been duly and timely filed or distributed. The Company has received no notice of, and to the Company's knowledge, there are no investigations by any Governmental Entity with respect to, termination proceedings or other claims (except claims for benefits payable in the normal operation of the Benefit Plans), suits or proceedings against or involving any Benefit Plan or asserting any rights or claims to benefits under any Benefit Plan that could give rise to any material liability, and, to the Company's knowledge, there are not any facts that could give rise to any material liability in the event of any such investigation, claim, suit or proceeding.

(c) All contributions to, and payments from, the Benefit Plans that may have been required to be made in accordance with the terms of the Benefit Plans and any applicable collective bargaining agreement have been timely made in all material respects.

(d) Each Benefit Plan that is a Pension Plan (hereinafter, a "Company Pension Plan") has been the subject of a determination letter from the Internal Revenue Service to the effect that such Company Pension Plan, or the prototype document on which it is based, is qualified and exempt from Federal income taxes under Sections 401(a) and 501(a), respectively, of the Code; no such determination letter has been revoked, and, to the knowledge of the Company, revocation has not been threatened; and no Company Pension Plan has been amended since the effective date of its most recent determination letter in any respect that might adversely affect its qualification, materially increase its cost or require security under Section 307 of ERISA. The Company has delivered to Parent a true and complete copy of the most recent determination letter received with respect to each Company Pension Plan for which such a letter has been issued, as well as a true and complete copy of each pending application for a determination letter, if any. The Company has also provided to Parent a complete and accurate list of all Company Pension Plan amendments as to which a favorable determination letter has not yet been received. No event has occurred that could subject any Company Pension Plan to tax under Section 511 of the Code.

(e) With respect to each Benefit Plan, (i) there has not occurred any prohibited transaction in which the Company or any of its employees has engaged that could subject the Company or any of its employees, or, to the knowledge of the Company, a trustee, administrator or other fiduciary of any trust created under any Benefit Plan to the

tax or penalty on prohibited transactions imposed by Section 4975 of ERISA or the sanctions imposed under Title I of ERISA and (ii) neither the Company nor, to the knowledge of the Company, any trustee, administrator or other fiduciary of any Benefit Plan nor any agent of any of the foregoing has engaged in any transaction or acted in a manner that could, or failed to act so as to, subject the Company or, to the knowledge of the Company, any trustee, administrator or other fiduciary to any liability for breach of fiduciary duty under ERISA or any other applicable law.

(f) The list of Welfare Plans in Section 3.15(f) of the Company Disclosure Schedule discloses whether each Welfare Plan is (i) unfunded, (ii) funded through a "welfare benefit fund", as such term is defined in Section 419(e) of the Code, or other funding mechanism or (iii) insured. Each such Welfare Plan may be amended or terminated without material liability to the Company at any time after the Closing Date. The Company and its subsidiaries comply in all material respects with the applicable requirements of Section 4980B(f) of the Code with respect to each Benefit Plan that is a group health plan, as such term is defined in Section 5000(b)(1) of the Code. Neither the Company nor any of its subsidiaries has any material obligations for retiree health or life benefits under any Benefit Plan.

(g) Neither the execution and delivery of this Agreement nor the obtaining of the Company Stockholder Approval nor the consummation of the Merger nor any other transaction contemplated by this Agreement will (x) entitle any current or former director, officer, employee or consultant of the Company or any of its subsidiaries to severance pay, (y) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any Benefit Plan (other than the acceleration of Stock Options) or (z) result in any breach or violation of, or a default under, any Benefit Plan.

(h) The Company has no material liability or obligations, including under or on account of a Benefit Plan, arising out of the Company's hiring of persons to provide services to the Company and treating such persons as consultants or independent contractors and not as employees of the Company.

SECTION 3.16. Insurance. Section 3.16 of the Company Disclosure Schedule sets forth a complete and accurate list and description, including annual premiums and deductibles, of all policies of fire, liability, product

liability, workmen's compensation, health and other forms of insurance presently in effect on the date hereof with respect to the Company's and its subsidiaries' business, true and complete copies of which have been delivered to, or made available for review by, Parent. All such policies are valid, outstanding and enforceable policies. The Company reasonably believes that such policies are sufficient to protect the properties, assets, operations and business of the Company and each of its subsidiaries against the risks of the sort normally insured by similar businesses. No notice of cancelation or termination has been received with respect to any such policy.

SECTION 3.17. Customers. (a) The Company does not have any customer to whom it made more than 5% of its sales during the Company's two most recent fiscal quarters. During the past two years, the Company has received no customer complaints concerning its products and services, nor has it had any of its products returned by a purchaser thereof, other than complaints and returns in the ordinary course of business.

(b) As of the date of this Agreement, no material customer of the Company or any of its subsidiaries has informed any officer of the Company or such subsidiary orally or in writing that such person intends to materially change its relationship with the Company or such subsidiary.

SECTION 3.18. Disclosure. The representations or warranties of the Company contained in this Agreement, together with the statements contained in the Company Disclosure Schedule, and the certificates and other documents or instruments delivered or to be delivered pursuant to this Agreement by or on behalf of the Company or any of its subsidiaries to Parent or any of its representatives, taken as a whole, do not contain any untrue statement of a material fact, or omit to state any material fact necessary, in light of the circumstances under which they were or will be made, in order to make the statements herein or therein not misleading.

SECTION 3.19. Information Supplied. None of the information supplied by or on behalf of, or to be supplied by or on behalf of, the Company specifically for inclusion in (i) the registration statement on Form F-4 to be prepared and filed with the SEC in connection the issuance of Parent Common Stock in the Merger, in which an information statement relating to the solicitation by the Company of the Company Stockholder Approval (the "Information Statement") will be included (the "Form F-4") will, at the time the Form F-4 is filed or becomes effective under the Securities

Act, or at the date the Information Statement is first mailed to the Stockholders or at the time of the Company Stockholders' Meeting (as defined in Section 6.01(b)), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The Form F-4, insofar as relates to the Company, will comply as to form in all material respects with the requirements of the Securities Act and the rules and regulations thereunder.

SECTION 3.20. Voting Requirements; Company Voting Agreement and Resale Restriction Agreement. The affirmative vote or consent of (a) the holders of a majority of the outstanding shares of each of (i) Company Series A Preferred Stock and (ii) Company Series B Preferred Stock, voting as distinct and separate classes, in each case in favor of adopting this Agreement and (b) the holders of a majority of the voting power of (i) Company Common Stock, (ii) Company Series A Preferred Stock and (iii) Company Series B Preferred Stock, voting together as a single class in favor of adopting this Agreement (the approvals set forth in this sentence begin collectively referred to as the "Company Stockholder Approval"), are the only votes or consents of the holders of any class or series of Company Capital Stock necessary to adopt this Agreement and consummate the transactions contemplated by this Agreement. Stockholders holding shares of Company Capital Stock representing 79.1% of the combined voting power on the date hereof (including 95.3% of the outstanding Shares of Company Series A Preferred Stock, 73.7% of the outstanding shares of Company Series B Preferred Stock and 56.5% of the outstanding shares of Company Common Stock) of the Company Capital Stock have entered into a Company Voting Agreement, and the affirmative vote of such holders is sufficient for the adoption of this Agreement under the Company Certificate and the DGCL. Stockholders holding shares of Company Capital Stock representing 84.0% of the shares of Company Capital Stock outstanding on the date hereof (and Stockholders and Optionholders holding shares of Company Capital Stock or Stock Options, as the case may be, representing in the aggregate 79.2% of the shares of Company Capital Stock on a fully diluted basis) have entered into a Resale Restriction Agreement.

SECTION 3.21. Brokers. No broker, investment banker, financial advisor or other person, other than Goldman Sachs & Co., the fees and expenses of which will be paid in accordance with Section 6.06, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions

contemplated by this Agreement based upon arrangements made by or on behalf of the Company. The Company has delivered to Parent true and complete copies of all agreements under which any such fees or expenses are payable and all indemnification and other agreements related to the engagement of the persons to who such fees are payable, and the fees and expenses of Goldman Sachs & Co. referred to in the previous sentence do not exceed 1% of the aggregate fair market value of the Merger Consideration as of the date of this Agreement.

SECTION 3.22. State Takeover Statutes. The Board of Directors of the Company has approved the Merger and this Agreement and the other transactions contemplated by this Agreement, and such approval is sufficient to render inapplicable to the Merger and this Agreement and the other transactions contemplated by this Agreement, any state takeover statute or similar law that would otherwise be applicable to the Merger and this Agreement and the other transactions contemplated by this Agreement.

SECTION 3.23. Customer Accounts Receivable. All customer accounts receivable of the Company, whether reflected on the Unaudited Statements or subsequently created, have arisen from bona fide transactions in the ordinary course of business. The Company reasonably believes that all such customer accounts receivable are good and collectible at the aggregate recorded amounts thereof, net of any applicable reserves for doubtful accounts reflected on the Unaudited Statements. The Company has good and marketable title to its accounts receivable, free and clear of all Liens. Since December 31, 1999, there have not been any write-offs as uncollectible of any accounts receivable of the Company, except for write-offs in the ordinary course of business.

SECTION 3.24. Corporate Name. The Company (i) has, to its knowledge, the exclusive right to use its name as the name of a corporation in each jurisdiction in which the Company is incorporated or qualified as a foreign corporation and (ii) has not received any notice of conflict during the past two years with respect to the rights of others regarding the corporate name of the Company. To the knowledge of the Company, no person is presently authorized by the Company to use the name of the Company.

SECTION 3.25. Accounts; Safe Deposit Boxes; Powers of Attorney; Officers and Directors. Section 3.25 of the Company Disclosure Schedule sets forth (i) a complete and accurate list of all bank and savings accounts, certificates of deposit and safe deposit boxes of the

Company and its subsidiaries and those persons authorized to sign thereon, (ii) a complete and accurate list of all powers of attorney granted by the Company and its subsidiaries and those persons authorized to act thereunder and (iii) a complete and accurate list of all officers and directors of the Company and its subsidiaries.

ARTICLE IV

Representations and Warranties of Parent and Sub

Except as set forth on the disclosure schedule (with specific reference to the Section of this Agreement to which the information stated in such disclosure relates; provided, however, that to the extent that it is reasonably apparent that such disclosure also relates to another Section of this Agreement, such other Section shall also be qualified by each such disclosure) delivered by Parent to the Company prior to the execution and delivery of this Agreement (the "Parent Disclosure Schedule"), Parent and Sub represent and warrant to the Company as follows:

SECTION 4.01. Organization. Each of Parent and Sub is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite power and authority to own, lease and otherwise hold and operate its assets and to carry on its business as presently conducted.

SECTION 4.02. Authority; Noncontravention. Each of Parent and Sub has the requisite corporate power and authority to enter into this Agreement, to consummate the transactions contemplated hereby and to comply with the provisions of this Agreement. The execution, delivery and performance of this Agreement, the consummation by Parent and Sub of the transactions contemplated hereby and the compliance by Parent with the provisions of this Agreement have been duly authorized by all necessary corporate action on the part of Parent and Sub, and no other corporate proceedings on the part of Parent or Sub are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by each of Parent and Sub and, when executed and delivered by the Company, will constitute a legal, valid and binding obligation of each of Parent and Sub, enforceable against Parent and Sub in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity). The

Board of Directors of Parent, at a meeting duly called and held at which a quorum was present, duly adopted resolutions approving this Agreement, the Merger and the other transactions contemplated hereby. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated by this Agreement and compliance with the provisions hereof will not, conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result in, termination, cancelation or acceleration of any obligation or to loss of a material benefit under, or result in the creation of any Lien in or upon any of the properties or assets of Parent under, or give rise to any increased, additional, accelerated or guaranteed rights or entitlements under, any provision of (i) the Articles of Amalgamation or by-laws of Parent or the certificate of incorporation or by-laws of Sub, in each case as amended through the date hereof, (ii) any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease or other contract, commitment, agreement, arrangement, understanding, obligation, undertaking, instrument, permit, concession, franchise or license, whether written or oral, to which Parent or Sub is a party or any of their respective properties or assets is subject or (iii) subject to the governmental filings and other matters referred to in the following sentence, any (A) statute, law, ordinance, rule or regulation or (B) order, writ, injunction, decree, judgment or stipulation, in each case applicable to Parent or Sub or their respective properties or assets, other than, in the case of clauses (ii) and (iii), any such conflicts, violations, breaches, defaults, rights, losses or Liens that individually or in the aggregate are not reasonably likely to (x) have a material adverse effect (without giving effect to the exception in clause (B) of the definition thereof in Section 9.03) on Parent, (y) impair in any material respect the ability of Parent or Sub to perform its obligations under or comply with the provisions of this Agreement or (z) prevent or materially impede, interfere with, hinder or delay the consummation of any of the transactions contemplated by this Agreement. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to Parent or Sub in connection with the execution and delivery of this Agreement by Parent or Sub, the consummation by Parent or Sub of the Merger or the other transactions contemplated by this Agreement or compliance by Parent or Sub with the provisions of this Agreement, except for (1) the filing of a premerger notification and report form by Parent under the HSR Act, (2) the filing with the SEC of (i) the Form F-4, (ii) such communications and other

filings as may be required under Rules 135, 165 and 425 under the Securities Act and (iii) such reports under Sections 13(a), 13(d) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") as may be required in connection with this Agreement and the transactions contemplated hereby, and the declaration of the effectiveness of the Form F-4 by the SEC, (3) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, (4) the approval for listing on The Toronto Stock Exchange (the "TSE") of the shares of Parent Common Stock to be issued in connection with the Merger and the shares of Parent Common Stock issuable in connection with the Adjusted Options and the Warrants, (5) the filing with Nasdaq of a Notification Form for Listing of Additional Shares and ancillary documentation with respect to the shares of Parent Common Stock to be issued in connection with the Merger and the shares of Parent Common Stock issuable in connection with the Adjusted Options and the Warrants, (6) filings required by Rule 45-501 of the Ontario Securities Commission and (7) such other consents, approvals, orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made individually or in the aggregate are not reasonably likely to (x) have a material adverse effect (without giving effect to the exception in clause (B) of the definition thereof in Section 9.03) on Parent, (y) impair in any material respect the ability of Parent or Sub to perform its obligations under or comply with the provisions of this Agreement or (z) prevent or materially impede, interfere with, hinder or delay the consummation of any of the transactions contemplated by this Agreement.

SECTION 4.03. Capital Stock of Parent. (a) The authorized capital stock of Parent consists of an unlimited number of shares of Parent Common Stock and an unlimited number of Preference Shares, issuable in series, none of which are issued or outstanding as of the date of this Agreement. As of the close of business on November 15, 2000, 39,091,765 shares of Parent Common Stock were issued and outstanding. All the issued and outstanding shares of Parent Common Stock are (and all shares of Parent Common Stock to be issued in connection with the Merger, including shares to be issued upon the exercise of the Adjusted Options when issued in accordance with this Agreement, shall be) duly authorized, validly issued, fully paid and nonassessable. As of November 15, 2000, options to acquire 4,028,554 shares of Parent Common Stock from Parent pursuant to Parent's stock incentive plans were issued and outstanding and 2,019,817 shares of Parent Common Stock were reserved for issuance in connection with future grants thereunder. Except as set forth above, as of November 15,

2000, there were outstanding (i) no shares of capital stock or other voting securities of Parent, (ii) no securities of Parent or any of its subsidiaries convertible into or exchangeable for shares of capital stock or voting securities of Parent, (iii) no options or other rights to acquire from Parent or any of its subsidiaries, and no obligations of Parent or any of its subsidiaries to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of Parent, and (iv) no equity equivalents, interests in the ownership or earnings of Parent or any of its subsidiaries or other similar rights (including stock appreciation rights) (collectively, "Parent Securities"). As of the date of this Agreement, there are no outstanding obligations of Parent or any of its subsidiaries to repurchase, redeem or otherwise acquire any Parent Securities.

(b) The authorized capital stock of Sub consists of 15,000 shares of common stock, par value $0.01 per share, of which 1,000 shares are issued and outstanding, all of which shares are owned beneficially and of record by Parent.

(c) All of the outstanding shares of capital stock of Parent's subsidiaries are owned by Parent, directly or indirectly, free and clear of any Lien or limitation or restriction (including any restriction on the right to vote or sell the same, except as may be provided as a matter of law), and are duly authorized, validly issued, fully paid and nonassessable. As of the date of this Agreement, there are no securities of Parent or its subsidiaries convertible into or exchangeable for, no options or other rights to acquire from Parent or its subsidiaries, and no other Contract, arrangement or obligation (whether or not contingent) providing for the issuance or sale, directly or indirectly, of, any capital stock or other ownership interests in, or any other securities of, any subsidiary of Parent. As of the date of this Agreement, there are no outstanding contractual obligations of Parent or its subsidiaries to repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other ownership interests in any subsidiary of Parent.

SECTION 4.04. Parent Public Disclosure Documents. Parent has filed with the SEC and the Canadian Securities Administrators all reports, schedules, forms, statements and other documents required to be filed with the SEC since January 27, 2000 (collectively, the "Parent Public Disclosure Documents"). As of their respective dates, the Parent Public Disclosure Documents complied in all material respects with the requirements of the Securities Act or the

Exchange Act and the applicable Canadian securities legislation, as the case may be, and the rules and regulations of the SEC or the Canadian Securities Administrators, as applicable, promulgated thereunder applicable to such Parent Public Disclosure Documents, and none of the Parent Public Disclosure Documents at the time they were filed or as of the date of this Agreement contained or contain any untrue statement of a material fact or omitted or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of Parent included in the Parent Public Disclosure Documents complied, as of their respective dates of filing with the SEC and the Canadian Securities Administrators, in all material respects with applicable accounting requirements and the published rules and regulations of the SEC and the Canadian Securities Administrators with respect thereto, have been prepared in accordance with GAAP as applied in Canada (except, in the case of unaudited statements, as permitted by the applicable rules and regulations of the SEC and the Canadian Securities Administrators), applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly presented in all material respects the consolidated financial position of Parent and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and the absence of notes). As of the date of this Agreement, since the date of the most recent audited financial statements included in the Parent Public Disclosure Documents, there has not been any change, or application or request for any change, by Parent or any of its subsidiaries in accounting principles, methods or policies for financial accounting or Tax purposes. As of the date of this Agreement, Parent has not filed any material change report on a confidential basis with the Canadian Securities Administrators.

SECTION 4.05. Undisclosed Liabilities. Except as set forth in or reflected on the financial statements of Parent included in the Parent Public Disclosure Documents (or specifically described in the notes thereto), none of Parent or its subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent, unasserted or otherwise) that could reasonably be expected to have a material adverse effect on Parent.

SECTION 4.06. Absence of Certain Changes or Events. Except for its obligations under this Agreement or the transactions contemplated hereby or in connection with

any year-end Tax planning matters and except as disclosed in the Parent Public Disclosure Documents filed and publicly available prior to the date of this Agreement (the "Parent Filed Public Disclosure Documents"), since the date of the most recent audited financial statements included in the Parent Filed Public Disclosure Documents, Parent has conducted its business only in the ordinary course consistent with past practice and there has not been any material adverse effect on Parent.

SECTION 4.07. Litigation; Decrees. Except as disclosed in the Parent Filed Public Disclosure Documents, there is no Litigation (other than investigations) pending, or, to the knowledge of Parent, threatened, nor, to the knowledge of Parent, is there any investigation pending or threatened, in each case against or affecting Parent or any of its subsidiaries or any of their respective properties or assets that individually or in the aggregate is reasonably likely to have a material adverse effect on Parent; and neither Parent nor any of its subsidiaries has received any notice that in any manner challenges or seeks to prevent, enjoin, alter or delay the Merger. There is no outstanding order, writ, injunction, decree, judgment or stipulation applicable to Parent or any of its subsidiaries or any of their respective properties, assets or businesses having, or that individually or in the aggregate is reasonably likely to have, a material adverse effect on Parent.

SECTION 4.08. No Vote Required. As permitted by the rules and regulations of the TSE and the National Association of Securities Dealers, Inc., certain holders of shares of Parent Common Stock have executed a letter or other instrument setting forth such holder's acknowledgment and support of the issuance of shares of Parent Common Stock in the Merger as contemplated by this Agreement and the assumption by Parent of the Company Stock Plan pursuant to Section 6.04(c). No vote of, or other action by, the holders of any class or series of the capital stock of Parent is necessary to approve this Agreement, the Merger or the other transactions contemplated hereby.

SECTION 4.09. Taxes. Neither Parent nor any of its subsidiaries has taken or agreed to take any action or knows of any fact, agreement, plan or other circumstance that is likely (i) to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a)(1)(B) of the Code or (ii) reasonably likely to cause the Merger to fail to qualify for an exemption to gain recognition pursuant to Section 367(a) of the Code. Neither Parent nor Sub will have any obligation to withhold any amounts from the Merger Consideration payable to the Stockholders

pursuant to any Canadian Tax law. Parent will not be a "passive foreign investment company" as defined in Section 1297(a) of the Code for the year ending December 31, 2000, and Parent has no current plan or intention to take any action that would cause it to become a "passive foreign investment company" as so defined for the year ending December 31, 2001.

SECTION 4.10. Interim Operations of Sub. Sub was formed solely for the purpose of engaging in the transactions contemplated hereby, has engaged in no other business activities and has conducted its operations only as contemplated hereby.

SECTION 4.11. Information Supplied. None of the information supplied by or on behalf of, or to be supplied by or on behalf of, Parent or Sub specifically for inclusion or incorporation by reference in (i) the Form F-4 will, at the time the Form F-4 is filed or becomes effective under the Securities Act, or at the date the Information Statement is first mailed to the Stockholders or at the time of the Company Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The Form F-4, insofar as it relates to Parent or Sub, will comply as to form in all material respects with the requirements of the Securities Act and the rules and regulations thereunder.

SECTION 4.12. Brokers. No broker, investment banker, financial advisor or other person, other than Credit Suisse First Boston Corporation and Salomon Smith Barney, the fees and expenses of which will be paid by Parent, is entitled to any broker's, finder's, financial advisor's or similar fee or commission, in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Sub.

SECTION 4.13. Assets. Each of Parent and its subsidiaries has good and marketable title to, or good and valid leasehold interests in, all of its material personal properties and assets (including with respect to all real property and interests in real property leased by it), in each case free and clear of any Liens, except for such property and assets as are no longer used or useful in the conduct of its businesses and except for defects in title, easements, restrictive covenants and similar encumbrances and Liens that individually or in the aggregate are not reasonably likely to materially affect the ability of Parent

and its subsidiaries to use such property or assets in their intended manner.

SECTION 4.14. Intellectual Property, Etc.
(a) All material patents, patent applications, trademark applications and registrations, trade names, service marks, copyrights and mask work rights of Parent or any of its subsidiaries have been duly registered and/or filed with or issued by each appropriate Governmental Entity in the jurisdictions indicated in Section 4.14(a) of the Parent Disclosure Schedule, all necessary affidavits of continuing use have been filed, and all necessary maintenance fees have been paid to continue all such rights in effect, except where the failure to take such actions or pay such fees would not, individually or in the aggregate, materially adversely affect any such rights. Each of Parent and each of its subsidiaries owns or is validly licensed or otherwise has the right to use all Intellectual Property used in or necessary for the conduct of its business as presently conducted or as currently proposed by management of Parent to be conducted, in each case free and clear of all Liens, except for Liens that, individually or in the aggregate, are not reasonably likely to materially affect the ability of Parent and its subsidiaries to use such Intellectual Property in its intended manner. The conduct of Parent's business, as presently conducted or as currently proposed by management of Parent to be conducted, does not in any material respect conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancelation or acceleration of any obligation or loss of a material benefit under, or result in the creation of any Lien in or upon any of the properties or assets of Parent or any of its subsidiaries under, any Contract between Parent or any of its subsidiaries and any person relating to Intellectual Property or, to the knowledge of Parent, any Intellectual Property rights of any other person, other than any such conflicts, violations, defaults, rights, losses or Liens that, individually or in the aggregate, are not reasonably likely to have a material adverse effect on Parent.

(b) All software, other than generally available software (such as Lotus Notes, WordPerfect and the like) and generally available system development tools, that is either marketed to customers of Parent or any of its subsidiaries as a program or as part of a product or service or is used

by Parent or any of its subsidiaries to support its business:

(i) either is owned by Parent or any of its subsidiaries or Parent or any of its subsidiaries has the right to use, modify, copy, sell, distribute, sublicense and make Derivative Works from such software, free and clear of any limitations or Liens that would materially impair the intended use of such software; and

(ii) is free from any interest of any former or present employees of, or contractors or consultants to, Parent or any of its subsidiaries that would materially impair the intended use of such software.

(c) To the extent third-party software is marketed to customers of Parent or any of its subsidiaries together with the Intellectual Property of the Company or any of its subsidiaries, all necessary licenses have been obtained.

(d) None of Parent and its subsidiaries is, and to the knowledge of Parent, no other party to any licensing, distributorship or other similar arrangements with Parent or any of its subsidiaries relating to Intellectual Property is, in breach of or default under its obligations under such arrangements in any material respect.

(e) None of Parent or any of its subsidiaries has received any written communications, and no executive officer of Parent has received any oral communication, alleging that Parent or any of its subsidiaries has infringed or violated or, by conducting its businesses as presently conducted or as currently proposed by management of Parent to be conducted by Parent or any of its subsidiaries, would infringe or violate any of the Intellectual Property of any other person.

(f) To the knowledge of Parent, no person is infringing on or otherwise violating any right of Parent or any of its subsidiaries in any material respect with respect to any material Intellectual Property owned by or licensed to Parent or any of its subsidiaries.

SECTION 4.15. Material Contracts. Each material Contract of Parent and each of its subsidiaries is in full force and effect and is a legal, valid and binding agreement of Parent or such subsidiary and, to the knowledge of Parent or such subsidiary, of each other party thereto, enforceable against Parent or any of its subsidiaries, as the case may be, and, to the knowledge of Parent, against the other party

or parties thereto, in each case, in accordance with its terms. Parent and each of its subsidiaries has performed or is performing all material obligations required to be performed by it under each of its Contracts and is not (with or without notice or lapse of time or both) in breach or default in any material respect thereunder. To the knowledge of Parent or such subsidiary, no other party to any of its Contracts is (with or without notice or lapse of time or both), as of the date hereof, in breach or default in any material respect thereunder. Neither Parent nor any of its subsidiaries knows of any circumstances that are reasonably likely to materially adversely affect its ability to perform its obligations under any material Contract.

SECTION 4.16. Compliance with Applicable Laws. Parent and each of its subsidiaries and their respective properties, assets, operations, personnel and businesses have been and are being operated and have been and are in compliance with all applicable statutes, laws, ordinances, rules, regulations orders, writs, injunctions, decrees, judgments and stipulations except for such failures to so comply that individually or in the aggregate are not reasonably likely to have a material adverse effect on Parent. Neither Parent nor any of its subsidiaries has received, since their respective dates of incorporation or organization, a notice or other written communication alleging or relating to a possible violation of any statute, law, ordinance, rule, regulation, order, writ, injunction, decree, judgment or stipulation of any Governmental Entity applicable to its properties, assets, operations, personnel and businesses except for such violations that individually or in the aggregate are not reasonably likely to have a material adverse effect on Parent.

ARTICLE V

Covenants

SECTION 5.01. Covenants of the Company. (a) Interim Period Operations. During the period from the date of this Agreement to the Effective Time, except as consented to in writing by Parent or as specifically contemplated by this Agreement, the Company shall, and shall cause its subsidiaries to, carry on their respective businesses in the ordinary course consistent with past practice (including in respect of research and development activities and hiring of new employees) and use their reasonable best efforts to comply with all applicable laws and, to the extent consistent therewith, use their reasonable best efforts to preserve their assets and technology

and preserve their relationships with customers, suppliers, licensors, licensees, distributors and others having business dealings with them. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Effective Time, except as consented to in writing by Parent or as specifically contemplated by this Agreement or Section 5.01(a) of the Company Disclosure Schedule, the Company shall not, and shall not permit any of its subsidiaries to:

(i) (x) declare, set aside or pay any dividends on, or make other distributions (whether in cash, stock or property) in respect of, any of its capital stock (except for dividends by a direct or indirect wholly owned subsidiary of the Company to its parent), other than dividends (paid solely in capital stock of the Company) pursuant to the respective terms in effect as of the date of this Agreement of the Company Preferred Stock issued and outstanding on the date of this Agreement, (y) split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or any of its other securities or (z) purchase, redeem or otherwise acquire any shares of capital stock or any other securities of the Company or any of its subsidiaries, or any options, warrants, calls or rights to acquire any such shares or other securities;

(ii) issue, deliver or sell, or authorize or propose the issuance, delivery or sale of, any shares of its capital stock, or any other equity or voting interests or any other securities of any class or any securities convertible into, or exchangeable for, or any options, warrants, calls or rights to acquire, any such shares, equity or voting interests or other securities or any stock appreciation rights or other rights that are linked to the value of Company Capital Stock, other than (x) the conversion of shares of Company Preferred Stock in accordance with their terms as of the date of such conversion, (y) the issuance of Company Common Stock upon the exercise of Stock Options or Warrants in accordance with their respective terms as of the date of this Agreement or (z) the granting of Permitted Interim Period Stock Options;

(iii) amend or propose to amend its certificate of incorporation or by-laws or similar organizational documents;

(iv) directly or indirectly acquire or agree to acquire (x) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, joint venture, association or other entity or division thereof or (y) any assets that, in the aggregate, have a purchase price in excess of $250,000;

(v) directly or indirectly sell, lease, license, mortgage, sell and leaseback or otherwise encumber or subject to any Lien or otherwise dispose of any of its properties or assets or any interest therein (including in the case of the Company, any shares of capital stock of any of its subsidiaries), except (A) in the ordinary course of business consistent with past practice or (B) as contemplated by Section 5.01(g);

(vi) repurchase, pay, prepay or incur any Indebtedness or Guarantee any Indebtedness of another person, issue or sell any options, warrants, calls or other rights to acquire any Indebtedness of the Company or any of its subsidiaries, enter into any "keep well" or other agreement to maintain any financial statement condition of another person or enter into any arrangement having the economic effect of any of the foregoing, or make any loans, advances or capital contributions to, or investments in, any other person;

(vii) incur or commit to incur any capital expenditures, or any obligations or liabilities in connection therewith, which, in the aggregate, are in excess of $250,000;

(viii) enter into any Contract to the extent consummation of the transactions contemplated hereby or compliance by the Company with the provisions of this Agreement will violate or conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result in, termination, cancelation or acceleration of any obligation or to loss of a material benefit under, or result in the creation of any Lien in or upon any of the properties of the Company or Parent or any of their respective subsidiaries under, or give rise to any increased, additional, accelerated or guaranteed rights or entitlements under, any provision of such Contract;

(ix) (A) pay, discharge, settle or satisfy any claims, liabilities or obligations (whether absolute, accrued, asserted or unasserted, contingent or

otherwise), other than the payment, discharge or satisfaction in the ordinary course of business consistent with past practice or in accordance with their terms as of the date of this Agreement, of claims, liabilities or obligations reflected or reserved against on the balance sheet of the Company as contained in the Financial Statements (for amounts not in excess of such reserves), or incurred since the date of such balance sheet in the ordinary course of business consistent with past practice or pursuant to the transactions contemplated by this Agreement, (B) waive, release, grant or transfer any right of material value outside the ordinary course of business consistent with past practice or (C) waive any material benefits of, or agree to modify in any adverse respect, or fail to enforce, any confidentiality, standstill or similar agreement to which the Company or any of its subsidiaries is a party;

(x) modify, amend or terminate any material Contract to which the Company or such subsidiary is a party or waive, release or assign any material rights or claims thereunder;

(xi) enter into any material Contract, including any Contract relating to any material Intellectual Property, other than in the ordinary course of business consistent with past practice;

(xii) except as otherwise specifically contemplated by this Agreement or as required to comply with applicable law or agreements, plans or arrangements existing on the date hereof, (A) terminate, adopt, enter into or amend any collective bargaining agreement or Benefit Plan, (B) increase in any manner the compensation or fringe benefits of, or pay any bonus to, any director, officer, employee or consultant (other than compensation increases for non-executive employees not to exceed for any non-executive employee 10% of such employee's current base salary, provided that the purpose of such increase is to bring such employee's compensation in line with market compensation rates for comparable employees in similar companies, and provided further that all such compensation increases are immaterial to the Company and that the Company consults with Parent a reasonable amount of time prior to awarding any such compensation increase), (C) pay any material benefit not provided for under any Benefit Plan, (D) increase in any manner the severance or termination pay of any director, officer or employee, (E) enter into (I) any employment,

severance, termination, deferred compensation, indemnification or consulting agreement (other than in the ordinary course of business), with any current or former director, officer, employee or consultant or (II) any agreement with any current or former director, officer, employee or consultant the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving the Company or any of its subsidiaries of the nature contemplated by this Agreement, (F) grant any awards under any Benefit Plan (including the grant of Stock Options, stock appreciation rights, stock based or stock related awards, performance units or restricted stock or the removal of existing restrictions in any Benefit Plans or agreements or awards made thereunder), other than grants of options pursuant to the Company Stock Plans in the ordinary course of business consistent with past practice and grants of options to acquire (I) up to 500,000 shares of Company Common Stock, which options shall (a) be granted (1) to employees newly hired or promoted between the date of this Agreement and the Closing Date and (2) in accordance with Parent's customary policies and practices in respect of employee stock options as set forth in Section 5.01(a) of the Parent Disclosure Schedule, (b) have an exercise price per share equal to the product obtained by multiplying the Closing Price on the most recently ended trading day prior to the grant date by the Common Exchange Ratio (assuming for purposes of determining the Common Exchange Ratio that the end of such trading day is the Effective Time) and (c) be governed by option agreements which shall be in a form agreed to by Parent and the Company (the "Permitted New Hire/Promotion Options") and (II) up to a number of shares of Company Common Stock equal to the quotient (rounded down to the nearest whole number) of (x) 1,500,000 divided by (y) the Common Exchange Ratio, which options shall (a) be contingent upon the consummation of the Merger, (b) be granted immediately prior to the Effective Time as incentive compensation to certain key employees of the Company to be mutually identified by Parent and the Company, (c) have an exercise price per share equal to the product obtained by multiplying the Closing Price on the most recently ended trading day prior to the Effective Time by the Common Exchange Ratio (assuming for purposes of determining the Common Exchange Ratio that the end of such trading day is the Effective Time), (d) have a term of ten years and (e) vest ratably in four equal annual installments on each of the second, third, fourth and fifth anniversaries of the Closing Date and

will have other terms and conditions that are generally applicable under Parent's stock incentive plans in effect at the time of grant (the "Permitted Incentive Options" and, together with the Permitted New Hire/Promotion Options, the "Permitted Interim Period Stock Options"); provided, however, that (a) the Company shall take all actions necessary to amend the Company Stock Plan so that the Permitted New Hire/Promotion Options and the Permitted Incentive Options have terms and conditions that are the same in all material respects as would have applied had the Permitted New Hire/Promotion Options and the Permitted Incentive Options been granted under Parent's stock incentive plans and (b) all of the Permitted New Hire/Promotion Options and all of the Permitted Incentive Options shall expressly provide (i) for conversion thereof into an option to acquire Parent Common Stock in accordance with the terms of this Agreement and (ii) that the existence of this Agreement, the consummation of the transactions contemplated by this Agreement and compliance by the parties hereto with the provisions of this Agreement will not give rise to a right of, or result in, acceleration of such options or give rise to, or result in, any additional rights for the holders of such options, (G) take any action to fund or in any other way secure the payment of compensation or benefits under any employee plan, contract, agreement or arrangement or Benefit Plan or (H) take any action to accelerate the vesting or payment of any compensation or benefit under any Benefit Plan;

(xiii) revalue any of its material assets or, except as required by GAAP, make any change in accounting methods, principles or practices;

(xiv) commence any Litigation (other than Litigation relative to the collection of accounts receivable or as a result of Litigation commenced against the Company or any of its subsidiaries); or

(xv) authorize any of, or commit, resolve or agree to take any of, the actions prohibited by clauses (i) through (xiv) above.

(b) Certain Tax Matters. (i) Tax Returns. (A) During the period from the date of this Agreement to the Effective Time, each of the Company, its subsidiaries and Company Consolidated Groups shall timely file or cause to be timely filed all Tax Returns ("Post-Signing Returns") required to be filed by it (after taking into account any

applicable extensions) (at the Company's own cost and expense and in a manner that is consistent with past practice and that is not reasonably likely to defer income to a taxable period that ends after the Closing Date).

(B) The Company and each of its subsidiaries shall timely pay all Taxes due and payable in respect of such Post-Signing Returns that are filed pursuant to Section 5.01(b)(i)(A) of this Agreement.

(ii) Company Covenants. (A) The Company shall accrue a reserve in its books and records and financial statements in accordance with GAAP for all Taxes payable by the Company and each of its subsidiaries for which no Post-Signing Return is due prior to the Effective Time.

(B) Prior to the Effective Time, the Company and each of its subsidiaries shall promptly notify Parent of any suit, claim, action, investigation, proceeding or audit pending against or with respect to the Company or any of its subsidiaries in respect of any Tax. None of the Company or any of its subsidiaries shall settle or compromise any such suit, claim, action, investigation, proceeding or audit without Parent's prior written consent.

(C) Prior to the Effective Time, none of the Company or any of its subsidiaries shall make or change any material Tax election, amend any Tax Return or take any other action (or fail to take any other action) in respect of Taxes, in each case, if such action (or failure to take action) could reasonably be expected to have the effect of increasing the Tax liability of Parent or any of its affiliates (including, after the Closing Date, the Company and its subsidiaries) with respect to a taxable period that ends after the Closing Date.

(iii) Additional Tax Matters. (A) Any and all existing Tax sharing agreements or arrangements (other than rights and obligations under Sections 8.3 and 8.4 of the Asset Transfer Agreement, dated March 31, 1999, between the Company and Compaq Computer Corporation (the "Asset Transfer Agreement")) between the Company and/or any subsidiary, on the one hand, and any other party, on the other hand, shall be terminated as of the Closing Date. After such date, none of the Company or any of its subsidiaries shall have any obligations thereunder.

(B) All stock transfer, real property transfer, documentary, sales, use, registration, value-added and other similar Taxes (including interest, penalties and additions thereto) incurred in connection with the transactions contemplated by the Agreement shall be borne by the Company, and the Company shall indemnify Parent or any of its affiliates for any such Taxes incurred as a result of the Company's failure timely to pay such Taxes.

(C) The Company shall deliver to Parent at or prior to the Closing a certificate, in form and substance reasonably satisfactory to Parent, certifying that the transactions contemplated by this Agreement are not subject to the Foreign Investment in Real Property Tax Act.

(c) No Solicitation. The Company shall not, and shall not permit any of its subsidiaries to, nor shall it authorize or permit any of the directors, officers or employees of the Company or any of its subsidiaries or any investment banker, financial advisor, attorney, accountant or other agent or representative retained by it or any of its subsidiaries to, directly or indirectly through another person, (i) take any action to solicit, initiate or encourage the making or submission of any Takeover Proposal (as defined below) or (ii) participate in any way in discussions or negotiations with, or furnish any information to, any person in connection with, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Takeover Proposal. The Company shall promptly notify Parent, orally and in writing, of any request for information relating to the Company or the receipt of any Takeover Proposal, the principal terms and conditions of such request or Takeover Proposal and the identity of the person making such request or Takeover Proposal. The Company shall keep Parent reasonably informed of the status and details (including any amendments or proposed amendments) of any such request or Takeover Proposal. For purposes of this Agreement, "Takeover Proposal" shall mean any inquiry, proposal or offer from any person relating to any direct or indirect acquisition or purchase of a business (a "Material Business") that constitutes 15% or more of the net revenues, net income or the assets (including equity securities) of the Company and its subsidiaries, taken as a whole, or 15% or more of any class of voting securities of the Company or any subsidiary of the Company that owns, operates or controls a Material Business, any tender offer or exchange offer that if consummated would result in any person beneficially owning 15% or more of any class of

voting securities of the Company or any such subsidiary, or any merger, amalgamation, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company or any such subsidiary, other than the transactions contemplated by this Agreement.

(d) Escrow Agreement. The Company shall use its best efforts to cause each Stockholder and each Optionholder to consent in writing prior to the Closing Date to be deemed to be a party to, and to bound by the terms of, the Escrow Agreement.

(e) Financial Statements. The Company shall use its best efforts to cause to be prepared all financial statement information relating to the Company (including its predecessors) as is required to be included in the Form F-4 pursuant to Article 3-05 of Regulation S-X promulgated under the Securities Act. In addition, the Company shall use its best efforts to obtain all financial information relating to the Company and its business for the first quarter of 1999 necessary in order to enable the Company and Parent to create auditable financial statements.

(f) Appraisal Rights. The Company shall use its reasonable best efforts to ensure that the condition set forth in Section 7.02(e) is satisfied. If (i) a Takeover Proposal shall have been announced or otherwise publicly disclosed (or disclosed to the Stockholders generally) and (ii) the Merger is not consummated because of a failure of the condition set forth in Section 7.02(e) to be satisfied, then the Company shall pay Parent an amount equal to $12,000,000 in immediately available funds promptly upon the Company's receipt of a written demand therefor from Parent.

(g) Sale of Accrue Software Shares. The Company shall sell the 1,432,000 shares of common stock, par value $0.001 per share, of Accrue Software Inc. that the Company holds.

(h) Obtaining Certain Waivers. The Company shall obtain (i) a waiver of any default that would otherwise occur as a result of the consummation of the Merger under the Loan and Security Agreement, dated as of February 10, 2000, between the Company and Imperial Bank, (ii) a waiver of any right of termination that would otherwise arise as a result of the consummation of the Merger under each of (a) the License Agreement, dated as of June 27, 2000, between the Company and Rabobank Nederland, (b) the OEM Licensing Agreement, dated as of May 7, 2000, between the Company and Nokia Corporation and (c) the Software License and

Maintenance Agreement, dated as of June 30, 2000, between the Company and Credit Suisse Aktiengesellschaft and (iii) a waiver or other agreement executed by Compaq Computer Corporation to the effect that any modifications to the terms of the Patent Cross-Licence Agreement, dated as of March 31, 1999, between the Company and Compaq Computer Corporation (the "Compaq License Agreement") that would otherwise be effected in accordance with the terms of the Compaq License Agreement as a result of the consummation of the Merger shall not be so effected and that the Compaq License Agreement shall continue in full force and effect after consummation of the Merger in accordance with the terms thereof in effect immediately prior to the consummation of the Merger as if the Merger had not been consummated.

(i) Termination of Certain Agreements. The Company shall take all actions necessary to terminate or cause to be terminated, if such agreements do not terminate by their respective terms contemporaneously with the consummation of the Merger, each of (i) the Amended and Restated Investors' Rights Agreement, dated as of June 1, 2000, by and among the Company, certain holders of Company Preferred Stock and the Founders (as defined therein), (ii) the Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of June 1, 2000, by and among the Company, certain holders of Company Common Stock and certain holders of Company Preferred Stock, (iii) the Amended and Restated Put Right Agreement, dated as of June 1, 2000, by and among the Company and certain holders of Company Preferred Stock and (iv) the Amended and Restated Voting Agreement, dated as of June 1, 2000, by and among the Company, certain holders of Company Common Stock, certain holders of Company Preferred Stock and Chase Capital Investments LLC (any such agreement that does not by its terms terminate contemporaneously with the consummation of the Merger being referred to as a "Company Investor Agreement").

(j) Recordation of Assignment of Patents. The Company shall use its reasonable best efforts to cause Compaq Computer Corporation ("Compaq") to execute recordable assignments memorializing Compaq's transfer to the Company of its entire right, title and interest in and to the Transferred Patents (as such term is defined in the Asset Transfer Agreement) pursuant to the Asset Transfer Agreement and the Company shall record all such assignments in the United States Patent and Trademark Office and in the appropriate foreign patent offices or administrative agencies in each country in which any Transferred Patent is issued or pending.

(k) Preferred Holder Letter Agreement. The Company has entered into a letter agreement dated as of November 27, 2000 with certain holders of Company Preferred Stock who collectively hold more than 66 2/3% of all outstanding shares of Company Preferred Stock (the "Preferred Holder Letter Agreement"). The Company shall take all reasonable actions necessary to enforce the provisions of the Preferred Holder Letter Agreement against each holder of Company Preferred Stock that is a party thereto.

(l) Resale Restriction Agreements. The Company shall use it best efforts to cause each Stockholder and each holder of Stock Options or Warrants to execute and deliver a Resale Restriction Agreement.

SECTION 5.02. Covenants of Parent. (a) During the period from the date of this Agreement to the Effective Time, Parent shall not take any action outside of the ordinary course of business without consulting the chief executive officer of the Company a reasonable amount of time prior to taking any such action, and, in addition, except as consented to in writing by the Company or as specifically contemplated by this Agreement, Parent shall not and shall not permit any of its subsidiaries to:

(i) directly or indirectly acquire or agree to acquire, by merging, amalgamating or consolidating with, or by purchasing all or a substantial portion of the assets of, or by any other manner, any assets constituting a business or any corporation, partnership, joint venture or association or other entity or division thereof, or any direct or indirect interest in any of the foregoing, in each case that is material to Parent and its subsidiaries, taken as a whole;

(ii) (A) directly or indirectly sell, lease, license, sell and leaseback, mortgage or otherwise encumber or subject to any Lien or otherwise dispose of any properties or assets or any interest therein, in each case that is material to Parent and its subsidiaries, taken as a whole or (B) agree to any issuance of greater than 10% of the outstanding Parent Common Stock; or

(iii) authorize any of, or commit, resolve or agree to take any of, the foregoing actions.

(b) During the period from the date of this Agreement to the Effective Time, except as consented to in

writing by the Company or as specifically contemplated by this Agreement, Parent shall not:

(i) (x) declare, set aside or pay any dividends on, or make other distributions (whether in cash, stock or property) in respect of, any of its capital stock, (y) split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or any of its other securities or (z) purchase, redeem or otherwise acquire any shares of capital stock or any other securities of Parent, or any options, warrants, calls or rights to acquire any such shares or other securities, except pursuant to Parent's contractual rights in connection with its acquisition of Ezlogin.com, Inc. and Spyonit.com, Inc.;

(ii) issue, deliver or sell, or authorize or propose the issuance, delivery or sale of, any shares of its capital stock, or any other equity or voting interests or any other securities of any class or any securities convertible into, or exchangeable for, or any options, warrants, calls or rights to acquire, any such shares, equity or voting interests or other securities or any stock appreciation rights or other rights that are linked to the value of capital stock of Parent, other than (x) the granting of options to purchase shares of Parent Common Stock pursuant to Parent's stock incentive plans in effect as of the date of this Agreement and the issuance of shares of Parent Common Stock upon the exercise of such options or (y) the issuance to Yrless Internet Corporation of shares of Parent Common Stock in satisfaction of Parent's deferred share issuance obligations relating to its acquisition of Yrless Internet Corporation;

(iii) amend or propose to amend its Articles of Amalgamation or by-laws; or

(iv) authorize any of, or commit, resolve or agree to take any of, the foregoing actions.

SECTION 5.03. Other Actions. (a) The Company shall not, nor shall it permit any of its subsidiaries to, take any action that would, or that could reasonably be expected to, result in (i) any of the representations and warranties of the Company set forth in this Agreement that are qualified as to materiality or material adverse effect becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any

material respect or (iii) any of the conditions set forth in Article VII not being satisfied.

(b) Parent shall not, nor shall it permit any of its subsidiaries to, take any action that would, or that could reasonably be expected to, result in (i) any of the representations and warranties of Parent set forth in this Agreement that are qualified as to materiality or material adverse effect becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any material respect or (iii) any of the conditions set forth in Article VII not being satisfied.

SECTION 5.04. Advice of Changes; Filings. The Company, Parent and each of their respective subsidiaries shall (i) confer on a regular and frequent basis with each other to report on operational matters and other matters requested by Parent or the Company and (ii) promptly advise the other orally and in writing of any change or event that is reasonably likely to have a material adverse effect on the Company or Parent, as the case may be. The Company and Parent shall promptly provide the other copies of all filings made by such party with any Governmental Entity in connection with this Agreement and the transactions contemplated hereby, other than the portions of such filings that include confidential information not directly related to the transactions contemplated by this Agreement.

ARTICLE VI

Additional Agreements

SECTION 6.01. Preparation of the Form F-4; Company Shareholders' Meeting. (a) As soon as practicable following the date of this Agreement, Parent and the Company shall prepare and file with the SEC the Form F-4. Each of Parent and the Company shall use its reasonable best efforts to have the Form F-4 declared effective under the Securities Act as promptly as practicable after such filing. Company shall use its reasonable best efforts to cause the Information Statement to be mailed to the Stockholders as promptly as practicable after the Form F-4 is declared effective under the Securities Act. Each party hereto shall also take any action (other than qualifying to do business in any jurisdiction in which such party is not already so qualified) required to be taken under any applicable state or provincial securities laws in connection with the issuance of Parent Common Stock in the Merger and each party shall furnish all information concerning itself and its shareholders as may be reasonably requested in connection

with any such action. No filing of, or amendment or supplement to, the Form F-4 or the Information Statement will be made without the approval of Parent and the Company. Parent shall advise the Company, promptly after it receives notice thereof, of the time when the Form F-4 has become effective or any supplement thereto or amendment thereof has been filed, the issuance of any stop order, the suspension of the qualification of the Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Form F-4 or comments thereon and responses thereto or requests by the SEC for additional information. If at any time prior to the Effective Time any information relating to Parent or the Company, or any of their respective affiliates, directors or officers, is discovered that should be set forth in an amendment or supplement to the Form F-4 or the Information Statement, so that such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by applicable law, disseminated to the shareholders of Parent and the Company.

(b) The Company shall, as soon as practicable following the effectiveness of the Form F-4, either solicit written consents from or duly call, give notice of, convene and hold a meeting of, the Stockholders (the "Company Stockholders' Meeting"), for the purpose of obtaining the Company Stockholder Approval. The Board of Directors of the Company will recommend that the Stockholders vote in favor of the adoption of this Agreement and the other matters comprising the Company Stockholder Approval at the Company Stockholders' Meeting. Without limiting the generality of the foregoing, the Company agrees that its obligations pursuant to this Section 6.01(b) shall not be affected by the commencement, public proposal, public disclosure or communication to the Company of any Takeover Proposal.

SECTION 6.02. Access to Information. Upon reasonable notice, the Company shall, and shall cause each of its subsidiaries to, afford to the officers, employees, accountants, counsel and other representatives of Parent, reasonable access, during normal business hours during the period prior to the Effective Time, to all its employees, properties, books, Contracts and records and, during such period, the Company shall, and shall cause each of its

subsidiaries, accountants, counsel and other advisors to, furnish promptly to Parent all information concerning its business, properties and personnel as Parent may reasonably request. Parent will treat any such information that is nonpublic as "Information" in accordance with the terms of the Confidentiality Agreement dated as of August 7, 2000 (the "Confidentiality Agreement"), between Parent and the Company and in the event of termination of this Agreement for any reason Parent shall promptly upon request return or destroy all nonpublic documents obtained from the Company, and any copies made of such documents, to the Company. No investigation pursuant to this Section 6.02 or information provided or received by any party hereto pursuant to this Agreement will affect any of the representations or warranties of the parties hereto contained in this Agreement or the conditions hereunder to the obligations of the parties hereto.

SECTION 6.03. Legal Conditions to Merger. Each of the Company, Parent and Sub will use its reasonable best efforts to take, and will cause each of its subsidiaries to use its reasonable best efforts to take, all actions and to do, or cause to be done, all things necessary, proper and advisable under applicable laws and regulations promptly to consummate and make effective the transactions contemplated by this Agreement (including cooperating fully with the other parties hereto and furnishing all information to each other in connection with any requirements imposed upon any party in connection with the Merger). Each of the Company, Parent and Sub will, and will cause each of its subsidiaries to, take all reasonable actions necessary to obtain (and will cooperate with each other in obtaining) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity or other public or private third party, required to be obtained or made by Parent or the Company in connection with the Merger or the taking of any action contemplated thereby or by this Agreement, except that no party need waive any substantial rights or agree to any substantial limitation on its operations or to dispose of, or enter into any licensing or similar arrangement with respect to, any material assets.

SECTION 6.04. Stock Options, Warrants and Restricted Stock. (a) As soon as practicable following the date of this Agreement, the Board of Directors of the Company (or, if appropriate, any committee administering the Company Stock Plan) shall adopt such resolutions or take

such other actions (if any) as may be required to effect the following:

(i) adjust the terms of all outstanding Stock Options, whether vested or unvested, as necessary to provide that, at the Effective Time, each such Stock Option outstanding immediately prior to the Effective Time shall be assumed by Parent and converted into an option to acquire, on the same terms and conditions as were applicable under such Stock Option, the number of shares of Parent Common Stock (rounded down to the nearest whole share), determined by multiplying the number of shares of Company Common Stock subject to such Stock Option by the Common Exchange Ratio, at an exercise price per share of Parent Common Stock equal to (1) the per share exercise price for the shares of Company Common Stock otherwise purchasable pursuant to such Stock Option divided by (2) the Common Exchange Ratio, provided that such exercise price shall be rounded up to the nearest whole cent (each, as so adjusted, an "Adjusted Stock Option");

(ii) adjust the terms of all outstanding Permitted Interim Period Stock Options, whether vested or unvested, as necessary to provide that, at the Effective Time, each such Permitted Interim Period Stock Option outstanding immediately prior to the Effective Time shall be assumed by Parent and converted into an option to acquire, on the same terms and conditions as were applicable under such Permitted Interim Period Stock Option, the number of shares of Parent Common Stock (rounded down to the nearest whole share), determined by multiplying the number of shares of Company Common Stock subject to such Permitted Interim Period Stock Option by the Common Exchange Ratio, at an exercise price per share of Parent Common Stock equal to (1) the per share exercise price for the shares of Company Common Stock otherwise purchasable pursuant to such Permitted Interim Period Stock Option divided by (2) the Common Exchange Ratio, provided that such exercise price shall be rounded up to the nearest whole cent (each, as so adjusted, an "Assumed Permitted Interim Period Stock Option" and, together with the Adjusted Stock Options, the "Adjusted Options");

(iii) make such changes to the Adjusted Options as are required by the rules of the TSE or applicable Canadian law; and

(iv) make such other changes to the Company Stock Plans as Parent and the Company may agree are appropriate to give effect to the Merger.

(b) The adjustments provided herein with respect to any Stock Options that are "incentive stock options" as defined in Section 422 of the Code shall be and are intended to be effected in a manner which is consistent with Section 424(a) of the Code.

(c) At the Effective Time, by virtue of the Merger and without the need of any further corporate action, Parent shall assume the Company Stock Plan, with the result that all obligations of the Company under the Company Stock Plan, including with respect to Stock Options and Permitted Interim Period Stock Options outstanding at the Effective Time, shall be obligations of Parent following the Effective Time.

(d) Within 30 days after the Closing Date, Parent shall prepare and file with the SEC a registration statement on Form S-8 (or another appropriate form) registering a number of shares of Parent Common Stock equal to the number of shares subject to the Adjusted Options. Such registration statement shall be kept effective (and the current status of the prospectus or prospectuses required thereby shall be maintained) as long as any Adjusted Options may remain outstanding.

(e) As soon as practicable and in any event within 30 days after the Effective Time, Parent shall deliver to the holders of Stock Options and Permitted Interim Period Stock Options appropriate notices setting forth such holders' rights pursuant to the Company Stock Plan and the agreements evidencing the grants of such Stock Options and Permitted Interim Period Stock Options and that such Stock Options and Permitted Interim Period Stock Options and agreements have been assumed by Parent and shall continue in effect on the same terms and conditions (subject to the adjustments required by this Section 6.04 after giving effect to the Merger).

(f) A holder of an Adjusted Option may exercise such Adjusted Option in whole or in part in accordance with its terms by delivering a properly executed notice (in the form to be specified by Parent) of exercise to Parent, together with the consideration therefor and the Federal withholding tax information, if any, required in accordance with the related Company Stock Plan.

(g) Except as otherwise contemplated by this Section 6.04 and except to the extent required under the respective terms of the Stock Option, the Permitted Interim Period Stock Options or Company Stock Plan, all restrictions or limitations on transfer with respect to Stock Options and Permitted Interim Period Stock Options awarded under the Company Stock Plans or any other plan, program or arrangement of the Company, to the extent that such restrictions or limitations have not already lapsed, shall remain in full force and effect with respect to such Stock Options and Permitted Interim Period Stock Options after giving effect to the Merger and the assumption by Parent as set forth above.

(h) As soon as practicable following the date of this Agreement, the Company shall use its best efforts to cause all the holders of Warrants to exercise all outstanding Warrants into Company Capital Stock.

(i) If, notwithstanding the Company's compliance with Section 6.04(h), any Warrants remain outstanding at the Effective Time, then, at the Effective Time, by virtue of the Merger and without the need for any further corporate action, each Warrant outstanding immediately prior to the Effective Time shall be automatically converted into a warrant to acquire, on the same terms and conditions as were applicable under such Warrant, a number of shares of Parent Common Stock (rounded down to the nearest whole share) equal to the number of shares of Parent Common Stock that the holder of such Warrant would have been entitled to receive pursuant to Section 2.01(c) if such Warrant had been exercised immediately prior to the Effective Time, at a price per share of Parent Common Stock equal to (A) the per share exercise price for the shares of Company Capital Stock otherwise purchasable pursuant to such Warrant divided by (B) the Common Exchange Ratio; provided, however, that such exercise price shall be rounded up to the nearest whole cent; and provided further, however, that no Warrants to purchase shares of Company Common Stock shall be assumed by Parent and so converted.

(j) All shares of Restricted Stock shall, after conversion into shares of Parent Common Stock in accordance with Section 2.01(c), remain subject to the same vesting requirements and transfer restrictions as were applicable to such shares of Restricted Stock immediately prior to the Effective Time, and Parent shall assume and become entitled to exercise, at the Effective Time, the Company's right of repurchase with respect to all shares of Restricted Stock on the same terms and conditions as were applicable to such

right of repurchase in favor of the Company immediately prior to the Effective Time.

(k) This Section 6.04 shall survive the consummation of the Merger, is intended to benefit the holders of the Stock Options and Warrants and shall be enforceable by such persons.

SECTION 6.05. Fees and Expenses. Except as provided in Section 5.01(b), all fees and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated. Notwithstanding the foregoing, the Company and Parent agree that they shall each bear and pay one-half of (i) the expenses incurred by the parties hereto in connection with the filing, printing and mailing of the Form F-4 and the Information Statement contained therein and (ii) filing fees incurred by the parties hereto in connection with the filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby.

SECTION 6.06. Additional Agreements. In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full title to all properties, assets, rights, approvals, immunities and franchises of either the Company or Sub, the proper officers and directors of each party to this Agreement shall take all such necessary action.

SECTION 6.07. Indemnification, Exculpation and Insurance. (a) Except as prohibited by applicable law, from and after the Effective Time, Parent shall cause the Surviving Corporation to (and, in the event of the liquidation, dissolution or winding up of the Surviving Corporation, Parent shall) fulfill and honor in all respects any indemnification obligations of the Company owed to each person who is or was a director or officer of the Company at or prior to the Effective Time (the "Indemnified Parties") under (a) the Company Certificate and By-laws of the Company as in effect on the date hereof or (b) any indemnification agreements between the Company and any Indemnified Party. Except as prohibited by applicable law, the Certificate of Incorporation and By-laws of the Surviving Corporation will at all times during a period of not fewer than six years following the Effective Time, contain provisions with respect to exculpation and indemnification that are at least as favorable to the Indemnified Parties as those contained in in the Company Certificate and By-laws of the Company as in

effect on the date hereof. In addition, from and after the Effective Time, directors and officers of the Company or any of its subsidiaries who become directors or officers of Parent will be entitled to the indemnity rights and protections afforded to directors and officers of Parent.

(b) For six years after the Effective Time, Parent shall maintain in effect the directors' and officers' liability insurance policies currently maintained by the Company (to the extent such coverage may be obtained) covering acts or omissions occurring prior to the Effective Time with respect to those persons who are currently covered by the Company's directors' and officers' liability insurance policies on terms with respect to scope and amount of coverage no less favorable than those of the relevant policy in effect on the date of this Agreement; provided, however, that Parent may substitute therefor policies of a reputable insurance company the material terms of which, including coverage and amount, are no less favorable in any material respect to such directors and officers than the insurance coverage otherwise required under this Section 6.07(b); provided further, however, that in no event shall Parent be required to pay aggregate premiums for insurance under this Section 6.07(b) in excess of 150% of the amount of the aggregate premiums paid by the Company for coverage in 1999 for such purpose (which 1999 premiums are hereby represented and warranted by the Company to be $15,500), it being understood that if such coverage cannot be obtained for such 150% amount or less, then Parent shall nevertheless be obligated to provide such coverage in respect of such party hereto as may be obtained for such 150% amount relating to such party hereto.

(c) This Section 6.07 shall survive the consummation of the Merger, is intended to benefit each Indemnified Party, shall be binding upon the successors and assigns of Parent and the Surviving Corporation, and shall be enforceable by the Indemnified Parties.

SECTION 6.08. Litigation. The Company and Parent shall give each other prompt notice of and the opportunity to participate in the defense of, any Litigation against the Company or Parent and/or their respective directors relating to the transactions contemplated by this Agreement. Neither party shall settle or agree to settle any such litigation without the prior written consent of the other party, not to be unreasonably withheld or delayed.

SECTION 6.09. Tax Treatment. Each of Parent, Sub and the Company shall use its reasonable best efforts to cause the Merger to qualify as a reorganization under the

provisions of Section 368(a)(1)(B) of the Code and to qualify for an exemption to gain recognition pursuant to Section 367(a) of the Code, and the Company shall use its reasonable best efforts to obtain the opinion of counsel referred to in Section 7.03(c), including the execution of the letters of representation referred to therein.

SECTION 6.10. Affiliates. Prior to the Closing Date, the Company shall deliver to Parent a letter identifying all persons who may be deemed, in the Company's reasonable judgment, at the time this Agreement is submitted for approval and adoption to the Stockholders, "affiliates" of the Company for purposes of Rule 145 under the Securities Act. The Company shall use its reasonable efforts to cause each such person to deliver to Parent as promptly as practicable after the date of this Agreement a written agreement substantially in the form attached as Exhibit C hereto.

SECTION 6.11. Employee Benefits. (a) During the six-month period following the Effective Time (the "Transition Period"), Parent shall cause the Surviving Corporation to either maintain the benefit programs provided by the Company and its subsidiaries in effect immediately prior to the Effective Time or replace all or any such programs with programs maintained for similarly situated employees of Parent, provided that the aggregate level of benefits provided during the Transition Period shall be substantially similar to the aggregate level of benefits provided by the Company and its subsidiaries before the Effective Time. To the extent that any plan of Parent or any of its affiliates (a "Parent Plan") becomes applicable to any employee or former employee of the Company or its subsidiaries, Parent shall grant, or cause to be granted, to such employees or former employees credit for their service with the Company and its subsidiaries for the purpose of determining eligibility to participate and nonforfeitability of benefits under such Parent Plan and for purposes of benefit accrual under vacation and severance pay plans (but only to the extent such service was credited under similar plans of the Company and its subsidiaries).

(b) With respect to any welfare benefit plan of Parent or its affiliates made available to individuals who immediately prior to the Closing Date were employees of the Company or any of its Subsidiaries, Parent shall, or shall cause the Surviving Corporation to, waive any waiting periods, pre-existing condition exclusions and actively-at-work requirements to the extent such provisions were inapplicable under the Company Plans immediately before such plan of Parent was made available and provide that any

expenses incurred on or before the date such plan was made available by any such individual or such individual's covered dependents shall be taken into account for purposes of satisfying applicable deductible, coinsurance and maximum out-of-pocket provisions.

SECTION 6.12. Parent Board of Directors.

(a) The Board of Directors of Parent shall take such action as may be necessary (including increasing the size of the Board of Directors of Parent to thirteen directors) to appoint to the Board of Directors of Parent as of the Effective Time four persons designated by the Board of Directors of the Company (which designees shall include John Sims and at least one resident of Canada (within the meaning of the OBCA)) and reasonably acceptable to the Board of Directors of Parent, subject in each case to obtaining the required consent of the TSE, which shall be diligently pursued. The Board of Directors of the Company shall inform the Board of Directors of the Parent of the names of such designees as soon as practicable following the date of this Agreement, and a designated sub-committee of the Board of Directors of Parent shall review the qualifications of such designees (including through conducting personal interviews). A reasonable time prior to the expected Effective Time, the Board of Directors of Parent shall notify the Board of Directors of the Company whether or not it has approved of such designees, which approval shall not be unreasonably withheld. If the Board of Directors of Parent notifies the Board of Directors of the Company that it has not approved of a designee, the Board of Directors of the Company shall supply the Board of Directors of Parent with the name of an alternate designee as soon as practicable following receipt of such notification.

(b) The Board of Directors of Parent shall take such action as may be necessary to appoint one designee of the Company to the governance committee of the Board of Directors of Parent effective at the first meeting of the Board of Directors following the Effective Time.

(c) This Section 6.12 shall survive consummation of the Merger, is intended to benefit each designee of the Company referred to in the first sentence of Section 6.12(a), shall be binding upon the successors and assigns of Parent, and shall be enforceable by each such designee.

ARTICLE VII

Conditions

SECTION 7.01. Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party hereto to effect the Merger shall be subject to the satisfaction or waiver by each of the Parties hereto on or prior to the Closing Date of the following conditions:

(a) Shareholder Approval. The Company Stockholder Approval shall have been obtained.

(b) Form F-4. The Form F-4 shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings seeking a stop order.

(c) Exchange Listing. The shares of Parent Common Stock to be issued in the Merger and issuable in connection with the Adjusted Options and the Warrants shall have been conditionally approved for listing on the TSE (subject to the customary requirements of such exchange) and Nasdaq, subject only to official notice of issuance.

(d) HSR Act. The waiting period (and any extension thereof) applicable to the Merger under the HSR Act shall have been terminated or expired.

(e) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other order, writ, decree, judgment or stipulation issued by any court of competent jurisdiction or other legal restraint or prohibition (collectively, "Legal Restraints") preventing the consummation of the Merger shall be in effect.

SECTION 7.02. Conditions of Obligations of Parent and Sub. The obligations of Parent and Sub to effect the Merger shall be subject to the satisfaction or waiver by Parent and Sub on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company contained in this Agreement that are qualified as to materiality or material adverse effect shall be true and correct, and the representations and warranties of the Company contained in this Agreement that are not so qualified shall be true and correct in all material respects, in

each case as of the date of this Agreement and as of the Closing Date with the same effect as though made as of the Closing Date (except that the accuracy of representations and warranties that by their terms speak as of a specified date will be determined as of such date). Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer of the Company to such effect.

(b) Performance of Obligations. The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date. Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer of the Company to such effect.

(c) No Litigation. There shall not be pending or threatened any suit, action or proceeding brought by any Governmental Entity, or any suit, action or proceeding with a reasonable probability of success brought by any other third party, (i) seeking to restrain or prohibit the consummation of the Merger; (ii) seeking to prohibit or limit in any material respect the ownership or operation by the Company, Parent or any of their respective affiliates of a material portion of the business or assets of the Company and its subsidiaries, taken as a whole, or Parent and its subsidiaries, taken as a whole, or to require any such person to dispose of or hold separate any material portion of the business or assets of the Company and its subsidiaries, taken as a whole, or Parent and its subsidiaries, taken as a whole, as a result of the Merger; or (iii) seeking to prohibit Parent or any of its affiliates from effectively controlling in any material respect the business or operations of the Company or its subsidiaries.

(d) Legal Restraint. No Legal Restraint that could reasonably be expected to result, directly or indirectly, in any of the effects referred to in clauses (i) through (iii) of paragraph (c) of this Section 7.02 shall be in effect.

(e) Appraisal Shares. No more than 5% of the shares of Company Capital Stock outstanding immediately prior to the Effective Time shall be Appraisal Shares.

(f) Employment Agreements and the Employment Terms Letters. Each of the Employment Agreements and

the Employment Terms Letters shall be in full force and effect.

(g) Indemnification and Escrow Agreement. The Indemnification and Escrow Agreement in the form attached hereto as Exhibit B shall have been executed by the Company, the Escrow Agent and the Representative.

(h) Resale Restriction Agreement. Each person (other than those persons listed in Section 7.02(h) of the Company Disclosure Schedule) who holds 100,000 or more shares of Company Capital Stock (assuming for this purpose the exercise of all Stock Options held by such person and the exercise in full for cash of all Warrants held by such person) shall have entered into a Resale Restriction Agreement and all the Resale Restriction Agreements shall be in full force and effect.

(i) Permitted Interim Period Stock Options. Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer of the Company to the effect that the options to acquire Company Common Stock issued from the date of this Agreement until the Effective Time that were intended to be Permitted Interim Period Stock Options satisfied the criteria set forth in Section 5.01(a)(xii)(F) hereof.

(j) No Material Adverse Effect. No material adverse effect on the Company shall have occurred.

(k) Conversion of Company Preferred Stock. All issued and outstanding shares of Company Preferred Stock shall have been converted by the holders thereof into shares of Company Common Stock in accordance with the Company Certificate.

(l) Termination of Company Investor Agreements. All Company Investor Agreements shall have been terminated.

SECTION 7.03. Conditions of Obligations of the Company. The obligation of the Company to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of the following conditions unless waived by the Company:

(a) Representations and Warranties. The representations and warranties of Parent contained in

this Agreement that are qualified as to materiality or material adverse effect shall be true and correct, and the representations and warranties of the Parent contained in this Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date with the same effect as though made as of the Closing Date (except that the accuracy of representations and warranties that by their terms speak as of a specified date will be determined as of such date). The Company shall have received a certificate signed on behalf of Parent by an authorized signatory of Parent to such effect.

(b) Performance of Obligations. Parent and Sub shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior the Closing Date. The Company shall have received a certificate signed on behalf of Parent by an authorized signatory of Parent to such effect.

(c) Tax Opinion. The Company shall have received from Brobeck, Phleger & Harrison LLP, counsel to the Company, on the Closing Date, an opinion, dated as of such date and stating that the Merger qualifies for Federal income tax purposes as a "reorganization" within the meaning of Section 368(a)(1)(B) of the Code, that Parent, Sub and the Company will each be a party to that reorganization within the meaning of Section 368(b) of the Code and no gain or loss will be recognized by the stockholders of the Company who exchange Company Capital Stock solely for Parent Common Stock pursuant to the Merger (except with respect to (i) cash received in lieu of fractional shares or (ii) stockholders of the Company who are not Eligible Company Shareholders). The issuance of such opinion shall be conditioned upon the receipt by such counsel of customary representation letters from each of the Company and Parent, which shall be in a form reasonably acceptable to such counsel.

(d) Registration Rights Agreement. The Registration Rights Agreement substantially in the form attached hereto as Exhibit D shall have been executed and delivered by Parent.

(e) No Material Adverse Effect. No material adverse effect on Parent shall have occurred.

SECTION 7.04. Frustration of Closing Conditions. None of the Company, Parent or Sub may rely on the failure of any condition set forth in Section 7.01, 7.02 or 7.03, as the case may be, to be satisfied if such failure was caused by such party's failure to use its reasonable best efforts to consummate the Merger and the other transactions contemplated by this Agreement, as required by and subject to Section 6.03.

ARTICLE VIII

Termination and Amendment

SECTION 8.01. Termination. This Agreement may be terminated at any time prior to the Effective Time:

(i) by mutual consent of Parent and the Company;

(ii) by either Parent or the Company if the other party shall have breached any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach (i) would give rise to the failure of a condition to the obligation of such party set forth in Article VII of this Agreement and (ii) has not been, or is incapable of being, cured by such other party within 30 calendar days after such other party receives written notice of such breach from Parent or the Company, as the case may be;

(iii) by either Parent or the Company if any Legal Restraint preventing the consummation of the Merger shall have become final and nonappealable;

(iv) by either Parent or the Company if the Company Stockholder Approval shall not have been obtained at the Company Stockholders' Meeting or at any adjournment or postponement thereof; or

(v) by either Parent or the Company if the Merger shall not have been consummated on or before March 31, 2001; provided, however, that the right to terminate this Agreement pursuant to this clause (v) shall not be available to any party whose failure to perform any of its obligations under this Agreement results in the failure of the Merger to be consummated by such time.

SECTION 8.02. Effect of Termination. In the event of a termination of this Agreement by either the Company or Parent as provided in Section 8.01, this

Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, Sub or the Company or their respective officers or directors, except with respect to any wilful breach of any representation, warranty, covenant or agreement contained in this Agreement prior to such termination; and except that Section 6.05, this Section 8.02, Article IX and the penultimate sentence of Section 6.02 shall continue in effect.

SECTION 8.03. Amendment. This Agreement may be amended by the parties hereto, by action taken or authorized by their respective Boards of Directors prior to the Effective Time, but no amendment shall be made which by law requires further approval by the stockholders of Parent or the Company without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

SECTION 8.04. Extension; Waiver. At any time prior to the Effective Time, each of the parties hereto, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto and (iii) waive compliance of the other party with any of the agreements or conditions to its obligations contained herein. Any agreement on the part of the party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party.

ARTICLE IX

Miscellaneous

SECTION 9.01. Survival of Representations, Warranties and Covenants. The representations and warranties and covenants of the Company set forth in Sections 3.03 and 5.01 shall not terminate. The other representations and warranties and the covenants of the Company in this Agreement and in any instrument delivered pursuant to this Agreement shall survive for a period of fifteen months after the Effective Time for purposes of the Escrow Agreement. No representations or warranties of Parent or Sub shall survive the Effective Time.

SECTION 9.02. Notices. All notices and other communications hereunder shall be in writing and shall be

deemed given if delivered personally, telecopied (which is confirmed) or mailed by registered or certified mail (return receipt requested) to the parties to this Agreement at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or Sub, to

724 Solutions Inc.
4101 Yonge Street
Toronto, Ontario
Canada, M2P 1N6

Attention: Mr. Christopher Erickson
President and General Counsel
Telecopy: (416) 228-2456

with a copy to

Ogilvy Renault
77 King Street West
Suite 2100, P.O. Box 141
Royal Trust Tower
TorontoDominion Centre
Toronto, Ontario
M5K 1H1

Attention: Brian A. Ludmer, Esq.
Telecopy: (416) 216-3930

with a copy to

Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475

Attention: Scott A. Barshay, Esq.
Telecopy: (212) 474-3700

(b) if to the Company, to

Tantau Software, Inc.
108 Wild Basin Road
Austin, TX 78746

Attention: Mr. John Reece
Vice President and Chief
Financial Officer
Telecopy: (512) 329-0167

with a copy to:

Brobeck, Phleger & Harrison LLP
4801 Plaza On the Lake
Austin, TX 78746

Attention: S. Michael Dunn P.C.
Telecopy: (512) 330-4001

SECTION 9.03. Definitions. For purposes of this Agreement:

(a) an "affiliate" of any person means another person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person and, for purposes of Section 3.10(e) only, shall include (i) any director or officer of such person and (ii) any person owning 5% or more of the voting securities of such person;

(b) "knowledge" of any person that is not an individual means the knowledge of such person's executive officers after reasonable inquiry and investigation.

(c) "material adverse effect" means, when used in connection with the Company or Parent, any state of facts, change, effect, condition, development, event or occurrence that has been, is or is reasonably likely to be, materially adverse to the business, assets, financial condition or results of operations of such party and its subsidiaries, taken as a whole, other than any state of facts, change, effect, condition, development, event or occurrence (A) arising directly as a result of material changes in (1) general economic or business conditions in the e commerce and m commerce software and applications development market or (2) economic conditions in the United States generally or (B) resulting from the announcement of this Agreement or the effects of the pendency of the transactions contemplated by this Agreement;

(d) "person" means an individual, corporation, company, limited liability company, partnership, joint venture, association, trust, unincorporated organization or other entity; and

(e) a "subsidiary" of any person means another person, an amount of the voting securities or other voting ownership or voting partnership interests of

which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, more than 50% of the equity interests of which) is owned directly or indirectly by such first person.

SECTION 9.04. Entire Agreement; No Third-Party Beneficiaries; Rights of Ownership. This Agreement (including the documents and the instruments referred to herein) and the Confidentiality Agreement (a) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and (b) except as expressly set forth in Sections 6.04, 6.08 and 6.13 of this Agreement, are not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

SECTION 9.05. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

SECTION 9.06. Publicity. Except as otherwise required by law or the rules of the TSE or the National Association of Securities Dealers, Inc., for so long as this Agreement is in effect, neither the Company nor Parent shall issue or cause the publication of any press release or other public announcement with respect to the transactions contemplated by this Agreement without the consent of the other party, which consent shall not be unreasonably withheld. The parties hereto have agreed upon the form of a joint press release announcing the execution of this Agreement and the transactions contemplated hereby.

SECTION 9.07. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by operation of law (including by merger, amalgamation or consolidation) or otherwise by any of the parties hereto without the prior written consent of the other parties, except that Sub may assign, in its sole discretion, any or all of its rights, interests and obligations hereunder to Parent or to any direct or indirect wholly owned subsidiary of Parent; provided, however, that prior to any such assignment, Parent shall deliver to the Company a written opinion from Cravath, Swaine & Moore to the effect that such assignment will not affect the Tax treatment of the Merger contemplated by this Agreement. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by

the parties and their respective successors and permitted assigns.

SECTION 9.08. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be a single agreement.

SECTION 9.09. Exhibits and Schedules; Interpretation. The headings contained in this Agreement or in any Exhibit or Schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Exhibits and Schedules annexed to this Agreement or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit to this Agreement but not otherwise defined herein, shall have the meaning as defined in this Agreement. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule, such reference shall be to a Section or Article of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. For all purposes hereof, (a) the words "include", "includes" and "including" shall be deemed followed by the words "without limitation", (b) the words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement and (c) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean "if".

SECTION 9.10. Consent to Jurisdiction. Each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of (a) the New York State court sitting in New York, New York and (b) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby (and each agrees that no such action, suit or proceeding relating to this Agreement shall be brought by it or any of its affiliates except in such courts). Each of the parties hereto further agrees that service of any process, summons, notice or document by U.S. registered mail to such person's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each of the parties hereto irrevocably and unconditionally waives

(and agrees not to plead or claim) any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (a) any New York State court sitting in New York, New York or (b) the United States District Court for the Southern District of New York, or that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 9.11. Waiver of Jury Trial. Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any Litigation directly or indirectly arising out of, under or in connection with this Agreement. Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of any such Litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement, by, among other things, the mutual waiver and certifications in this Section 9.11.

SECTION 9.12. Enforcement. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the United States District Court for the Southern District of New York or in any New York State court sitting in New York, New York, this being in addition to any other remedy to which they are entitled at law or in equity.

IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

724 SOLUTIONS INC.,

by

_____

Name: Christopher Erickson
Title: President

SATURN MERGER SUB, INC.

by

_____

Name: Christopher Erickson
Title: President

TANTAU SOFTWARE, INC.,

by

_____

Name: John Reece
Title: Vice President and Chief Financial Officer

IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

724 SOLUTIONS INC.,

by _____

Name: CHRISTOPHER ERICKSON
Title: PRESIDENT

SATURN MERGER SUB, INC.

by _____

Name: CHRISTOPHER ERICKSON
Title: PRESIDENT

TANTAU SOFTWARE, INC.,

by _____

Name:
Title:

[NYCORP:1140720.15:4632D:11/27/00-11:02a]

IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

724 SOLUTIONS INC.,

by

_____

Name:
Title:

SATURN MERGER SUB, INC.

by

_____

Name:
Title:

TANTAU SOFTWARE, INC.,

by

Name: John Reece
Title: VP & CFO

ORP;1140720.15:4632D:11/27/00-11:02a]

SCHEDULE 3.09

Intellectual Property

Section 3.09(a)

1) List and Status of Patents- The patents listed in the following tables were transferred to Target by Compaq Compaq Comptuer Corporation ("Compaq") pursuant to the Asset Purchase Agreement between Target and Compaq dated March 31, 1999. The record owner of the patents is Tandem. Target has granted licenses to the patents to Compaq under the Patent Cross License Agreement dated March 31, 1999.

INVENTOR	TITLE	FILING DATE	STATUS
Andrew Schofield	Method and Apparatus for Asynchronously Calling and Implementing Objects	July 11, 1996	Awaiting office action
Andrew Schofield	Method and Apparatus for Describing an Interface Definition Language-Defined Interface, Operation and Data Type	July 11, 1996	Notice of Allowance received 9/1999; CPA filed 11/1999 to permit consideration of new references for Information Disclosure Statement erroneous notice of abandonment received 1/2000; erroneous abandonment rescinded 7/2000; awaiting issuance
Andrew Schofield	Method and Apparatus Using parameterized Vectors for Converting Interface Definition Language-Defined Data Structures into a Transport and Platform Independent Format	July 11, 1996	Notice of Appeal filed on 9/2000
Andrew Schofield	Method for Performing Distributed Object Calls	July 11, 1996	Notice of Appeal filed on 9/2000
Andrew Schofield	Data Structure Representing an Interface Definition Language Source File	July 11, 1996	Issued as US Patent No. 5,943,674 on August 24, 1999

INVENTOR	TITLE	FILING DATE	STATUS
Andrew Schofield	Method and Apparatus for Performing Distributed Object Calls Using Proxies and Memory Allocation	July 11, 1996	Notice of Appeal filed 7/2000
Jeroen P. De Borst, *et al.*	Object Oriented Method and Apparatus for Information Delivery	July 11, 1996	Notice of Allowance granted 12/1999. Awaiting publication
Reto Kaesar	Distributed Object Computer System with Hierarchal Name Spacing Versioning	July 11, 1996	Issued as US Patent No. 5,897,636 on April 27, 1999
Andrew Schofield	Hyper Media Object Management	July 11, 1996	Response to Office Action filed 10/2000
Peter Bonham	Method and Apparatus for Object Reference Processing	July 3, 1997	Issued as US Patent No. 6,065,045 on May 16, 2000
Peter Bonham	Method and Apparatus for Providing Portable Kernel-Mode Support for Fast Interprocess Communication	July 3, 1997	Notice of Allowance June 8, 1999. Issue fee paid. Awaiting publication. File at file maintenance department for issuance
Peter Bonham	Method and Apparatus for Transporting Interface Definition Language-Defined Data Structures Between Heterogeneous Systems	July 11, 1996	Issued as US Patent No. 5,860,072 on January 12, 1999

FOREIGN PATENTS

INVENTOR	SERIAL NO	TITLE	LAST ACTION
21329.00016 22471-713	PCTUS 97/11885	Hyper Media Object Management (corresponds to US file no. 12)	PCT International phase complete. Application now handled by designated countries and/or regions.
21329.00017 22471-714	EP 97934070.0	Hyper Media Object Management (corresponds to US file no. 12)	Entered European Regional Phase February 4, 1999. Being examined in Europe.
21329.00018 22471-715	JP 9-202282	Hyper Media Object Management (corresponds to US file no. 12)	Japanese Application Filed, but not being examined. Request for exam due July 11, 2004.
21329.00019 22471-716	PCTUS 97/11879	Method and Apparatus for Asynchronously Calling and Implementing Objects (corresponds to US file no. 4)	PCT International phase complete. Application now handled by designated countries and/or regions.
21329.00020 22471-717	EP 97934894.3	Method and Apparatus for Asynchronously Calling and Implementing Objects (corresponds to US file no. 4)	Entered European Regional Phase February 4, 1999. Being examined in Europe.
21329.00021 22471-718	JP 10-506101	Method and Apparatus for Asynchronously Calling and Implementing Objects (corresponds to US file no. 4)	Japanese Application Filed, but not being examined. Request for exam due July 11, 2004.
21329.00022 22471-719	PCTUS 97/11891	Method and Apparatus for Describing an Interface Definition Language-Defined Interface, Operation and Data Type (corresponds to US file no. 5)	PCT International phase complete. Application now handled by designated countries and/or regions.
21329.00023 22471-720	EP 97936046.8	Method and Apparatus for Describing an Interface Definition Language-Defined Interface, Operation and Data Type (corresponds to US file no. 5)	Entered European Regional Phase February 4, 1999. Being examined in Europe.
21329.00024 22471-721	JP 10-506110	Method and Apparatus for Describing an Interface Definition Language-Defined Interface, Operation and Data Type (corresponds to US file no. 5)	Japanese Application Filed, but not being examined. Request for exam due July 11, 2004.

INVENTOR	SERIAL NO	TITLE	LAST ACTION
21329.00025 22471-722	PCTUS 97/11886	Method and Apparatus for Performing Distributed Object Calls Using Proxies and Memory Allocation (corresponds to US file no. 9)	PCT International phase complete. Application now handled by designated countries and/or regions.
21329.00026 22471-723	EP 97934071.8	Method and Apparatus for Performing Distributed Object Calls Using Proxies and Memory Allocation (corresponds to US file no. 9)	Entered European Regional Phase February 4, 1999. Being examined in Europe.
21329.00027 22471-724	JP 10-506106	Method and Apparatus for Performing Distributed Object Calls Using Proxies and Memory Allocation (corresponds to US file no. 9)	Japanese Application Filed, but not being examined. Request for exam due July 11, 2004.
21329.00028 22471-725	PCTUS 97/11883	Method and Apparatus for Transporting InterfaceDefinition Language-Defined Data Structures Between Heterogeneous Systems (corresponds to US file no. 15)	PCT International phase complete. Application now handled by designated countries and/or regions.
21329.00029 22471-726	EP 97934069.2	Method and Apparatus for Transporting InterfaceDefinition Language-Defined Data Structures Between Heterogeneous Systems (corresponds to US file no. 15)	Entered European Regional Phase February 4, 1999. Being examined in Europe.
21329.00030 22471-727	JP 10-506103	Method and Apparatus for Transporting InterfaceDefinition Language-Defined Data Structures Between Heterogeneous Systems (corresponds to US file no. 15)	Japanese Application Filed, but not being examined. Request for exam due July 11, 2004.
21329.00031 22471-728	PCTUS 97/11887	Object-Oriented Method and Apparatus for Information Delivery (corresponds to US file no. 10)	PCT International phase complete. Application now handled by designated countries and/or regions.
21329.00032 22471-729	EP 97934072.6	Object-Oriented Method and Apparatus for Information Delivery (corresponds to US file no. 10)	Entered European Regional Phase February 4, 1999. Being examined in Europe.
21329.00033 22471-730	JP 10-506107	Object-Oriented Method and Apparatus for Information Delivery (corresponds to US file no. 10)	Japanese Application Filed, but not being examined. Request for exam due July 11, 2004.