



Atty. Docket No.: 4450-0253P

Page 1 of 1

RECORDATION

08-22-2003



102531893

To the Director of the
Please record the attached

1. Name of conveying party(ies):

CYRAS SYSTEMS, INC. ; and
CO ACQUISITION CORP.

Additional name(s) of conveying party(ies) attached?

☐ YES ☒ NO

3. Nature of conveyance:

- | | |
|---|--|
| <input type="checkbox"/> Assignment | <input checked="" type="checkbox"/> Merger |
| <input type="checkbox"/> Security Agreement | <input type="checkbox"/> Change of Name |
| <input type="checkbox"/> Other: | |

Execution Date: December 18, 2000

2. Name and address of receiving party(ies)

Name: CIENA CORPORATION

Internal Address:

Street Address: 1201 Winterson Road

City: Linthicum State: MD ZIP: 21090

Country:

Postal Code:

Additional name(s) & address(es) attached? ☐ YES ☒ NO

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No(s).

09/663,260

B. Patent No.(s).

Additional numbers attached? ☐ YES ☒ NO5. Name and address of party to whom correspondence
concerning document should be mailed:

Name: BIRCH, STEWART, KOLASCH & BIRCH, LLP

Street Address: P.O. BOX 747

City: FALLS CHURCH State: VA ZIP: 22040-0747

Country: USA

6. Total No. of applications/patents involved: one (1)

7. Total fee (37 C.F.R. § 3.41): \$40.00

- ☒ Enclosed
☒ Authorized to be charged to deposit account,
if no fee attached.

8. Deposit account number: 02-2448

(Attach triplicate copy of this page
if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

Michael R. Cammarata, 39,491

Name of Person Signing/Reg. No.

Signature

August 19, 2003

Date

Total number of pages including cover sheet, attachments, and document: sixty-two (62)

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AGREEMENT AND PLAN OF MERGER

AMONG

CIENA CORPORATION

CYRAS SYSTEMS, INC.

AND

CO ACQUISITION CORP.

Dated as of December 18, 2000

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Exhibit A	Form of Stockholder Agreement
Exhibit B	Form of Escrow Agreement

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement") dated as of December 18, 2000, by and among **CIENA CORPORATION**, a Delaware corporation ("CIENA"), **CYRAS SYSTEMS, INC.**, a Delaware corporation (the "Company"), and **CO ACQUISITION CORP.**, a Delaware corporation ("Merger Sub").

RECITALS

WHEREAS, the Boards of Directors of each of CIENA, Merger Sub and the Company have determined that the merger of Merger Sub with and into the Company (the "Merger") in accordance with the provisions of the Delaware General Corporation Law, as amended (the "DGCL"), and subject to the terms and conditions of this Agreement, is advisable and in the best interests of CIENA, Merger Sub and the Company and their respective stockholders;

WHEREAS, the Company is a Delaware corporation and has authorized 847,300,000 shares of common stock, par value \$0.0001 per share ("Company Common Stock"), and 152,700,000 shares of preferred stock, \$0.0001 par value per share ("Company Preferred Stock"), of which 7,200,000 shares have been designated Series A Preferred Stock ("Series A Preferred Stock"), 73,800,000 shares have been designated Series B Preferred Stock ("Series B Preferred Stock"), 57,000,000 shares have been designated Series C Preferred Stock ("Series C Preferred Stock"), 13,200,000 shares have been designated Series D Preferred Stock ("Series D Preferred Stock") and 1,500,000 shares have been designated Series E Preferred Stock (the "Series E Preferred Stock") (the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock are referred to as the "Company Preferred Stock," and the Company Preferred Stock and the Company Common Stock are referred to as the "Company Capital Stock");

WHEREAS, in order to induce CIENA and Merger Sub to enter into this Agreement, concurrently herewith each stockholder of the Company who also is a director or officer of the Company and persons affiliated with such persons, are entering into stockholder agreements with CIENA in the form attached hereto as **Exhibit A**, pursuant to which, among other things, each such stockholder agrees to vote in favor of adoption of this Agreement and the Merger, and grants an option to CIENA to purchase such stockholder's Company Capital Stock upon the occurrence of certain events;

WHEREAS, in order to induce CIENA and the Company to enter into this Agreement, CIENA and each of the officers of the Company who were parties to employment agreements with the Company immediately prior to the date hereof have entered into employment agreements, to be effective upon the closing of the transactions contemplated hereby; and

WHEREAS, the parties intend that, for federal income tax purposes, the Merger shall qualify as a reorganization within the meaning of Section 368(a) of the Code.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein and other good

and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound do hereby agree as follows:

ARTICLE I THE MERGER

SECTION 1.1. General.

(a) Subject to the terms and conditions of this Agreement and in accordance with the DGCL, at the Effective Time (i) Merger Sub shall be merged with and into the Company, (ii) the separate corporate existence of Merger Sub shall cease and (iii) the Company shall be the surviving company (the "Surviving Company") and shall continue its legal existence under the laws of the State of Delaware.

(b) The Merger shall become effective at the time of filing of a Certificate of Merger with the Secretary of State of the State of Delaware in accordance with the provisions of Section 251 of the DGCL, or at such later time as may be stated in the Certificate of Merger (the "Effective Time"). The closing of the Merger (the "Closing") shall take place at the offices of Hogan & Hartson, LLP, 111 South Calvert Street, Baltimore, Maryland 21202 at 10:00 A.M., two Business Days after the date on which the last of the conditions set forth in Article VI shall have been satisfied or waived, or on such other date, time and place as the Company and CIENA may mutually agree (the "Closing Date").

(c) At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Company, and all debts, liabilities, obligations, and duties of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions, disabilities and duties of the Surviving Company.

SECTION 1.2. Certificate of Incorporation.

The Certificate of Incorporation of the Company, as in effect immediately prior to the Effective Time (the "Company Certificate"), shall be the Certificate of Incorporation of the Surviving Company, until thereafter amended as provided therein and by law.

SECTION 1.3. The By-Laws.

The By-laws of the Merger Sub, as in effect immediately prior to the Effective Time, shall be adopted at the Effective Time as the By-laws of the Surviving Company, until thereafter amended as provided therein and by law.

SECTION 1.4. Board of Directors and Officers.

From and after the Effective Time, the Board of Directors and Officers of Merger Sub at the Effective Time shall be the Board of Directors and Officers of the Surviving Company, each to hold office until his or her respective successors are duly elected or appointed and qualified.

SECTION 1.5. Conversion of Securities.

At the Effective Time, by virtue of the Merger and without any action on the part of the Company or the holders of the Company's Capital Stock (the "Stockholders"):

(a) Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock of the Surviving Company;

(b) Each share of Company Capital Stock held in the treasury of the Company and each share of Company Capital Stock owned by CIENA shall be canceled without any conversion thereof and no payment or distribution shall be made with respect thereto; and

(c) At the Effective Time, the then issued and outstanding shares of Company Capital Stock shall be converted into an aggregate of 27,000,000 shares (the "Aggregate Share Consideration") of CIENA common stock, par value \$0.01 per share ("CIENA Common Stock" or "CIENA Stock"), to be distributed in accordance with this Section 1.5(c). Subject to the provisions of Sections 1.6 and 1.9, each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time (other than (i) shares canceled in accordance with Section 1.5(b) and (ii) Dissenting Shares) shall be converted into a fraction of a share of CIENA Common Stock including the corresponding fraction of a right ("Right") to purchase shares of series A junior participating preferred stock, par value \$0.01 per share, pursuant to the Rights Agreement dated as of December 29, 1997 between CIENA and BankBoston, N.A. as Rights Agent, determined as follows:

(i) at the Effective Time, the Aggregate Share Consideration shall be multiplied by a dollar value equal to the Assumed Value (as defined below) (such total amount being referred to herein as the "Aggregate Value");

(ii) each share of a particular series of Company Preferred Stock outstanding, if any, at the Effective Time shall be converted into a portion of a share of CIENA Common Stock (the "Preferred Stock Exchange Ratio") equal to:

Preferred Liquidation Value
Assumed Value

(iii) each share of Company Common Stock outstanding at the Effective Time shall be converted into a portion of a share of CIENA Common Stock (the "Common Stock Exchange Ratio") equal to:

$$\frac{\text{Aggregate Share Consideration} + \text{Option Consideration} - \text{Preferred Share Consideration}}{\text{Assumed Value}}$$

Company Outstanding Shares + Stock Option Equivalents

For purposes hereof, the following definitions apply:

- "Assumed Value" = the lower of (i) the average closing price of a share of CIENA Common Stock as reported on the NASDAQ National Market ("NASDAQ") for the twenty most recent days that CIENA Common Stock has traded ending on the third trading day prior to the Effective Time, and (ii) the closing price of a share of CIENA Common Stock as reported on NASDAQ on the last full trading day prior to the Effective Time.
- "Company Outstanding Shares" = the total number of shares of Company Common Stock outstanding at the Effective Time.
- "Preferred Liquidation Value" = the portion of the Aggregate Value allocated to each of the outstanding shares of a particular series of Company Preferred Stock pursuant to Article IV.B., Section 2 of the Amended and Restated Certificate of Incorporation of the Company, treating the Merger as a Liquidation for purposes thereof.
- "Preferred Share Consideration" = the total number of shares of CIENA Common Stock allocated at the Effective Time to holders of Company Preferred Stock.
- "Option Consideration" = the aggregate amount receivable from holders of Company Stock Options and Company Warrants upon the exercise of all Company Stock Options and Company Warrants (assuming they were exercised for cash).
- "Stock Option Equivalents" = the number of shares of Company Common Stock issuable upon exercise of all Company Stock Options and Company Warrants outstanding at the Effective Time (except for those which expire at the Effective Time or by their terms will expire following the Effective Time without becoming exercisable due to vesting provisions).

As of the date of this Agreement, there are 15,361,242 Company Stock Options issued and outstanding. Notwithstanding the foregoing calculations, the Company may grant additional Company Stock Options after the date of this Agreement and prior to the Closing Date to new hires consistent with the Company's current new hire option grant policy, at the fair market value of the Company at such time (taking into account this Agreement and the proposed consideration provided for hereunder), in an amount not to exceed twenty-five thousand (25,000) multiplied by the number of days between the date of this Agreement and the Closing Date, provided that such amount shall not exceed 3,000,000 shares, and such Company Stock Options shall not be included in the calculations of the Common Stock Exchange Ratio.

All references in this Agreement to CIENA Common Stock to be received in accordance with the Merger shall be deemed, from and after the Effective Time, to include the Rights. After the Effective Time, except for shares of Company Common Stock exchanged for shares of Merger Sub all such shares of Company Capital Stock shall no longer be outstanding and shall automatically be canceled and retired, and each holder of a certificate representing any such shares shall cease to have any rights with respect thereto other than (i) the right to receive shares of CIENA Common Stock to be issued in consideration therefor upon the surrender of such certificate, (ii) any dividends and other distributions in accordance with **Section 1.8(c)** and (iii) any cash, without interest, to be paid in lieu of any fractional share of CIENA Common Stock in accordance with **Section 1.9**.

SECTION 1.6. Adjustment of the Exchange Ratio.

In the event that, prior to the Effective Date, any stock split, combination, reclassification or stock dividend with respect to the CIENA Common Stock, any change or conversion of CIENA Common Stock into other securities or any other dividend or distribution with respect to the CIENA Common Stock should occur or, if a record date with respect to any of the foregoing should occur, appropriate and proportionate adjustments shall be made to the Aggregate Share Consideration and Exchange Ratios, and thereafter all references to the Aggregate Share Consideration and Exchange Ratios shall be deemed to be to such Aggregate Share Consideration and Exchange Ratios as so adjusted.

SECTION 1.7. Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, shares of Company Capital Stock that are outstanding immediately prior to the Effective Time and which are held by stockholders who shall not have voted in favor of the Merger or consented thereto in writing and who shall have demanded properly in writing appraisal for such shares in accordance with Section 262 of the DGCL (collectively, the "Dissenting Shares") shall not be converted into or represent the right to receive the consideration set forth in **Section 1.5**. Such stockholders shall be entitled to receive such consideration as is determined to be due with respect to such Dissenting Shares in accordance with the provisions of Section 262, except that all Dissenting Shares held by stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such shares under Section 262 shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the Effective Time, the right to

receive the shares of CIENA Common Stock specified in **Section 1.5**, without any interest thereon, upon surrender, in the manner provided in **Section 1.8**, of the certificate or certificates that formerly evidenced by such Dissenting Shares less the number of shares of CIENA Common Stock allocable to such stockholder that have been deposited in the Escrow Fund in respect of Company Capital Stock pursuant to **Sections 1.8(b)** and **7.2**.

(b) The Company shall give CIENA (i) prompt notice of any demands for appraisal received by the Company, withdrawals of such demands, and any other instruments served pursuant to the DGCL and received by the Company and (ii) the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under the DGCL. The Company shall not, except with the prior written consent of CIENA, make any payment with respect to any demands for appraisal or offer to settle or settle any such demands.

(c) Notwithstanding the foregoing, as provided in **Article VI**, it is a condition to CIENA's obligations pursuant to this Agreement that holders of shares of Company Capital Stock representing in excess of 2.0% of the issued and outstanding Company Capital Stock immediately prior to the Effective Time shall not have demanded or exercised appraisal rights under **Section 262** of the DGCL.

SECTION 1.8. Exchange Procedures: Distributions with Respect to Unexchanged Shares: Stock Transfer Books.

(a) As of the Effective Time, CIENA shall deposit with the Exchange Agent for the benefit of the holders of shares of Company Capital Stock, certificates representing shares of the CIENA Common Stock to be issued as the Closing Payment pursuant to **Section 1.5(c)** in exchange for the shares of Company Capital Stock less the number of shares of CIENA Common Stock to be deposited in the Escrow Fund pursuant to **Section 7.2**, together with cash in an amount sufficient to permit the payment of cash in lieu of fractional shares pursuant to **Section 1.9**. (Such shares of CIENA Common Stock, together with any dividends or distributions with respect thereto pursuant to **Sections 1.8(c)** and **1.9**, are referred to herein as the "Exchange Fund").

(b) As soon as practicable after the Effective Time, CIENA shall cause the Exchange Agent to send to each Person who was, at the Effective Time, a holder of record of certificates which represented outstanding Company Capital Stock (the "Certificates") which shares were converted into the right to receive CIENA Common Stock pursuant to **Section 1.5**, a letter of transmittal which (i) shall specify that delivery shall be effected and risk of loss and title to such Certificates shall pass, only upon actual delivery thereof to the Exchange Agent and (ii) shall contain instructions for use in effecting the surrender of the Certificates. Upon surrender to the Exchange Agent of Certificates for cancellation, together with such letter of transmittal duly executed, such holder shall be entitled to receive in exchange therefor (A) a certificate representing the number of whole shares of CIENA Common Stock into which the Company Capital Stock represented by the surrendered Certificate shall have been converted at the Effective Time (less such holder's pro rata portion of the number of shares of CIENA Common Stock to be deposited in the Escrow Fund on such holder's behalf pursuant to **Section 7.2**), (B) cash in lieu of any

fractional share of CIENA Common Stock in accordance with **Section 1.9** and (C) certain dividends and distributions in accordance with **Section 1.8(c)**, and the Certificates so surrendered shall then be canceled. Subject to **Section 1.8(c)** and **Section 1.9**, until surrendered as contemplated by this **Section 1.8(b)**, each Certificate, from and after the Effective Time, shall be deemed to represent only the right to receive, upon such surrender, the number of shares of CIENA Common Stock into which such Company Capital Stock shall have been converted. As soon as practicable after the Effective Time, and subject to and in accordance with the provisions of **Section 7.2**, CIENA shall cause to be distributed to the Escrow Agent certificates representing 10% of the Closing Payment (the "Escrow Amount") which shall be registered in the name of the Escrow Agent as nominee for the holders of Certificates canceled pursuant to this **Section 1.8**. Such shares shall be beneficially owned by such holders, shall be held in escrow and shall be available to settle certain contingencies as provided in the Escrow Agreement. To the extent not used for such purpose, such shares shall be released, as provided in the Escrow Agreement.

(c) No dividends or other distribution declared or made after the Effective Time with respect to the CIENA Common Stock with a record date after the Effective Time shall be paid to any holder entitled by reason of the Merger to receive certificates representing CIENA Common Stock and no cash payment in lieu of a fractional share of CIENA Common Stock shall be paid to any such holder pursuant to **Section 1.9** until such holder shall have surrendered its Certificates pursuant to this **Section 1.8**. Subject to applicable law, following surrender of any such Certificate, such holder shall be paid, in each case, without interest, (i) the amount of any dividends or other distributions theretofore paid with respect to the shares of CIENA Common Stock represented by the certificate received by such holder and having a record date on or after the Effective Time and a payment date prior to such surrender and (ii) at the appropriate payment date or as promptly as practicable thereafter, the amount of any dividends or other distributions payable with respect to such shares of CIENA Common Stock and having a record date on or after the Effective Time but prior to such surrender and a payment date on or after such surrender.

(d) If any certificate representing shares of CIENA Common Stock or any cash is to be issued or paid to any Person other than the registered holder of the Certificate surrendered in exchange therefor, it shall be a condition to such exchange that such surrendered Certificate shall be properly endorsed and otherwise in proper form for transfer and such Person either (i) shall pay to the Exchange Agent any transfer or other taxes required as a result of the issuance of such certificates of CIENA Common Stock and the distribution of such cash payment to such Person or (ii) shall establish to the reasonable satisfaction of the Exchange Agent that such tax has been paid or is not applicable. CIENA or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Company Capital Stock such amounts as CIENA or the Exchange Agent is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld by CIENA or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Capital Stock in respect of which such deduction and withholding was made by CIENA or the Exchange Agent. All amounts in respect of taxes received or withheld by CIENA shall be disposed of by CIENA in accordance with the Code or such state, local or foreign tax law, as applicable.

(e) 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 subject to such other conditions as the Board of Directors of the Surviving Company may impose, the Surviving Company shall issue in exchange for such lost, stolen or destroyed Certificate the shares of CIENA Common Stock as determined under Section 1.5(c) and pay any cash, dividends and distributions as determined in accordance with Section 1.8(c) and Section 1.9 in respect of such Certificate. When authorizing such issue of shares of CIENA Common Stock (and payment of any such cash, dividends and distribution) in exchange for such Certificate, the Board of Directors of the Surviving Company (or any authorized officer thereof) may, in its reasonable discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificate to give the Surviving Company a bond in such sum as the Board of Directors may direct as indemnity against any claim that may be made against the Surviving Company with respect to the Certificate alleged to have been lost, stolen or destroyed.

(f) At the close of business on the day on which the Effective Time occurs, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of shares of Company Capital Stock on the records of the Company. From and after the Effective Time, the holders of shares of Company Capital Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares except as otherwise provided herein or by applicable law.

SECTION 1.9. No Fractional Shares.

No certificates or scrip representing fractional shares of CIENA Common Stock shall be issued upon the surrender for exchange of Certificates and such a fractional share shall not entitle the record or beneficial owner thereof to vote or to any other rights as a stockholder of CIENA. In lieu of receiving any such fractional share, each holder of Company Capital Stock who would otherwise have been entitled thereto upon the surrender of Certificates for exchange will receive cash (without interest) in an amount rounded to the nearest whole cent, determined by multiplying (i) the per share closing price on NASDAQ of CIENA Common Stock on the date on which the Effective Time shall occur (or, if the CIENA Common Stock shall not trade on NASDAQ on such date, the first day of trading in CIENA Common Stock on NASDAQ thereafter) by (ii) the fractional share to which such holder would otherwise be entitled. CIENA shall make available to the Exchange Agent the cash necessary for this purpose.

SECTION 1.10. Return of Exchange Fund.

Any portion of the Exchange Fund which remains undistributed to the former holders of Company Capital Stock for six months after the Effective Date shall be delivered to CIENA, upon its request, and any such former holders who have not theretofore surrendered to the Exchange Agent their Certificates in compliance herewith shall thereafter look only to CIENA for payment of their claim for shares of CIENA Common Stock, any cash in lieu of fractional shares of CIENA Common Stock and any dividends or distributions with respect to such shares of CIENA Common Stock. Neither CIENA nor the Company shall be liable to any former holder of Company Capital Stock for any such shares

of CIENA Common Stock held in the Exchange Fund (and any cash, dividends and distributions payable in respect thereof) which is delivered to a public official pursuant to an official request under any applicable abandoned property, escheat or similar law.

SECTION 1.11. No Further Ownership Rights in Company Capital Stock.

All shares of CIENA Common Stock delivered upon the surrender for exchange of any Certificate in accordance with the terms hereof (including any cash paid pursuant to Section 1.8 or Section 1.10) shall be deemed to have been delivered (and paid) in full satisfaction of all rights pertaining to the Company Stock previously represented by such Certificate.

SECTION 1.12. Further Assurances.

If at any time after the Effective Time the Surviving Company shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Company, its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or Assets of either the Company or Merger Sub or (b) otherwise to carry out the purposes of this Agreement, the Surviving Company and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of the Company, Merger Sub, all such deeds, bills of sale, assignments and assurances and do, in the name and on behalf of the Company or Merger Sub, all such other acts and things necessary, desirable or proper to vest, perfect or confirm its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or Assets of the Company or Merger Sub, as applicable, and otherwise to carry out the purposes of this Agreement.

**ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company hereby represents and warrants to CIENA and Merger Sub as follows:

SECTION 2.1. Organization and Qualification.

The Company is a corporation duly organized, validly existing and in good standing under the laws of Delaware. The Company has the requisite power and authority to carry on its business as now being conducted and to perform the terms of this Agreement and the transactions contemplated hereby. The Company is duly qualified to conduct its business, and is in good standing, in each jurisdiction in which the ownership or leasing of its Assets or the nature of its activities in connection with the conduct of its business makes such qualification necessary or in which the failure to be so qualified and in good standing

would have a Company Material Adverse Effect. The Company has no subsidiaries or any equity interest in any Person.

SECTION 2.2. Certificate of Incorporation and Bylaws.

The Company has heretofore delivered to CIENA a complete and correct copy of the Company Certificate and the bylaws of the Company, each as amended to date. Such Company Certificate and bylaws are in full force and effect. The Company is not in violation of any of the provisions of the Company Certificate or its bylaws.

SECTION 2.3. Capitalization.

The authorized capital stock of the Company consists of 847,300,000 shares of common stock, \$0.0001 par value per share, of which, 61,858,144 shares are issued and outstanding, and 152,700,000 shares of preferred stock, par value \$0.0001 per share, of which 7,200,000 shares are designated as Series A Preferred Stock, all of which are issued and outstanding, 73,800,000 shares are designated as Series B Preferred Stock, 70,143,996 of which are issued and outstanding, 57,000,000 shares are designated as Series C Preferred Stock, 52,646,118 of which are issued and outstanding, 13,200,000 shares are designated as Series D Preferred Stock, 7,594,947 of which are issued and outstanding, and 1,500,000 shares are designated as Series E Preferred Stock, 270,756 of which are issued and outstanding. All of the issued and outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Common Stock of the Company are owned of record by the Stockholders of the Company shown on **Schedule 2.3 hereto**. Except as set forth on **Schedule 2.3**, the Company has not granted any options, warrants or other rights, or entered into any agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of the Company, or obligating the Company to issue or sell any shares of capital stock of, or other equity interests in the Company, including any securities directly or indirectly convertible into or exercisable or exchangeable for any capital stock or other equity securities of the Company. Except as set forth on **Schedule 2.3**, the Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the Stockholders of the Company on any matter. Except as set forth on **Schedule 2.3**, there are no outstanding obligations of the Company to repurchase, redeem or otherwise acquire any shares of its capital stock or make any investment (in the form of a loan, capital contribution or otherwise) in any other Person except for outstanding rights of the Company to repurchase unvested shares of Company Common Stock, at the original purchase price paid per share, upon the holder's termination of service or employment with the Company. All of the issued and outstanding shares of the Company Capital Stock, have been duly authorized and validly issued in accordance with applicable laws and are fully paid and non-assessable and not subject to preemptive rights. Except as set forth on **Schedule 2.3**, no shares of capital stock of the Company have been reserved for any purpose.

SECTION 2.4. Authority.

(a) The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions contemplated hereby, except approval by holders of a majority of the shares of the Company Common Stock and the holders of a majority of the Company Preferred Stock, each voting as a separate class (the "Company Requisite Vote"). The Company Preferred Stock is not otherwise entitled to any vote on the Merger. Assuming due authorization, execution and delivery by CIENA, this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity.

(b) The Board of Directors of the Company has duly and unanimously approved this Agreement and the Merger and the other transactions contemplated hereby, to which the Company is a party, and has recommended adoption thereof by the Stockholders.

SECTION 2.5. No Conflict; Required Filings and Consents.

(a) The execution and delivery of this Agreement by the Company does not, and the performance by the Company of its obligations under this Agreement will not, (i) conflict with or violate the Company Certificate or the bylaws of the Company, (ii) conflict with or violate any Law applicable to the Company, or (iii) except as set forth in **Schedule 2.5(a)**, result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which it is subject.

(b) Except as set forth in **Schedule 2.5(b)**, the execution and delivery of this Agreement by the Company does not, and the performance of this Agreement by the Company will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Government Entity by the Company, except for the filing of a Certificate of Merger under the DGCL and filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Hart-Scott-Rodino Act").

SECTION 2.6. Financial Statements.

Attached hereto as **Schedule 2.6** are (a) the audited balance sheets of the Company as of December 31, 1998 and 1999 and the audited statements of operations and cash flows for the period from July 24, 1998 (inception) to December 31, 1998 and for the fiscal year ended December 31, 1999 and (b) the unaudited balance sheet of the Company as of November 30, 2000, and the unaudited statement of operations and cash flows for the eleven months then ended (collectively, the "Financial Statements"). The audited financial statements referred to in this **Section 2.6** present fairly, in all material

respects, the financial condition of the Company as of the respective dates and the results of operations and cash flows for the respective periods indicated and have been prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis. Except as set forth on **Schedule 2.6**, the unaudited financial statements referred to in this **Section 2.6** present fairly, in all material respects, the financial condition of the Company as of the respective dates and the results of operations and cash flows for the respective periods indicated and have been prepared in all material respects in accordance with GAAP applied on a consistent basis except for the absence of required footnotes. All audited financial statements included in the Financial Statements are accompanied by unqualified audit reports of Deloitte & Touche LLP, who are independent for purposes of federal securities laws. Except as set forth on **Schedule 2.6** or as reflected in the unaudited balance sheet of the Company as of November 30, 2000 (the "Balance Sheet Date"), the Company has incurred no liabilities, contingent or absolute, matured or unmatured, known or unknown, and knows of no basis for such liabilities, except for liabilities (a) not required under GAAP applied on a consistent basis with that of the preceding accounting periods to be reported on such Financial Statements, and (b) incurred in the Ordinary Course of Business.

SECTION 2.7. Absence of Certain Changes or Events.

Since the Balance Sheet Date, there has been no event or set of circumstances that resulted in or is reasonably likely to result in a Company Material Adverse Effect. Except as set forth on **Schedule 2.7**, since the Balance Sheet Date, the Company has conducted its business in the Ordinary Course of Business, and has not (a) paid any dividend or distribution in respect of, or redeemed or repurchased any of, its capital stock other than the Company's repurchase of unvested shares, at the original purchase price paid per share, from terminating employees or consultants; (b) incurred loss of, or significant injury to, any of the material Assets, whether as the result of any natural disaster, labor trouble, accident, other casualty, or otherwise; (c) incurred, or become subject to, any material liability (absolute or contingent, matured or unmatured, known or unknown), and knows of no basis for such liabilities, except current liabilities incurred in the Ordinary Course of Business; (d) mortgaged, pledged or subjected to any Encumbrance any of the Assets; (e) sold, exchanged, transferred or otherwise disposed of any of the Assets except in the Ordinary Course of Business, or canceled any debts or claims; (f) written down the value of any Assets or written off as uncollectible any accounts receivable, except write downs and write-offs in the Ordinary Course of Business, none of which, individually or in the aggregate, are material; (g) entered into any transactions other than in the Ordinary Course of Business; (h) made any change in any method of accounting or accounting practice; or (i) made any agreement to do any of the foregoing, other than negotiations with CIENA and its representatives regarding the transactions contemplated by this Agreement. Since December 31, 1999, except as set forth on **Schedule 2.7**, there has not been: (a) any damage, destruction or loss (whether or not covered by insurance) or any other event affecting the business or Assets of the Company; (b) any forgiveness or cancellation of debts or claims owed to the Company; (c) any increase in the compensation or benefits payable or to become payable by the Company to any of the directors, officers, consultants or employees of the Company, other than salary increases in connection with customary performance reviews and customary bonuses consistent with past practices; (d) any discharge or satisfaction of any Lien or payment of any liability or obligation by the

Company other than current liabilities in the Ordinary Course of Business; or (e) any agreement to do any of the foregoing, other than negotiations with CIENA and its representatives regarding the transactions contemplated by this Agreement.

SECTION 2.8. Ownership and Condition of the Assets.

Except as set forth on **Schedule 2.8**, the Company is the sole and exclusive legal and equitable owner of and has good and marketable title to the Assets it purports to own and such Assets are free and clear of all Encumbrances other than Permitted Encumbrances. No person or Government Entity has an option to purchase, right of first refusal or other similar right with respect to all or any part of such Assets other than in the Ordinary Course of Business. All of the personal property of the Company is in good working order and repair, ordinary wear and tear excepted, and is suitable and adequate for the uses for which it is intended or is being used.

SECTION 2.9. Leases.

Schedule 2.9 lists all leases and other agreements under which the Company is lessee or lessor of any Asset, or holds, manages or operates any Asset owned by any third party, or under which any Asset owned by the Company is held, operated or managed by a third party. The Company is the holder of all the leasehold estates purported to be granted to such entity by the leases listed in **Schedule 2.9** and is the owner of all equipment, machinery and other Assets purported to be owned by the Company thereon, free and clear of all Encumbrances. Each such lease and other agreement is in full force and effect and constitutes a legal, valid and binding obligation of, and is legally enforceable against, the respective parties thereto (except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity) and grants the leasehold estate it purports to grant free and clear of all Encumbrances. All necessary governmental approvals required to be obtained by the Company with respect thereto have been obtained, all necessary filings or registrations therefor have been made, and to the Company's Knowledge, there have been no threatened cancellations thereof and are no outstanding disputes thereunder. The Company has performed in all material respects all obligations thereunder required to be performed by such entity to date. The Company is not in default in any material respect under any of the foregoing and to the Company's Knowledge, no other party is in default in any material respect under any of the foregoing, and there has not occurred any event which (whether with or without notice, lapse of time or the happening or occurrence of any other event) would, constitute a default on the part of the Company, or to the Company's Knowledge, a party other than the Company.

SECTION 2.10. Other Agreements.

(a) **Schedule 2.10** is an accurate list of all material contracts and agreements to which the Company is a party, or which it or any of its property is bound, (including, without limitation, joint venture agreements, employment contracts, loan agreements, bonds, mortgages, liens, pledges or other security agreements) used in

connection with, or relating to the conduct of the business of the Company (the "Contracts"). Such agreements include each agreement and contract to which the Company is a party that limits the right of the Company to engage in, or to compete with any person in, any business, including each contract or agreement containing exclusivity provisions restricting the geographical area in which, or the method by which, any business may be conducted by the Company prior to the Effective Time.

(b) Except as set forth on **Schedule 2.10**, with respect to the conduct of the business of the Company and ownership of the Assets, the Company is not:

(1) a party to any contract, purchase or sales orders, or commitment that involves a dollar amount in excess of \$50,000 or extends for a period of twelve months or more;

(2) a party to any employment contracts with employees, agents or consultants;

(3) a party to any contract with sales or other agents, brokers, franchisees, distributors or dealers;

(4) a party to any partnership or joint venture agreement;

(5) a party to any lease or other occupancy or use agreements, oral or written, nor has the Company granted any options, rights of first refusal or security or other interests other than Permitted Encumbrances in or relating to the Assets or the business of the Company;

(6) a party to any agreements giving any party the right to renegotiate or require a reduction in price or refund of payments previously made in connection with the business of the Company;

(7) a party to any agreements for the borrowing or lending of money with respect to the business of the Company and is not a party to any guaranty agreement;

(8) a party to any agreements that contain any provisions requiring the Company to indemnify any other party thereto;

(9) a party to any agreement for the sale of goods or services to any Governmental Entity;

(10) a party to any agreement granting any Person a Lien on any of the Assets other than Permitted Encumbrances;

(11) a party to any bonus, executive or deferred compensation, profit sharing, pension or retirement, stock option or stock purchase, hospitalization, insurance, medical reimbursement or other plan, agreement or arrangement or practice providing employee or executive benefits to any officer or employee or former officer or former employee; and

(12) a party to or bound by any non-competition, secrecy or confidentiality agreement relating to the business of the Company or the Assets or any other contract restricting its right to conduct the business the Company at any time, in any manner or at any place in the world, or the expansion thereof to other geographical areas, customers, suppliers or lines of business.

(c) A true and correct copy of each Contract has been made available to CIENA prior to the date hereof. Each Contract is now valid, in full force and effect and enforceable in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity). The Company has not breached or improperly terminated any such Contract, the effect of which could have a Company Material Adverse Effect, and neither the Company nor, to the Knowledge of the Company, any third party is in default under any such Contract, the effect of which would have a Company Material Adverse Effect. There exists no condition or event which, after notice or lapse of time or both, would constitute any such breach, termination or default. Except as set forth on **Schedule 2.10**, the Company does not know of a bid or contract proposal made by the Company that, if accepted and entered into, is likely to result in a loss to the Company.

SECTION 2.11. Real Property.

Schedule 2.11 contains a list of all leasehold interests in real estate, easements, rights to access, rights-of-way and other real property interests which are owned, or are leased, used or held for use by the Company (collectively, the "Real Property"). The Real Property listed in **Schedule 2.11** constitutes all real property interests necessary to conduct the business and operations of the Company as now conducted. The Company is not aware of any easement or other real property interest, other than those listed in **Schedule 2.11**, that is required, or that has been asserted by a Government Entity to be required, to conduct the business and operations of the Company. The Company has made available to CIENA true and complete copies of all deeds, leases, easements, rights-of-way and other instruments pertaining to the Real Property (including any and all amendments and other modifications of such instruments). All Real Property (including the improvements thereon) (i) is in good condition and repair other than conditions that do not adversely affect its use by the Company and consistent with its present use, (ii) is available to the Company for immediate use in the conduct of its business and operations, and (iii) to the Knowledge of the Company complies in all material respects with all applicable building or zoning codes and in the regulations of any Government Entity having jurisdiction.

SECTION 2.12. Environmental Matters.

(a) The Company has complied in all material respects with all Environmental Laws. There are no pending or, to the Knowledge of the Company, threatened actions, suits, claims, legal proceedings or other proceedings against the Company based on any Environmental Laws, and the Company has not received any notice of any complaint, order, directive, citation, notice of responsibility, notice of potential responsibility, or information request from any Government Entity or any other person

arising out of or attributable to: (i) the current or past presence at any part of the Real Property of Hazardous Materials (as defined below) or any substances that pose a hazard to human health or an impediment to working conditions; (ii) the current or past release or threatened release into the environment from the Real Property (including, without limitation, into any storm drain, sewer, septic system or publicly owned treatment works) of any Hazardous Materials or any substances that pose a hazard to human health or an impediment to working conditions; (iii) the off-site disposal of Hazardous Materials originating on or from the Real Property; (iv) any facility operations or procedures of the Company which do not conform to requirements of the Environmental Laws; or (v) any violation of Environmental Laws at any part of the Real Property or otherwise arising from the Company's activities involving Hazardous Materials.

(b) The Company has been duly issued, and currently has all material permits, licenses, certificates and approvals required to be maintained by the Company under any Environmental Law with respect to the use of the Real Property by the Company. A true and complete list of such permits, licenses, certificates and approvals, all of which are valid and in full force and effect, is set out in **Schedule 2.12**. Except in accordance with such permits, licenses, certificates and approvals, there has been no discharge of any Hazardous Materials or any other material regulated by such permits, licenses, certificates or approvals.

(c) None of the Real Property contains any underground storage tanks, or underground piping associated with such tanks, used currently or in the past for Hazardous Materials.

SECTION 2.13. Litigation.

Except as set forth on **Schedule 2.13**, the Company is not directly involved in any pending action, suit, investigation, claim, arbitration or litigation and, to the knowledge of the Company, no such matter is threatened against or involving the Company, or the Assets, at law or in equity, or before or by any court, arbitrator or Government Entity. The Company is not operating under, and is not subject to, any judgment, writ, order, injunction, award or decree of any court, judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any Government Entity. No property or Assets of the Company has been taken or expropriated by any federal, state, provincial, municipal or other Government Entity nor has any notice or proceeding with respect to thereof been given or commenced, nor is the Company aware of any intent or proposal by any Governmental Entity to give any such notice or commence any such proceeding.

SECTION 2.14. Compliance with Laws.

The Company is in compliance in all material respects with all Laws applicable to the Assets and its business and operations, including all Laws applicable to the Company's relationship with its employees.

SECTION 2.15. Intellectual Property.

(a) The Company has all right, title, interest and license rights necessary to use all intellectual property used in the business of the Company as presently conducted and, to the Company's Knowledge, has the right, title, interest and license rights to use all intellectual property that is currently anticipated by the Company to be required to carry out, the Company's product development and marketing plans through at least the next 18 months (the "Intellectual Property Rights"). There are no claims or demands against the Company by any other Person pertaining to any of such Intellectual Property Rights and no proceedings have been instituted, or are pending or to the Knowledge of the Company, threatened, which challenge the rights of the Company in respect thereof. The Company has the right to use, without infringing the rights of others, all customer lists, designs, manufacturing or other processes, computer software, systems, data compilations, research results and other information required for or incident to its products or its business as presently conducted.

(b) **Schedule 2.15(b)** lists all patents, patent applications, registered trademarks, trademark applications and registrations and registered copyrights owned or licensed by or registered in the name of the Company or used by the Company in its business as presently conducted, and generally describes any other Intellectual Property Rights material to the business or operations of the Company. All of such patents, patent applications, registered trademarks, trademark applications and registrations and registered copyrights, if any, have been duly registered in, filed in or issued by the United States Patent and Trademark Office, the United States Register of Copyrights, or the corresponding offices of other jurisdictions as identified on **Schedule 2.15(b)**, and have been properly maintained and renewed in accordance with all applicable provisions of law and administrative regulations in the United States and each such jurisdiction except as set forth on **Schedule 2.15(b)**.

(c) All licenses or other agreements under which the Company is granted rights in Intellectual Property Rights are listed on **Schedule 2.15(c)**. All such licenses or other Agreements are in full force and effect, there is no material default by the Company or, to the Company's Knowledge, any party thereto. To the Knowledge of the Company, the licensors under such licenses and other agreements have and had all requisite power and authority to grant the rights purported to be conferred thereby. True and complete copies of all such licenses or other Agreements, and any amendments thereto, have been furnished to CIENA.

(d) All licenses or other agreements under which the Company has granted rights to others in Intellectual Property Rights owned or licensed by the Company are listed on **Schedule 2.15(d)**. All of such licenses or other agreements are in full force and effect, there is no material default by the Company, or to the Company's Knowledge, by any party thereto. True and complete copies of all such licenses or other agreements, and any amendments thereto, have been furnished to CIENA.

(e) The Company has taken all reasonable steps it believes to be required in accordance with sound business practice to establish and preserve its ownership of all material copyright, trade secret and other proprietary rights with respect to its products and technology. The Company has required all professional and technical employees and

independent contractors having access to valuable non-public information of the Company to execute agreements under which such persons are required to maintain the confidentiality of such information and appropriately restricting the use thereof. The Company does not have Knowledge of any infringement by others of any Intellectual Property Rights of the Company.

(f) To the Knowledge of the Company, except as set forth on Schedule 2.15(f), the present business, activities and products of the Company do not infringe any Intellectual Property Rights of any other Person. No proceeding charging the Company with infringement of any Intellectual Property Rights has been filed or, to the Knowledge of the Company, is threatened or likely to be filed. To the Knowledge of the Company, there exists no unexpired patent or patent application that includes claims that would be infringed by the products, activities or business of the Company. To the Knowledge of the Company, the Company is not making any unauthorized use of any confidential information or trade secrets of any Person, including without limitation, any customer of the Company, or any past or present employee of the Company. Except for customer contracts in the Ordinary Course of Business and confidentiality agreements by Employees with former employers, neither the Company nor, to the Knowledge of the Company, any of its employees have any agreements or arrangements with any Persons other than the Company related to confidential information or trade secrets of such Persons or restricting any such employee's engagement in business activities of any nature. The activities of its employees on behalf of the Company do not violate any such agreements or arrangements known to the Company.

SECTION 2.16. Taxes and Assessments.

The Company has (i) duly and timely paid all Taxes which have become due and payable by it, and there are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any Tax Return or the payment of any Tax; (ii) received no written notice of, nor does the Company have any Knowledge of, any notice of deficiency or assessment or proposed deficiency or assessment from any taxing Government Entity; (iii) no Knowledge of any audits pending and there are no outstanding agreements or waivers by the Company that extend the statutory period of limitations applicable to any federal, state, local, or foreign tax returns or Taxes; and (iv) not entered into any discussions with any federal, state, local, or foreign authority with respect to any Tax asserted by such authority. Since inception of the Company, the Tax Returns of the Company have never been audited by federal, state, local, or foreign authorities. There are no Liens on any property of the Company that arose in connection with any failure (or alleged failure) to pay any material Tax when due. The Company has withheld from each payment made to any of its past or present employees, officers or directors, and to any non-residents, the amount of Taxes and other deductions required to be withheld therefrom and has paid the same (or set aside for timely payment) to the proper Tax or other receiving officers within the time required under applicable Laws. The provision for Taxes of the Company, if any, as shown in the Financial Statements is adequate for Taxes due or accrued as of the date thereof.

SECTION 2.17. Employment and Benefit Matters.

(a) Pension and Benefit Plans and Other Arrangements.

Schedule 2.17(a) lists each employee benefit plan, program, arrangement and contract (including, without limitation, any "employee benefit plan" as defined by Section 3(3) of ERISA), applicable to employees of the Company to which it has contributed or under which it has any material liability (collectively, the "Company Benefit Plans"). The Company has made available to CIENA, to the extent they exist, a true and correct copy of (i) the most recent annual report (Form 5500 series) filed with the Internal Revenue Service (the "IRS") with respect to each Company Benefit Plan or similar report of the jurisdiction in which such employee benefit plan is located, (ii) each such Company Benefit Plan document, (iii) each trust agreement or other funding vehicle relating to each such Company Benefit Plan, (iv) the most recent summary plan description for each Company Benefit Plan for which a summary plan description is required, and (v) the most recent determination letter issued by the IRS with respect to any Company Benefit Plan qualified under Section 401(a) of the Code or similar report of the jurisdiction in which such employee benefit plan is located.

(b) Compliance. The Company has complied, in all material respects, with all applicable provisions of the Company Benefit Plans and the Code, ERISA, the National Labor Relations Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Securities Act of 1933, as amended (the "Securities Act"), and all other Laws pertaining to the Company Benefit Plans or the Company's relations with its employees, and other employee or employment related benefits, and all premiums and assessments relating to all Company Benefit Plans. The Company has no liability for any delinquent contributions within the meaning of Section 515 of ERISA (including, without limitation, related attorneys' fees, costs, liquidated damages and interest) or for any arrearages of wages. The Company has no pending unfair labor practice charges, contract grievances under any collective bargaining agreement, other administrative charges, claims, grievances or lawsuits before any court, governmental agency, regulatory body, or arbiter arising under any Law governing any Plan, and, to the Knowledge of the Company, there exist no facts that could reasonably be expected to give rise to such a claim. t.

(c) Collective Bargaining Agreements. There are no collective bargaining agreements applicable to the Company's employees and the Company has no duty to bargain with any labor organization with respect to any such persons. There is not pending any demand for recognition or any other request or demand from a labor organization for representative status with respect to any persons employed by the Company.

(d) Employee Information. The Company has made available to CIENA a list of the names, positions and rates of compensation of all officers, directors, employees and consultants of the Company, as of the date hereof, showing each such person's name, positions, and annual remuneration, bonuses and fringe benefits for the current fiscal year and the most recently completed fiscal year. With respect to any persons employed by the Company, the Company is in material compliance with all Laws respecting employment conditions and practices, has withheld all amounts required by any applicable Laws to be withheld from wages or any Taxes or penalties for failure to comply with any of the foregoing.

(e) Employment Practices. With respect to any persons employed by the Company, (i) the Company has not engaged in any unfair labor practice within the meaning of the National Labor Relations Act and has not violated any legal requirement prohibiting discrimination on the basis of race, color, national origin, sex, religion, age, marital status, or handicap in its employment conditions or practices; and (ii) there are no pending or, to the Knowledge of the Company, threatened unfair labor practice charges or discrimination complaints relating to race, color, national origin, sex, religion, age, marital status, or handicap against the Company before any Government Entity nor, to the Knowledge of the Company, does any basis therefor exist.

(f) Contributions to the Company Benefit Plans. All contributions to, and payments from, each Company Benefit Plan which may have been required to be made in accordance with the terms of such plan, and, where applicable, the laws of the jurisdiction which govern such plan, have been made in a timely manner, and all material reports, returns and similar documents (including applications for approval of contributions) with respect to any Company Benefit Plan required to be filed with any Government Entity or distributed to any participant of such plan have been duly filed on a timely basis or distributed. The Assets of each Company Benefit Plan subject to Title IV of ERISA are at least equal to the liabilities of such plan based on the actuarial assumptions utilized in the most recent valuation performed by an actuary for such plan.

(g) Immigration Laws. The Company has complied, in all material respects, with all Laws governing the employment of personnel by U.S. companies and the employment of non-U.S. nationals in the United States, including, but not limited to, the Immigration and Nationality Act 8 U.S.C. Sections 1101 et seq. and its implementing regulations.

SECTION 2.18. Transactions with Related Parties.

Except as set forth on **Schedule 2.18**, neither any present or former officer, director, stockholder of the Company or person known by the Company to be an Affiliate of any of them, is currently a party to any transaction or agreement with the Company, including, without limitation, any agreement providing for the employment of, furnishing of services by, rental of Assets from or to, or otherwise requiring payments to, any such officer, director, stockholder or Affiliate.

SECTION 2.19. Insurance and List of Claims.

Schedule 2.19 contains a list of all policies of title, property, fire, casualty, liability, life, workmen's compensation, libel and slander, and other forms of insurance of any kind relating to the business and operations of the Company in each case which are in full force and effect as of the date hereof. The Company has made available to CIENA true and correct copies of all such policies. All such policies: (a) are sufficient for compliance by the Company with all requirements of applicable Law and of all licenses, franchises and other agreements to which the Company is a party; and (b) are valid, outstanding, and enforceable policies. All premiums due and payable on all such policies have been paid. A true and complete list of all claims made since July 24, 1998 under any of the policies (or their predecessors) listed on **Schedule 2.19** is included on **Schedule 2.19**.

SECTION 2.20. Brokers.

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any of the Company, except for a fee to be paid by the Company to Credit Suisse First Boston upon consummation of the Merger, the terms of which are set forth on **Schedule 2.20.**

SECTION 2.21. Disclosure.

True and complete copies of all documents listed in the Schedules have been made available or provided to CIENA. The books of account, stock record books and other financial and corporate records of the Company, all of which have been made available to CIENA, are materially complete and correct and have been maintained in accordance with good business practices, including the maintenance of an adequate system of internal accounting controls, and such book and records are accurately reflected in the Financial Statements. The minute books of the Company contain accurate and complete records of all meetings held of, and corporate action by, the stockholders and the board of directors (and committees thereof) of the Company, and no meeting of any such stockholders or board of directors (or committees thereof) has been held for which minutes have not been prepared and are not contained in such minute books.

SECTION 2.22. Absence of Violation.

To the Knowledge of the Company, none of the Company, nor any of its officers, directors, employees or agents (or stockholders, distributors, representatives or other persons acting on the express, implied or apparent authority of any of the Company) have paid, given or received or have offered or promised to pay, give or receive, any bribe or other unlawful payment of money or other thing of value, any extraordinary discount, or any other unlawful inducement, to or from any person, business association or governmental official or entity in the United States or elsewhere in connection with or in furtherance of the business of the Company (including, without limitation, any unlawful offer, payment or promise to pay money or other thing of value (i) to any foreign official or political party (or official thereof) for the purposes of influencing any act, decision or omission in order to assist the Company in obtaining business for or with, or directing business to, any person, or (ii) to any person, while knowing that all or a portion of such money or other thing of value will be offered, given or promised to any such official or party for such purposes). To the Knowledge of the Company, the business of the Company is not in any manner dependent upon the making or receipt of such unlawful payments, discounts or other inducements.

SECTION 2.23. Customers and Suppliers.

Except as set forth on **Schedule 2.23**, the Company does not have Knowledge of (i) any termination or cancellation of (or any intent to terminate or cancel) the business relationship of the Company with (y) any single customer or any group of affiliated customers who represented five percent (5%) or more of the revenues or potential

revenues of the business of the Company during the fiscal year ended December 31, 1999, or (z) any single supplier or any group of affiliated suppliers who provided five percent (5%) or more of the requirements of the business of the Company during the fiscal year ended December 31, 1999, or (ii) any existing condition, state of facts or circumstances that in the reasonable judgment of the Company will cause the Company or any of its customers to terminate their relationships or refuse to consider a prospective relationship. To the Knowledge of the Company, none of the business or prospective business of the Company is in any manner dependent upon the making or receipt of any payments, discounts or other inducements to any officers, directors, employees, representatives or agents of any customer.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF CIENA

CIENA represents and warrants to the Company as follows:

SECTION 3.1. Organization and Qualification.

CIENA is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. CIENA has the requisite power and authority to own, lease and operate its Assets and properties, to carry on its business as now being conducted and to perform the terms of this Agreement and the transactions contemplated hereby. CIENA is duly qualified to conduct its business, and is in good standing, in each jurisdiction where the ownership or leasing of its properties or the nature of its activities in connection with the conduct of its business makes such qualification necessary.

SECTION 3.2. Certificate of Incorporation and Bylaws.

CIENA has previously made available to Company complete and correct copies of its Certificate of Incorporation and Bylaws, as amended to date (together, the "CIENA Charter Documents"). Such CIENA Charter Documents and equivalent organizational documents of each of its subsidiaries are in full force and effect.

SECTION 3.3. Authority.

The execution and delivery of this Agreement by CIENA and the consummation by CIENA of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of CIENA are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by CIENA and, assuming the due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of CIENA, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity.

SECTION 3.4. No Conflict; Required Filings and Consents.

(a) The execution and delivery of this Agreement by CIENA does not, and the performance by CIENA of its obligations under this Agreement will not, (i) conflict with or violate the certificate of incorporation or bylaws of CIENA, (ii) conflict with or violate any Law applicable to CIENA or its Assets and properties, or (iii) result in any breach of or constitute a default (or an event which with the notice or lapse of time or both would become a default) under any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which CIENA is a party or by which CIENA is bound, or by which any of its properties or Assets is subject.

(b) The execution and delivery of this Agreement by CIENA does not, and the performance of this Agreement by CIENA will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Government Entity other than required filings with the Securities and Exchange Commission and filings under the Hart-Scott-Rodino Act.

SECTION 3.5. Brokers.

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of CIENA, except for the fee to be paid by CIENA to Morgan, Stanley & Co. Incorporated.

SECTION 3.6. Issuance of CIENA Stock.

Upon consummation of the Merger, and as of the Effective Time, the shares of CIENA Stock to be issued in the Merger will be duly and validly issued, fully paid and non-assessable, free and clear of all Encumbrances imposed by CIENA, except as contemplated hereby.

SECTION 3.7. SEC Filings.

CIENA has filed all reports required to be filed by it with the Securities and Exchange Commission (the "SEC") during the last twelve months. The reports filed with the SEC (i) were prepared in accordance of the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and (ii) did not, at the time they were filed, contain any untrue statements of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Since the date of CIENA's last periodic report filed with the SEC, as of the date of this Agreement CIENA has incurred no liabilities, contingent or absolute, matured or unmatured, known or unknown that would reasonably be expected to result in a CIENA Material Adverse Effect, and there has been no event that has resulted in, or development that would reasonably be expected to result in, a CIENA Material Adverse Effect.

SECTION 3.8 Litigation.

Except as disclosed in CIENA's SEC reports filed prior to the date hereof, there is no action, suit, investigation, claim, arbitration or litigation pending or, to the knowledge of CIENA, threatened against or involving CIENA or its Assets or the business and operations of any of CIENA, at law or in equity, or before or by any court, arbitrator or Government Entity that would reasonably be expected to result in a CIENA Material Adverse Effect. Except under proceedings that have been disclosed in CIENA's SEC reports filed prior to the date hereof, CIENA is not operating under nor is it subject to any judgment, writ, order, injunction, award or decree of any court, judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any Government Entity. No property or Assets of CIENA has been taken or expropriated by any federal, state, provincial, municipal or other Government Entity nor has any notice or proceeding with respect to thereof been given or commenced nor is CIENA aware of any intent or proposal to give any such notice or commence any such proceeding.

SECTION 3.9 Capitalization.

The authorized capital stock of CIENA consists of 460,000,000 shares of common stock, \$0.01 par value per share, of which 286,530,631 shares are issued and outstanding as of October 31, 2000 and 20,000,000 shares of Preferred Stock, par value \$0.01 per share, none of which are issued and outstanding. Except for shares issuable in this Agreement, and for 30,720,965 shares issuable under outstanding stock options and 3,688,776 shares issuable under stock purchase plans and the shares issuable under the terms of the Rights Agreement, there are no options, warrants or other agreements obligating CIENA to issue or sell any shares of capital stock of, or other equity interests in CIENA. Except as disclosed in the Company's SEC reports, there are no outstanding obligations of CIENA to repurchase, redeem or otherwise acquire any shares of its capital stock. All of the issued and outstanding shares of CIENA capital stock have been duly authorized and validly issued in accordance with applicable laws and are fully paid and non-assessable and not subject to preemptive rights.

SECTION 3.10 Reorganization under Section 368(a) of the Code.

CIENA has not taken any actions which would prevent the Merger from qualifying as a reorganization under Section 368(a) of the Code.

SECTION 3.11 Absence of Certain Changes or Events.

Since October 31, 2000, there has not been: (i) any Material Adverse Effect on CIENA, (ii) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of any of CIENA's capital stock, or any purchase, redemption or other acquisition by CIENA of any of CIENA's capital stock or any other securities of CIENA or any options, warrants, calls or rights to acquire any such shares or other securities except for repurchases from employees following their termination pursuant to the terms of their pre-existing stock option or purchase agreements, (iii) any split, combination or reclassification of any of CIENA's capital stock,

or (iv) any material change by CIENA in its accounting methods, principles or practices, except as required by concurrent changes in GAAP and related interpretations.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF MERGER SUB

CIENA and Merger Sub jointly and severally represent and warrant to the Company as follows:

SECTION 4.1. Organization and Qualification.

Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Merger Sub has the requisite power and authority to own, lease and operate its Assets and properties, to carry on its business as now being conducted and to perform the terms of this Agreement and the transactions contemplated hereby. Merger Sub is duly qualified to conduct its business, and is in good standing, in each jurisdiction where the ownership or leasing of its properties or the nature of its activities in connection with the conduct of its business makes such qualification necessary.

SECTION 4.2. Authority.

The execution and delivery of this Agreement by Merger Sub and the consummation by Merger Sub of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of Merger Sub are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of Merger Sub, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity.

SECTION 4.3. No Conflict; Required Filings and Consents.

(a) The execution and delivery of this Agreement by Merger Sub does not, and the performance by Merger Sub of its obligations under this Agreement will not,
(i) conflict with or violate the certificate of incorporation or bylaws of Merger Sub,
(ii) conflict with or violate any Law applicable to Merger Sub or its Assets and properties, or
(iii) result in any breach of or constitute a default under any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Merger Sub is a party or by which Merger Sub is bound, or by which any of its properties or Assets is subject.

(b) The execution and delivery of this Agreement by Merger Sub does not, and the performance of this Agreement by Merger Sub will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Government Entity, except for the filing of the Certificate of Merger under the DGCL.

ARTICLE V CONDUCT PENDING CLOSING

SECTION 5.1. Conduct of Business Pending Closing.

(a) From the date hereof until the Closing, the Company shall:

(i) maintain its existence in good standing;

(ii) maintain the character of its business and properties and conduct its business in the ordinary and usual manner consistent with past practices, except as expressly permitted by this Agreement;

(iii) maintain business and accounting records consistent with past practices; and

(iv) use its best efforts (a) to preserve its business intact, (b) to keep available to the Company the services of its present officers and employees, and (c) to preserve for the Company the goodwill of its suppliers, customers and others having business relations with the Company.

(b) During the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Closing, CIENA shall not do any of the following and shall not permit its subsidiaries to do any of the following:

(i) Declare, set aside, or pay any dividends or make any other distributions (whether in cash, stock, equity securities or property) in respect to CIENA's capital stock, except where (A) an adjustment is made to the exchange ratio in accordance with Section 1.6 or (B) the holders of Company Capital Stock will otherwise receive an equivalent, proportional dividend or distribution (based on the Exchange Ratio, as adjusted pursuant to Section 1.6) in connection with the Merger as if they had been holders of CIENA Common Stock on the record date for such dividend or distribution; or

(ii) Agree in writing or otherwise take any of the actions described in Section 5.1(b)(i) above.

SECTION 5.2. Prohibited Actions Pending Closing.

Unless otherwise provided for herein or otherwise necessary in order to comply with the Company's obligations hereunder or approved by CIENA in writing, from the date hereof until the Closing, the Company shall not:

(a) amend or otherwise change the Company Certificate or the bylaws of the Company;

(b) issue or sell or authorize for issuance or sale (other than any issuance of Company Capital Stock upon the exercise of any outstanding option or warrant to purchase Company Capital Stock which option or warrant was issued prior to the date hereof in accordance with the terms of the relevant stock option or warrant agreement and the terms of which are disclosed on **Schedule 2.3** or which are subsequently issued in accordance with the succeeding limitations of this **Section 5.2(b)**), or grant any options or make other agreements with respect to, any shares of its capital stock or any other of its securities, except for (i) stock options to purchase Company Common Stock which may be granted under the Company's 1998 Stock Plan in accordance with past practices (including promotion and new hire grants), provided the exercise price per share of each such option is not less than the fair market value per share of Company Common Stock on the grant date, and (ii) those provisions of the agreement with the Exchange Agent which provisions are in furtherance of this Agreement;

(c) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise with respect to any of its capital stock;

(d) reclassify, combine, split, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock except for repurchases of unvested shares in connection with the termination of any employee pursuant to stock option or purchase agreements;

(e) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person, or make any loans or advances, except in the Ordinary Course of Business, consistent with past practice, or modify, amend or waive in any respect the terms and conditions of the Company's 4 ½% Convertible Subordinated Notes Due August 15, 2005 or the Indenture related thereto;

(f) (i) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or Assets) any corporation, partnership, other business organization or any division thereof or any material amount of Assets;

(ii) enter into any contract or agreement other than in the Ordinary Course of Business, consistent with past practice; or

(iii) authorize any capital commitment or capital lease which is in excess of \$500,000 or capital expenditures which are, in the aggregate, in excess of \$500,000;

(g) mortgage, pledge or subject to Encumbrance, any of its Assets or properties or agree to do so;

(h) assume, guarantee or otherwise become responsible for the obligations of any other Person or agree to so do;

(i) enter into or agree to enter into any employment agreement (other than offer letters and letter agreements entered into in the Ordinary Course of Business);

(j) increase the compensation payable or to become payable to its officers or employees, or grant any severance or termination pay to, or enter into any severance agreement with any director, officer or other employee of the Company, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any such director, officer or employee, except that (i) the Company may make reasonable salary increases in connection with the customary officer and employee performance review process and pay customary bonuses consistent with past practices and (ii) the Company may make any amendments to existing employee benefit plans to the extent necessary to maintain their compliance with applicable Laws;

(k) take any action to change in any respect its accounting policies or procedures (including, without limitation, procedures with respect to the payment of accounts payable and collection of accounts receivables);

(l) make any Tax election or settle or compromise any federal, state, local or foreign income material Tax liability in excess of \$50,000;

(m) settle or compromise any pending or threatened suit, action or claim;

(n) pay, discharge or satisfy any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the Ordinary Course of Business and consistent with past practice, of liabilities reflected or reserved against in the latest balance sheet included in the Financial Statements provided to CIENA or subsequently incurred in the Ordinary Course of Business and consistent with past practice in amounts not in excess of \$100,000;

(o) sell, assign, transfer, license or sublicense (other than in the Ordinary Course of Business and consistent with past practice), pledge or otherwise encumber any of the Intellectual Property Rights; or

(p) announce an intention, commit or agree to do any of the foregoing.

Notwithstanding the foregoing, the Company may amend its 1998 Stock Plan to provide for acceleration of vesting of twenty-five percent (25%) of the then unvested shares held by each holder of options or stock issued thereunder upon the occurrence of a change in control event (excluding the transactions contemplated by this Agreement), similar to the manner and event described in CIENA's 1999 Non-Officer Stock Option Plan.

SECTION 5.3. Access; Documents; Supplemental Information.

(a) From and after the date hereof until the Closing, the Company shall afford, and, with respect to clause (ii) below, shall use its reasonable best efforts to cause the independent certified public accountants for the Company to afford, (i) to the officers, independent certified public accountants, counsel and other representatives of CIENA and Merger Sub, upon reasonable notice, free and full access at all reasonable times to the properties, books and records including tax returns filed and those in preparation of the Company and the right to consult with the officers, employees, accountants, counsel and other representatives of the Company in order that CIENA and Merger Sub may have full opportunity to make such investigations as it shall deem necessary of the operations, properties, business, financial condition and prospects of the Company, (ii) to the independent certified public accountants of CIENA and Merger Sub, free and full access at all reasonable times to the work papers and other records of the accountants relating to the Company, and (iii) to CIENA and Merger Sub and their respective representatives, such additional financial and operating data and other information as to the properties, operations, business, financial condition and prospects of the Company as CIENA and Merger Sub shall from time to time require.

(b) From the date of this Agreement through and including the Closing, the Company will furnish to CIENA copies of any notices, documents, requests, court papers, or other materials received from any governmental agency or any other third party with respect to the transactions contemplated by this Agreement.

SECTION 5.4. No Solicitation.

The Company shall not, nor shall it authorize or permit any of its Affiliates or any officer, director, employee, investment banker, attorney or other adviser or representative of the Company or any of its Affiliates to (a) solicit, initiate, or encourage the submission of, any Acquisition Proposal (as hereinafter defined), (b) enter into any agreement with respect to any Acquisition Proposal or (c) participate in any discussions or negotiations regarding, or furnish to any Person any information for the purpose of facilitating the making of, 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 Acquisition Proposal other than the transactions contemplated hereby; provided, however, that nothing contained in this Agreement shall prevent the Company or its Board of Directors at any time prior to the time the Merger has been approved by the Company's stockholders from: (a) providing information in response to a request therefor by a Person who has delivered to the Board of Directors of the Company an unsolicited bona fide written Acquisition Proposal if the Board of Directors of Company receives from the Person so requesting such information an executed confidentiality agreement the terms of which are (without regard to the terms of the Acquisition Proposal) (i) no less favorable to the Company and (ii) no less restrictive on the Person requesting such information than those contained in the Confidentiality Agreement; or (b) engaging in negotiations or discussions with a Person who has delivered to the Board of Directors of the Company an unsolicited bona fide written Acquisition Proposal; if, and only to the extent that, in each such case referred to in clause (a) or (b) above, (x) the Board of Directors of the Company determines in good faith (after reviewing the advice of its financial advisor and outside legal counsel) that the Acquisition

Proposal, if accepted, is likely to be consummated, (y) the Board of Directors of the Company determines in good faith (after reviewing the advice of its financial adviser) that the Acquisition Proposal would, if consummated, result in a transaction that is more favorable to the Company's stockholders (with respect to financial terms and, if applicable, strategic benefit, taking into account the long-term value to stockholders of the Aggregate Share Consideration and the strategic nature of the proposed Merger) than the Merger (any Acquisition Proposal as to which such determinations are made being referred to in this Agreement as a "Superior Proposal") and (z) the Board of Directors determines in good faith (after receiving advice of outside legal counsel) that taking such action is required or necessary in the exercise of its fiduciary duties under applicable law. Without limiting the foregoing, it is understood that any violation, of which the Company or any of its Affiliates had Knowledge at the time of such violation, of the restrictions set forth in the immediately preceding sentence by any officer, director, employee, investment banker, attorney, employee, or other adviser or representative of the Company or any of its Affiliates, whether or not such Person is purporting to act on behalf of the Company or any of its Affiliates or otherwise, shall be deemed to be a breach of this Section 5.4 by the Company and its Affiliates. Nothing in this Section 5.4 shall permit the Company to enter into any agreement, orally or in writing, with respect to an Acquisition Proposal during the term of this Agreement (other than a confidentiality agreement as described above). The Company promptly shall advise CIENA of any Acquisition Proposal (including the terms thereof and the identity of the person making the Acquisition Proposal) and inquiries with respect to any Acquisition Proposal and shall keep CIENA informed on a current basis of the status of any discussions regarding an Acquisition Proposal. "Acquisition Proposal" means any proposal for a merger or other business combination involving the Company or any proposal or offer to acquire in any manner, directly or indirectly, 5% or more (for purposes of this Section 5.4) or 30% or more (for purposes of Section 8.5) of the equity securities, voting securities or Assets of the Company (except in connection with employee stock option grants or warrant exercises). The Company will, and except as otherwise provided in this Agreement, will cause its Affiliates to, immediately cease and cause to be terminated any activities, discussions or negotiations existing as of the date of this Agreement with any Persons (other than CIENA and its representatives) conducted heretofore with respect to any Acquisition Proposal, and will not pursue, directly or indirectly, any Acquisition Proposal received on or prior to the date of this Agreement from any Person (other than CIENA and its representatives). The Company shall not release any third party from, or waive any provisions of, any confidentiality or standstill agreement relating to an Acquisition Proposal to which such party is a party.

SECTION 5.5. Information Supplied.

Each of the Company and CIENA agree that none of the information supplied or to be supplied by it or them for inclusion or incorporation by reference in (a) the Registration Statement on Form S-4 to be filed with the SEC by CIENA in connection with the issuance of shares of CIENA Common Stock in the Merger (including the proxy statement and prospectus (the "Proxy Statement /Prospectus") constituting a part thereof) (the "S-4 Registration Statement") will, at the time the S-4 Registration Statement becomes effective under the Securities Act, 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, not misleading, and (b) the Proxy Statement/Prospectus and any amendment or

supplement thereto will, at the date of mailing to the Company's stockholders and at the times of the meeting of the Company's stockholders to be held in connection with the Merger, contain any untrue statement of a material fact or omit to state any 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.

SECTION 5.6. Stockholder Meeting.

Whether or not the Board of Directors of the Company shall take any action permitted by the third sentence of this **Section 5.6**, the Company shall cause a meeting of its stockholders (the "Stockholders' Meeting") to be duly called and held as soon as practicable after the date of this Agreement for the purpose of voting on the adoption of this Agreement and for the purpose of soliciting holders of Company Preferred Stock to vote in favor of an automatic conversion of the Company Preferred Stock immediately prior to the Closing in accordance with Article IV.B. Section 3(b)(iii) of the Company Certificate, or, at the request of and in the sole discretion of CIENA, shall solicit written consents of stockholders for such purpose. The Board of Directors of the Company shall (i) include in the Proxy Statement/Prospectus prepared therefor its recommendation in favor of adoption of the Merger Agreement (the "Board Recommendation") and (ii) use its best efforts to obtain the necessary vote in favor of the adoption of this Agreement by its stockholders. The Board of Directors of the Company shall not withdraw, amend, modify or qualify in a manner adverse to CIENA the Board Recommendation (or announce its intention to do so), except that, prior to the receipt of the Company Requisite Vote, the Board of Directors of the Company shall be permitted to withdraw, amend, modify or materially qualify in a manner adverse to CIENA the Board Recommendation, following three Business Days' prior notice to CIENA, but only if (A) the Company has complied in all respects with this Agreement, including **Section 5.4**, and (B) after receiving advice of its outside legal counsel, the Board of Directors determines in good faith that the Merger is not in the best interests of the stockholders of the Company and that, therefore, it is required to withdraw, amend or modify the Board Recommendation in order to satisfy its fiduciary duties to the stockholders of the Company under applicable law.

SECTION 5.7. Filings; Other Actions; Notification.

(a) CIENA shall prepare and file with the SEC the S-4 Registration Statement as promptly as practicable. CIENA shall use its reasonable best efforts to have the S-4 Registration Statement declared effective under the Securities Act as promptly as practicable after such filing, and promptly thereafter mail the Prospectus to the stockholders of the Company. CIENA shall also use its reasonable best efforts to obtain prior to the effective date of the S-4 Registration Statement all necessary state securities law or "blue sky" permits and approvals required in connection with the Merger and to consummate the other transactions contemplated by this Agreement. CIENA further agrees to file following the Effective Time a post-effective amendment to the S-4 Registration Statement to convert it to a Form S-3 shelf registration covering resales of CIENA Common Stock by affiliates of the Company.

(b) The Company and CIENA each shall from the date hereof until the Effective Time cooperate with the other and use its reasonable best efforts to cause to be

done all things necessary, proper or advisable on its part under this Agreement and applicable Laws to consummate and make effective the Merger and the other transactions contemplated by this Agreement as soon as practicable, including preparing and filing as promptly as practicable all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity, including filings under the Hart-Scott-Rodino Act, in order to consummate the Merger or any of the other transactions contemplated by this Agreement.

(c) The Company and CIENA each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, executive officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Prospectus, the S-4 Registration Statement or any other statement, filing, notice or application made by or on behalf of CIENA, the Company or any of their respective Subsidiaries to any third party and/or any Governmental Entity in connection with the Merger and the transactions contemplated by this Agreement.

(d) The Company and CIENA each shall keep the other apprised of the status of matters relating to completion of the transactions contemplated hereby.

(e) Prior to the Closing Date, the Company shall take all steps necessary to address the items set forth on Schedule 5.7(e) to CIENA's reasonable satisfaction.

SECTION 5.8. Comfort Letters.

The Company shall cause to be delivered to CIENA a "comfort" letter of Deloitte & Touche LLP, the Company's independent public accountants, dated as of the Effective Date of the S-4 Registration Statement, and addressed to CIENA and the Company, in form and substance reasonably satisfactory to CIENA and reasonably customary in scope and substance for letters delivered by independent public accounts in connection with transactions such as those contemplated by this Agreement.

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SECTION 5.9. NASDAQ Listing.

As soon as practicable after the date hereof and in any event prior to the Effective Time, CIENA shall list on NASDAQ the shares of CIENA Common Stock to be issued in connection with the Merger and upon exercise of Substitute Options and Warrants.

SECTION 5.10. Company Stock Options; Company Warrants.

(a) Concurrent with the Effective Time, each stock option to purchase Company Common Stock (the "Company Stock Options") which is outstanding immediately prior to the Effective Time pursuant to the Company's 1998 Stock Plan in effect on the date hereof (the "Stock Plan") shall together with each such Stock Plan, be assumed by CIENA and shall thereby be converted into an option (an "Assumed Option") to purchase the number of shares of CIENA Common Stock (decreased to the nearest full share) determined

by multiplying (i) the number of shares of Company Common Stock subject to such Company Stock Option immediately prior to the Effective Time by (ii) the Common Stock Exchange Ratio, at an exercise price per share of CIENA Common Stock (increased to the nearest whole cent) equal to the exercise price per share of Company Common Stock in effect under such Company Stock Options immediately prior to the Effective Time divided by the Common Stock Exchange Ratio. Except for the foregoing adjustments and the Rights, all the terms and conditions in effect for each Assumed Option immediately prior to the Effective Time shall continue in effect following the assumption of such option in accordance with this Agreement. The Company agrees that it will not grant any stock appreciation rights or limited stock appreciation rights and will not permit cash payments to holders of Company Stock Options in lieu of the substitution therefor of Assumed Options. The Company shall take all actions necessary to assure that no acceleration of vesting of Assumed Options shall occur solely as a result of the Merger.

(b) It is the intention of the parties that the Company Stock Options so assumed by CIENA shall qualify, immediately after the Effective Time, as "Incentive Stock Options" under Section 422 of the Code to the same extent those options qualified as such Incentive Stock Options immediately prior to the Effective Time. Accordingly, the adjustments provided herein with respect to any "Company Stock Options" that are Incentive Stock Options shall be and are intended to be effected in a manner which is consistent with Section 424(a) of the Code.

(c) CIENA shall take all corporate action necessary to reserve for issuance a sufficient number of shares of CIENA Common Stock for delivery upon the exercise of the Assumed Options and the Company Warrants. As soon as practicable after the Effective Time, CIENA shall deliver to the holders of Company Stock Options appropriate notices setting forth such holders' rights pursuant to CIENA's stock option plans and the agreements evidencing the grants of such Assumed Options and that such Assumed Options shall continue in effect on the same terms and conditions as the Company Stock Options (subject to the adjustment set forth in this Section 5.10).

(d) As soon as practicable after the Effective Time, CIENA shall prepare and file with the SEC a registration statement on Form S-8 (or another appropriate form) registering a number of shares subject to the Assumed Options. Such registration statement shall be kept effective (and the current status of the prospectus required thereby shall be maintained in accordance with the relevant requirements of the Securities Act and the Exchange Act) at least for so long as any Assumed Options remain outstanding.

(e) Concurrent with the Effective Time, each warrant to purchase Company Common Stock that is then outstanding and exercisable described in Schedule 2.3 (each, a "Company Warrant"), without any action on the part of the holder, shall be deemed assumed by CIENA and shall constitute a warrant to acquire, on the same terms and conditions as were applicable under such Company Warrant, a number of shares of CIENA Common Stock equivalent to (A) the number of Shares that could have been purchased immediately prior to the Effective Time under such Company Warrant multiplied by (B) the Common Stock Exchange Ratio (rounded down to the nearest whole number), at a price per share of CIENA Common Stock (rounded up to the nearest whole cent) equal to the exercise price per share pursuant to such Company Warrant immediately prior to the Effective Time divided by the Common Stock Exchange Ratio. At or prior to the

Effective Time, the Company shall make all necessary arrangements with respect to the Company Warrants to permit the assumption of the unexercised Company Warrants by CIENA pursuant to this **Section 5.10(e)**.

SECTION 5.11. Notification of Certain Matters.

The Company shall give prompt notice to CIENA, and CIENA shall give prompt notice to the Company, of (a) the occurrence, or non-occurrence, of any event which would be likely to cause (i) any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect or (ii) any covenant, condition or agreement contained in this Agreement not to be complied with or satisfied; and (iii) any failure of the Company, CIENA or Merger Sub, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided that the delivery of any notice pursuant to this **Section 5.11** shall not limit or otherwise affect the remedies available to the party receiving such notice.

SECTION 5.12. Reorganization.

Each of CIENA and the Company shall use its reasonable best efforts to cause the business combination to be effected by the Merger to be qualified as a "reorganization" described in Section 368(a) of the Code. CIENA shall take no action following the Effective Time that would have the effect of causing the Merger to fail to so qualify.

SECTION 5.13. Indemnification.

From and after the Effective Time for not less than (i) six (6) years, in the case of acts or omissions under or pursuant to Section 174 of the DCGL and Section 8109 of Title 10 of the Delaware Code Annotated, and (ii) four (4) years for all other acts or omissions, after the Effective Time, CIENA shall fulfill and honor in all respects the obligations of the Company to indemnify each person who is or was a director or officer of the Company against losses such person may incur based upon matters existing or occurring prior to the Effective Time pursuant to any applicable indemnification agreements and any indemnification and exculpation provision of the Company Certificate or its bylaws as each is in effect on the date hereof.

SECTION 5.14. Actions by the Parties.

Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto will use its reasonable best efforts to take or cause to be taken all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable law and regulations to consummate and make effective in the most expeditious manner practicable, the transactions contemplated by this Agreement including (i) the obtaining of all necessary actions and non-actions, waivers and consents, if any, from any governmental agency or authority and the making of all necessary registrations and filings and the taking of all reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by any governmental agency or authority; (ii) the

obtaining of all necessary consents, approvals or waivers from any other Person; (iii) the defending of any claim, investigation, action, suit or other legal proceeding, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby; and (iv) the execution of additional instruments necessary to consummate the transactions contemplated by this Agreement. Each party will promptly consult with the other and provide necessary information (including copies thereof) with respect to all filings made by such party with the any agency or authority in connection with this Agreement and the transactions contemplated hereby.

ARTICLE VI CONDITIONS PRECEDENT

SECTION 6.1. Conditions Precedent to Each Party's Obligation to Effect the Merger.

The respective obligations of each party hereto to effect the Merger shall be subject to the fulfillment or satisfaction, prior to or on the Closing Date of the following conditions:

(a) Approvals. All authorizations, consents, orders, declarations or approvals of, or filings with, or terminations or expirations of waiting periods imposed by (including without limitation, expiration of any Hart-Scott-Rodino waiting period), any governmental or regulatory authority, domestic or foreign, which the failure to obtain, make or occur would have the effect of making the Merger or any of the transactions contemplated hereby illegal or would have a CIENA Material Adverse Effect or a Company Material Adverse Effect, assuming the Merger had taken place, shall be in effect.

(b) No Injunction. No temporary restraining order, preliminary or permanent injunction or other order from any court of competent jurisdiction or other governmental or regulatory authority prohibiting or preventing the consummation of the Merger or any of the transactions contemplated hereunder shall be in effect.

(c) S-4. The S-4 Registration Statement shall have become effective under the Securities Act. No stop order suspending the effectiveness of the S-4 Registration Statement shall have been issued, and no proceeding for that purpose shall have been initiated or be threatened, by the SEC.

(d) Stockholder Approval. The Merger shall have been duly approved by holders of Company Capital Stock as required by the Company Certificate.

(e) NASDAQ Listing. The CIENA Common Stock to be issued in the Merger shall have been approved for listing on NASDAQ.

SECTION 6.2. Conditions Precedent to Obligations of CIENA.

The obligations of CIENA to effect the Merger shall be subject to the fulfillment or satisfaction, prior to or on the Closing Date, of each of the following conditions precedent:

(a) **Performance of Obligations: Representations and Warranties:**
Dissenters.

(i) The Company shall have performed in all material respects and complied in all material respects with all agreements and conditions contained in this Agreement that are required to be performed or complied with by it prior to or at the Closing. Each of the Company's representations and warranties contained in Article II of this Agreement shall be true and correct in all material respects, in each case, on and as of the Closing with the same effect as though such representations and warranties were made on and as of the Closing, except for changes permitted by this Agreement and except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be as of such earlier date. CIENA shall have received a certificate dated the Closing Date and signed by the Chairman, President or a Vice-President of the Company, certifying that, the conditions specified in this Section 6.2(a) have been satisfied;

(ii) there shall have been no changes that have had or are reasonably likely to have a Company Material Adverse Effect since the date of this Agreement, except for changes contemplated by this Agreement; and

(iii) holders of shares of Company Capital Stock representing in excess of 2.0% of the issued and outstanding Company Capital Stock immediately prior to the Effective Time shall not have demanded or exercised appraisal rights under Section 262 of the DGCL.

(b) **Consents.** The Company shall have received consents or waivers, in form and substance reasonably satisfactory to CIENA, from the other parties to the contracts, leases or agreements to which the Company is a party and which are set forth on Schedule 6.2(b).

(c) **Non-Competition Agreements.** Each of the Non-Competition Agreements shall be in full force and effect.

(d) **Tax Opinion.** CIENA shall have received the opinion of Hogan & Hartson L.L.P., counsel to CIENA, dated the Closing Date, to the effect that the Merger will not result in taxation to CIENA or Merger Sub under the Code. In rendering such opinion, Hogan & Hartson L.L.P. shall require delivery of and rely upon representation letters delivered by CIENA, Merger Sub and the Company in customary form.

(e) **Termination of Agreements.** The Right of First Refusal and Cosale Agreement and the Registration Rights Agreement shall be inapplicable to this transaction and shall have been terminated.

(f) Escrow Agreement. The Stockholder Representative shall have executed and delivered the Escrow Agreement in the form attached hereto as **Exhibit B**, on behalf of all stockholders other than the holders of Dissenting Shares.

SECTION 6.3. Conditions Precedent to the Company's Obligations.

The obligations of the Company to effect the Merger shall be subject to the fulfillment or satisfaction, prior to or on the Closing Date, of each of the following conditions precedent:

(a) Performance of Obligations; Representations and Warranties. CIENA and Merger Sub shall have performed in all material respects and complied in all material respects with all agreements and conditions contained in this Agreement that are required to be performed or complied with by them prior to or at the Closing. Each of the representations and warranties of CIENA and Merger Sub contained in **Articles III and IV** of this Agreement shall be true and correct in all material respects, in each case, on and as of the Closing with the same effect as though such representations and warranties were made on and as of the Closing except for changes permitted by this Agreement and except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be as of such earlier date. The Company shall have received certificates dated the Closing Date and signed by the Chairman, President or a Senior Vice-President of CIENA, certifying that the conditions specified in this **Section 6.3(a)** have been satisfied.

(b) Opinions of Counsel. The Company shall have received (i) the favorable written opinion dated the Closing Date of counsel to CIENA and Merger Sub, in form satisfactory to the Company, as to the legal validity of the shares of CIENA stock to be issued in the Merger, and (ii) the opinion of Brobeck, Phleger & Harrison LLP, counsel to the Company, dated the Closing Date, to the effect that the Merger will not result in taxation to the Company's Stockholders under the Code. In rendering such opinion, Brobeck, Phleger & Harrison LLP shall require delivery of and rely upon representation letters delivered by CIENA, Merger Sub and the Company in customary form.

(c) CIENA and Merger Sub shall have executed and delivered the Escrow Agreement in the form attached hereto as **Exhibit B**.

ARTICLE VII SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

SECTION 7.1. Survival of Representations and Warranties.

✓ All of the Company's, CIENA's and Merger Sub's representations and warranties representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Merger and continue until the date which is one year following the Closing Date.

SECTION 7.2. Indemnification; Escrow Agreements.

(a) **Indemnification.** CIENA, Merger Sub and their respective officers, directors and affiliates (the "Indemnified Parties") shall be indemnified and held harmless by the Stockholders (other than those dissenting stockholders exercising rights of appraisal under Section 262 of the DGCL who do not receive CIENA Common Stock in the Merger) against all claims, losses, liabilities, damages, deficiencies, costs and expenses, including reasonable attorneys' fees and expenses of investigation (hereinafter individually a "Loss" and collectively "Losses") incurred by the Indemnified Parties directly or indirectly as a result of: (i) any inaccuracy or breach of a representation or warranty of the Company contained in this Agreement or contained in a certificate of any officer of the Company delivered pursuant to this Agreement, or (ii) any failure by the Company to perform or comply with any covenant or agreement contained in this Agreement. The Stockholders shall not have any right of contribution from the Company with respect to any Loss claimed by CIENA after the Effective Time. Nothing herein shall limit the liability of the Company for any breach of any representation, warranty, covenant or agreement if the Merger is not consummated.

(b) **Indemnification Threshold and Limitations.**

(i) Except as set forth below, there shall be no liability for any Stockholder under **Section 7.2** unless the aggregate amount of Losses incurred by the Indemnified Parties exceeds \$1,000,000 (the "Indemnification Threshold") in the aggregate, in which event the entire aggregate amount of the Losses shall be indemnifiable pursuant to **Section 7.2(a)**.

(ii) Subject to **Sections 7.2(a) and 7.5**, the Indemnified Parties sole and exclusive remedy for any inaccuracy or breach of a representation or warranty of the Company or any failure by the Company to perform or comply with any covenant and agreement in this Agreement or any agreement, instrument or certificate delivered pursuant to or in connection therewith shall be indemnification pursuant to this **Article VII**. Subject to **Sections 7.2(a) and 7.5**, the liability of the Stockholders under and the right of the Indemnified Parties to seek such indemnification shall be limited solely and exclusively to the Escrow Amount (as defined in **Section 7.2(c)**).

(c) **Satisfaction of Indemnification Obligations; Escrow Fund.**

Each of the Stockholders receiving CIENA Common Stock in the Merger will be deemed to have received and deposited with the Escrow Agent (as defined below) the Escrow Amount (plus any additional shares as may be issued upon any stock split, stock dividend or recapitalization effected by CIENA after the Effective Time with respect to the Escrow Amount). The Escrow Amount will be deposited with and will be held by an institution mutually acceptable to CIENA and the Stockholders' Representative (as defined in **Section 7.3**) as Escrow Agent (the "Escrow Agent"), such deposit to constitute an escrow fund (the "Escrow Fund") to be governed by the terms set forth in the Escrow Agreement. Payment of any Loss from the Escrow Amount shall be taken ratably from the Escrow Shares (as defined in the Escrow Agreement). Each payment for Losses satisfied by shares of the Escrow Amount which are subject to repurchase shall be in proportion to the number of shares vested and unvested (including with respect to vesting dates).

(d) Liability for Disclosed Matter.

Notwithstanding any other provision of this **Article VII** and without regard to any breach by the Company of a representation, warranty, covenant or agreement contained herein, any claim for fees owed and any related liability resulting from a claim for payment with respect to the matter disclosed as Item 42 on **Schedule 2.10(a)** (referenced also as the second item listed on **Schedule 2.20**) shall be satisfied in full out of the Escrow Amount and the Indemnification Threshold shall be wholly inapplicable to any such claim.

SECTION 7.3. Stockholder's Representative.

(a) In the event the Stockholders approve the Merger, effective upon such vote and without any further action by the Stockholders, Douglas Carlisle will be appointed as agent and attorney-in-fact (the "Stockholders' Representative") for each Stockholder receiving CIENA Common Stock in the Merger, for and on behalf of the Stockholder. The Stockholders' Representative shall have full power and authority to represent all of the Stockholders and their successors with respect to all matters arising under this Agreement and the Escrow Agreement and all actions taken by the Stockholders' Representative hereunder and thereunder shall be binding upon all such Stockholders and their successors as if expressly confirmed and ratified in writing by each of them. The Stockholders' Representative shall take any and all actions which he believes are necessary or appropriate under this Agreement and the Escrow Agreement for and on behalf of the Stockholders, as fully as if the Stockholders were acting on their own behalf, including, without limitation, defending all indemnity claims against the Stockholders pursuant to **Section 7.2** of this Agreement (an "Indemnity Claim"), consenting to, compromising or settling all Indemnity Claims, conducting negotiations with CIENA and its agents regarding such claims, dealing with CIENA and the Escrow Agent under this Agreement and the Escrow Agreement with respect to all matters arising under this Agreement and the Escrow Agreement, taking any and all other actions specified in or contemplated by this Agreement and the Escrow Agreement, and engaging counsel, accountants or other Stockholders' Representatives in connection with the foregoing matters. Without limiting the generality of the foregoing, the Stockholders' Representative shall have full power and authority to interpret all the terms and provisions of this Agreement and the Escrow Agreement and to consent to any amendment hereof or thereof on behalf of all such Stockholders and such successors. Notwithstanding the foregoing, each Stockholder shall have the right to exercise any voting rights appertaining to the Escrow Shares.

(b) Indemnification of Stockholders' Representative. The Stockholders' Representative may act upon any instrument or other writing believed by the Stockholders' Representative in good faith to be genuine and to be signed or presented by the proper person and shall not be liable in connection with the performance by him of his duties pursuant to the provisions of the Escrow Agreement, except for his own willful default or gross negligence. The Stockholders' Representative shall be, and hereby is, indemnified and held harmless, jointly and severally, by the Stockholders from all losses, costs and expenses (including attorneys' fees) that may be incurred by the Stockholders' Representative as a result of the Stockholders' Representative's performance of his duties under this Agreement and the Escrow Agreement, provided that the Stockholders'

Representative shall not be entitled to indemnification for losses, costs or expenses that result from any action taken or omitted by the Stockholders' Representative as a result of his willful default or gross negligence and provided, further, that each Stockholder's obligation to indemnify the Stockholders' Representative under this Agreement and the Escrow Agreement shall be limited to, and payable only from, each Shareholder's pro rata interest in the Escrow Account and cash available, if any, to the Stockholders under the Escrow Agreement. The Escrow Agent shall from time to time sell such amount of the Escrow Shares as necessary to pay such Stockholders' Representative's costs and expenses, to the extent required by the preceding sentence.

(c) Access to Information. The Stockholders' Representative shall have reasonable access to information of and concerning any Indemnity Claim and which is in the possession, custody or control of the Company and the reasonable assistance of the Company's officers and employees for purposes of performing the Stockholders' Representative's duties under this Agreement or the Escrow Agreement and exercising its rights under this Agreement and the Escrow Agreement, including for the purpose of evaluating any Indemnity Claim against the Escrow Shares by CIENA; provided that the Stockholders' Representative shall treat confidentially and not disclose any nonpublic information from or concerning any Indemnity Claim to anyone (except to the Stockholders' Representative's attorneys, accountants or other advisers, to Stockholders, to the arbitrators appointed to resolve disputes pursuant to this Agreement, and on a need-to-know basis to other individuals who agree to keep such information confidential.)

(d) Reasonable Reliance. In the performance of his duties hereunder, the Stockholders' Representative shall be entitled to rely upon any document or instrument reasonably believed by him to be genuine, accurate as to content and signed by any Stockholder or CIENA. The Stockholders' Representative may assume that any person purporting to give any notice in accordance with the provisions hereof has been duly authorized to do so.

(e) Attorney-in-Fact.

(i) The Stockholders' Representative is hereby appointed and constituted the true and lawful attorney-in-fact of each Stockholder, with full power in his, her or its name and on his, her or its behalf to act according to the terms of this Agreement and the Escrow Agreement in the absolute discretion of the Stockholders' Representative; and in general to do all things and to perform all acts including, without limitation, executing and delivering the Escrow Agreement and any other agreements, certificates, receipts, instructions, notices or instruments contemplated by or deemed advisable in connection with the Escrow Agreement.

(ii) This power of attorney and all authority hereby conferred is granted and shall be irrevocable and shall not be terminated by any act of any Stockholder, by operation of law, whether by such Stockholder's death, disability protective supervision or any other event. Without limitation to the foregoing, this power of attorney is to ensure the performance of a special obligation and, accordingly, each Stockholder hereby renounces its, his or her right to renounce this power of attorney unilaterally any time before the end of the Escrow Period (as such term is defined in the Escrow Agreement).

(iii) Each Stockholder hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the Stockholders' Representative taken in good faith under the Escrow Agreement.

(iv) Notwithstanding the power of attorney granted in this Section 8.3, no agreement, instrument, acknowledgement or other act or document shall be ineffective by reason only of the Stockholders having signed or given such directly instead of the Stockholders' Representative.

(f) Liability. If the Stockholders' Representative is required by the terms of the Escrow Agreement to determine the occurrence of any event or contingency, the Stockholders' Representative shall, in making such determination, be liable to the Stockholders only for his proven bad faith as determined in light of all the circumstances, including the time and facilities available to him in the ordinary conduct of business. In determining the occurrence of any such event or contingency, the Stockholders' Representative may request from any of the Stockholders or any other person such reasonable additional evidence as the Stockholders' Representative in his sole discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and may at any time inquire of and consult with others, including any of the Stockholders, and the Stockholders' Representative shall not be liable to any Stockholder for any damages resulting from his delay in acting hereunder pending his receipt and examination of additional evidence requested by him.

(g) Orders. The Stockholders' Representative is authorized, in his sole discretion, to comply with final, nonappealable orders or decisions issued or process entered by any court of competent jurisdiction or arbitrator with respect to the Escrow Shares. If any portion of the Escrow Shares is disbursed to the Stockholders' Representative and is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Stockholders' Representative is authorized, in his sole discretion, but in good faith, to rely upon and comply with any such order, writ, judgment or decree which he is advised by legal counsel selected by him is binding upon him without the need for appeal or other action; and if the Stockholders' Representative complies with any such order, writ, judgment or decree, he shall not be liable to any Stockholder or to any other Person by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

(h) Removal of Stockholders' Representative: Authority of Successor Stockholders' Representative. Stockholders who in the aggregate hold at least a majority of the Stockholders' interest in the Escrow Shares shall have the right at any time during the term of the Escrow Agreement to remove the then-acting Stockholders' Representative and to appoint a successor Stockholders' Representative; provided, however, that neither such removal of the then acting Stockholders' Representative nor such appointment of a successor Stockholders' Representative shall be effective until the delivery to the Escrow Agent of executed counterparts of a writing signed by each such Stockholder with respect to such removal and appointment, together with an acknowledgment signed by the successor Stockholders' Representative appointed in such writing that he or she accepts the

responsibility of successor Stockholders' Representative and agrees to perform and be bound by all of the provisions of this Agreement applicable to the Stockholders' Representative. Each successor Stockholders' Representative shall have all of the power, authority, rights and privileges conferred by this Agreement upon the original Stockholders' Representative, and the term "Stockholders' Representative" as used herein and in the Escrow Agreement shall be deemed to include any interim or successor Stockholders' Representative.

SECTION 7.4. Defense of Third Party Claims.

(a) In the event of the assertion or commencement by any Person of any claim or legal proceeding ("Legal Proceeding") (whether against the Company, against any other indemnitee or against any other Person) with respect to which any of the Stockholders may become obligated to indemnify, hold harmless, pay, compensate or reimburse CIENA, their officers, directors or affiliates ("CIENA Indemnitee") pursuant to this Article VII, (i) CIENA, as soon as practicable after it receives written notice of any such claim or Legal Proceeding shall notify the Stockholders' Representative of such claim or Legal Proceeding (it being understood that the failure to notify the Stockholders' Representative shall not in any way limit the rights of the CIENA Indemnitees under this Agreement unless such failure materially prejudices the rights or defenses available to the Stockholders' Representative), and (ii) the Stockholders' Representative shall have the right to participate in the defense of such claim or Legal Proceeding at the sole expense of the Stockholders. If the Stockholders' Representative so participates in the defense of any such claim or Legal Proceeding, the Stockholders' Representative shall acknowledge in writing the obligation of the Stockholders to indemnify the relevant CIENA Indemnitee against any Losses that may result from such claim or Legal Proceeding.

(b) CIENA shall proceed with the defense of such claim or Legal Proceeding and:

(i) all expenses relating to the defense of such claim or Legal Proceeding shall be borne and paid exclusively by the Stockholders in the manner and to the extent contemplated by the Escrow Agreement and Section 7.2 hereof;

(ii) the Stockholders shall make available to CIENA any documents and materials in the possession or control of any of the Stockholders that may be necessary to the defense of such claim or Legal Proceeding;

(iii) CIENA shall keep the Stockholders' Representative informed of all material developments and events relating to such claim or Legal Proceeding; and

(iv) CIENA shall not have the right to settle, adjust or compromise such claim or Legal Proceeding without the prior written consent of the Stockholders' Representative, provided, however, that the Stockholders' Representative shall not unreasonably withhold such consent.

SECTION 7.5. Maximum Payments; Remedy.

Notwithstanding anything to the contrary herein, the existence of this Article and of the rights and restrictions set forth herein do not limit any legal remedy against the parties hereto for claims based on fraud. No Stockholder shall have any right to contribution from the Company for any claim made by CIENA with respect to any Loss claimed by CIENA after the Effective Time.

ARTICLE VIII MISCELLANEOUS AND GENERAL

SECTION 8.1. Expenses.

Regardless of whether or not the transactions contemplated hereby have been consummated at the Closing, each party hereto shall pay its own expenses incidental to the preparation of this Agreement, the carrying out of the provisions of this Agreement and the consummation of the transactions contemplated hereby.

SECTION 8.2. Press Releases.

The Company shall not issue any press release or otherwise make public any information with respect to this Agreement nor the transactions contemplated hereby, prior to the Closing, without the prior written consent of CIENA. The parties shall issue a joint initial press release announcing the execution of this Agreement as may be mutually agreed.

SECTION 8.3. Contents of Agreement; Parties in Interest; Etc.

This Agreement and the agreements referred to or contemplated herein and the letter agreement dated September 21, 2000, as amended on November 29, 2000, concerning confidentiality (the "Confidentiality Agreement") set forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby, and, except as set forth in this Agreement, such other agreements and the Exhibits hereto and the Confidentiality Agreement, there are no representations or warranties, express or implied, made by any party to this Agreement with respect to the subject matter of this Agreement and the Confidentiality Agreement. Except for the matters set forth in the Confidentiality Agreement, any and all previous agreements and understandings between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement and the agreements referred to or contemplated herein.

SECTION 8.4. Assignment and Binding Effect.

This Agreement may not be assigned by either party hereto without the prior written consent of the other party; provided, that CIENA may assign its rights and obligations under this Agreement to any directly or indirectly wholly-owned Subsidiary of

CIENA, upon written notice to the Company if the assignee shall assume the obligations of CIENA hereunder and CIENA shall remain liable for its obligations hereunder. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

SECTION 8.5. Termination.

(a) **Termination by Mutual Consent.** This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the approval by Stockholders of the Company referred to in **Section 6.1(d)**, by mutual written consent of the Company and CIENA.

(b) **Termination by Either CIENA or the Company.** This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by action of the Board of Directors of either CIENA or the Company if (i) the Merger shall not have been consummated by June 30, 2001, whether such date is before or after the date of approval by the Stockholders of the Company (the "Termination Date"); (ii) the approval of the Company's stockholders required by **Section 6.1(d)** shall not have been obtained at a meeting duly convened therefor or at any adjournment or postponement thereof; or (iii) any Order permanently restraining, enjoining or otherwise prohibiting consummation of the Merger shall become final and non-appealable; provided, that the right to terminate this Agreement pursuant to clause (i) or (ii) above shall not be available to any party that has breached in any material respect its obligations under this Agreement in any manner that shall have caused the occurrence of the failure of the Merger to be consummated or the stockholder approval to be obtained.

(c) **Termination by the Company.** This Agreement may be terminated and the Merger may be abandoned at any time prior to the receipt of the approval of the Company's Stockholders required by **Section 6.1(d)**, by action of the Board of Directors of the Company:

(i) if (A) the Company is not in material breach of any of the terms of this Agreement, (B) the Merger shall not have been approved by the Company's Stockholders as required by **Section 6.1(d)**, (C) the Board of Directors of the Company authorizes the Company, subject to complying with the terms of this Agreement, to enter into a binding written agreement concerning a transaction that constitutes a Superior Proposal and the Company notifies CIENA in writing that it intends to enter into such an agreement, attaching the most current version of such agreement to such notice, (D) CIENA does not make, within five Business Days of receipt of the Company's written notification of its intention to enter into a binding agreement for a Superior Proposal, an offer that the Board of Directors of the Company determines, in good faith after consultation with its outside legal counsel and its financial advisors, is at least as favorable to the stockholders of the Company as the Superior Proposal taking into account the long-term value to stockholders of the revised Merger Consideration and the strategic nature of the proposed Merger, if applicable, and (E) the Company prior to such termination pays to CIENA in immediately available funds the fees required to be paid pursuant to **Section 8.5(e)**. The Company agrees (1) that it will not enter into a binding agreement referred to in clause (C) above until at least the sixth business day after it has provided the notice to CIENA required thereby and (2) to notify CIENA promptly if its intention to enter

into a written agreement referred to in its notification shall change at any time after giving such notification; or

(ii) if it is not in material breach of its obligations under the Agreement and there is a breach by CIENA or Merger Sub of any material representation, warranty, covenant or agreement contained in this Agreement and such breach has not been cured within thirty (30) days after written notice thereof to CIENA, or such breach cannot be cured, and would cause a condition set forth in Section 6.3(a) to be incapable of being satisfied.

(d) Termination by CIENA. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the receipt of the approval of the Company's Stockholders required by Section 6.1(d), by written notice given to the Company by CIENA.

(i) if the Company or its Board of Directors shall have (A) withdrawn, modified or amended in any respect adverse to CIENA its recommendation of the adoption of this Agreement or failed to reconfirm its recommendation of this Agreement or the Merger within three Business Days after a written request by CIENA to do so ("Change in the Board Recommendation"), or (B) approved, recommended or entered into an agreement with respect to, or consummated, or adopted a resolution to approve, recommend, enter into an agreement with respect to, or consummate, any Acquisition Proposal from a person other than CIENA or any of its Affiliates; or

(ii) if it is not in material breach of its obligations under the Agreement and there is a breach by the Company of any material representation, warranty, covenant or agreement contained in this Agreement, or such breach has not been cured within thirty (30) days after written notice thereof to the Company and such breach cannot be cured and would cause a condition set forth in Section 6.2(a) or 6.2(d) to be incapable of being satisfied.

(e) Effect of Termination and Abandonment.

(i) In the event of termination of this Agreement and the abandonment of the Merger pursuant to this Section 8.5, this Agreement (other than as set forth in this Section 8.5(e)) shall become void and of no effect with no liability on the part of any party hereto (or of any of its directors, officers, employees, agents, legal and financial advisors or other representatives); provided, however, except as otherwise provided herein, no such termination shall relieve any party hereto of any liability or damages resulting from any willful breach of this Agreement.

(ii) In the event that this Agreement is terminated (A) by the Company pursuant to Section 8.5(c)(i) or (B) by CIENA pursuant to Section 8.5(d)(i), then the Company shall (1) promptly, but in no event later than the earlier of the date of such termination or date of entrance into an agreement concerning an Acquisition Proposal or such earlier time as required by this Agreement, pay to CIENA a termination fee of \$80 million payable by wire transfer of same day funds and (2) in no event later than two business days after CIENA shall have requested payment of its charges and expenses incurred in connection with the transactions contemplated hereby, pay to CIENA the

amount of such charges and expenses up to a maximum of \$1.5 million payable by wire transfer of same day funds. Notwithstanding the foregoing, except as provided in clause (iii) below, the Company shall have no obligation to pay the amounts payable in this clause (ii) if (x) the Agreement is terminated pursuant to **Section 8.5(d)(i)(A)**, and (y) the principal reason for the Change in the Board Recommendation is a development or combination of developments relating to CIENA that, in any such case individually or in the aggregate, has had or is reasonably likely to result in a CIENA Material Adverse Effect.

(iii) In the event that this Agreement is terminated pursuant to **Section 8.5(b)(ii)**, or pursuant to **Section 8.5(d)(i)(A)** in a circumstance where no termination fee is payable pursuant to the last sentence of **Section 8.5(e)(ii)**, and at the time of the Company Stockholders' Meeting or Change in the Board Recommendation referred to therein any Person shall have made an Acquisition Proposal to the Company or any of its stockholders or shall have publicly announced an intention (whether or not conditional) to make an Acquisition Proposal with respect to the Company, if within 12 months of such termination, the Company enters into an agreement concerning a transaction that constitutes an Acquisition Proposal, the Company shall (A) at the time of entering into such agreement, shall pay to CIENA the termination fee of \$80 million payable by wire transfer of same day funds and (B) in no event later than two business days after CIENA shall have requested payment of its charges and expenses incurred in connection with the transactions contemplated hereby, pay to CIENA the amount of such charges and expenses up to a maximum of \$1.5 million payable by wire transfer of same day funds.

(iv) The Company and CIENA each acknowledge that the agreements contained in **Sections 8.5(e)(ii)** and **(iii)** are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Company, CIENA and Merger Sub would not enter into this Agreement; accordingly, if the Company fails to promptly pay the amounts due pursuant to this Section, and, in order to obtain such payment, CIENA commences a suit which results in a judgment against the Company for the fees set forth in this **Section 8.5**, the Company shall pay to CIENA its costs and expenses (including attorneys' fees) in connection with such suit, together with interest from the date of termination of this Agreement on the amounts owed at the prime rate of First Union National Bank of Maryland in effect from time to time during such period plus two percent.

SECTION 8.6. Joint Integration Team.

The parties agree that a joint integration team represented equally by the Company and CIENA shall identify any person(s) performing redundant functions at the Company to those performed at CIENA. The Parties agree that to the extent a person is identified as performing a redundant function the joint integration team shall use reasonable best efforts to identify a suitable non-redundant position for such person. If the joint integration team is unable to identify a suitable non-redundant position for such person(s) then it shall agree on a salary and benefits continuation and Substitute Options vesting continuation for such person(s) of from three to six months based on the experience level and position of such person. In the event that the team is deadlocked on a particular position the team shall bring the decision to the President of the Company (or its successor)

for advice and consultation and, if necessary, to CIENA's President or Chairman, who shall make the ultimate decision.

SECTION 8.7. Definitions.

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

(a) "*Affiliate*" of a Person means any other Person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such Person. "Control" means the possession of the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise.

(b) "*Assets*" means assets of every kind and everything that is or may be available for the payment of liabilities (whether inchoate, tangible or intangible), including, without limitation, real and personal property but excluding Intellectual Property Rights.

(d) "*Business Day*" means a day other than Saturday or Sunday or a day on which banks are required or authorized to close in the State of California, Maryland or Delaware.

(e) "*CIENA Material Adverse Effect*" means a material adverse effect on the business, financial condition, assets, liabilities or results of operations of CIENA and its Subsidiaries, taken as a whole; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a CIENA Material Adverse Effect: (a) any failure by CIENA to meet internal projections of forecasts or published revenue or earnings predictions for any period ending (or for which revenues or earnings are released) on or after the date of this Agreement; (b) any adverse change, effect, event, occurrence, state of facts or development to the extent attributable to the announcement or pendency of the Merger (including any cancellations of or delays in customer orders, any reduction in sales, any disruption in supplier, distributor, partner or similar relationships or any loss of employees); (c) any adverse change, effect, event, occurrence, state of facts or development attributable to conditions affecting the industries in which CIENA participates, the U.S. economy as a whole or foreign economies in any locations where CIENA has material operations or sales or suppliers or customers; (d) any adverse change, effect, event, occurrence, state of facts or development attributable or relating to (i) out-of-pocket fees and expenses (including legal, accounting, investment banking and other fees and expenses) incurred in connection with the transactions contemplated by this Agreement, or (ii) the payment of any amounts due to, or the provision of any other benefits (including benefits relating to acceleration of stock options) to, any officers or employees under employment contracts, non-competition agreements, employee benefit plans, severance arrangements or other arrangements in existence as of the date of this Agreement; or (e) any adverse change, effect, event, occurrence, state of facts or development resulting from or relating to compliance with the terms of, or the taking of any action required by, this Agreement.

(f) "*Code*" shall mean the Internal Revenue Code of 1986, as amended.

(g) **"Company Material Adverse Effect"** means a material adverse effect on the business, financial condition, prospects, Assets, liabilities or results of operations of the Company; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Company Material Adverse Effect: (a) any failure by Company to meet internal projections of forecasts or published revenue or earnings predictions for any period ending (or for which revenues or earnings are released) on or after the date of this Agreement; (b) any adverse change, effect, event, occurrence, state of facts or development to the extent attributable to the announcement or pendency of the Merger (including any cancellations of or delays in customer orders, any reduction in sales, any disruption in supplier, distributor, partner or similar relationships or any loss of employees); (c) attrition with respect to employees of the Company who do not have employment contracts with CIENA after the Merger; (d) any adverse change, effect, event, occurrence, state of facts or development attributable to conditions affecting the industries in which Company participates, the U.S. economy as a whole or foreign economies in any locations where Company has material operations or sales or suppliers or customers; (e) any adverse change, effect, event, occurrence, state of facts or development attributable or relating to (i) out-of-pocket fees and expenses (including legal, accounting, investment banking and other fees and expenses) incurred in connection with the transactions contemplated by this Agreement, or (ii) the payment of any amounts due to, or the provision of any other benefits (including benefits relating to acceleration of stock options) to, any officers or employees under employment contracts, non-competition agreements, employee benefit plans, severance arrangements or other arrangements in existence as of the date of this Agreement; or (f) any adverse change, effect, event, occurrence, state of facts or development resulting from or relating to compliance with the terms of, or the taking of any action required by, this Agreement.

(h) **"Encumbrances"** means Liens, security interests, deeds of trust, encroachments, reservations, orders of Governmental Entities, decrees, judgments, contract rights, claims or equity of any kind.

(i) **"Environmental Laws"** shall mean all applicable federal, state, local or foreign laws, rules and regulations, orders, decrees, judgments, permits, filings and licenses relating (i) to protection and clean-up of the environment and activities or conditions related thereto, including those relating to the generation, handling, disposal, transportation or release of Hazardous Substances and (ii) the health or safety of employees in the workplace environment, all as amended from time to time, and shall also include any common law theory based on nuisance, trespass, negligence or other tortious conduct.

(j) **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

(k) **"Exchange Agent"** shall mean a bank or trust company designated as the exchange agent by CIENA (which designation shall be reasonably acceptable to the Stockholders' Representative).

(l) **"Exchange Ratios"** shall mean the Company Preferred Stock Exchange Ratio and the Company Common Stock Exchange Ratio.

(m) *"Governmental Entity"* means any United States or other national, state, municipal or local government, domestic or foreign, any subdivision, agency, entity, commission or authority thereof, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority.

(n) *"Hazardous Substances"* shall mean any and all hazardous and toxic substances, wastes or materials, any pollutants, contaminants, or dangerous materials (including, but not limited to, polychlorinated biphenyls, PCBs, friable asbestos, volatile and semi-volatile organic compounds, oil, petroleum products and fractions, and any materials which include hazardous constituents or become hazardous, toxic, or dangerous when their composition or state is changed), or any other similar substances or materials which are included under or regulated by any Environmental Laws.

(o) *"holders"* shall mean, with respect to any Person entitled to receive any portion of the Aggregate Share Consideration distributable in accordance with **Article I** hereof, such holders on and as of the Effective Time and their respective successors by operation of law, heirs, executors, administrators and legal representatives.

(p) *"Knowledge of the Company"* or *"Company's Knowledge"* shall mean the actual knowledge of any of the Directors and Officers of the Company as of the date hereof.

(q) *"Laws"* means all foreign, federal, state and local statutes, laws, ordinances, regulations, rules, resolutions, orders, determinations, writs, injunctions, awards (including, without limitation, awards of any arbitrator), judgments and decrees applicable to the specified persons or entities.

(r) *"Liens"* shall mean any mortgage, pledge, lien, security interest, conditional or installment sale agreement, encumbrance, charge or other claims of third parties of any kind.

(s) *"Non-Competition Agreements"* means the Non-Competition Agreements dated as of the date hereof, to be effective as of the Closing Date, between CIENA and certain officers of the Company.

(t) *"Ordinary Course of Business"* shall mean all actions taken by a Person if such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person.

(u) *"Permitted Encumbrances"* shall mean (i) Liens for Taxes not yet due or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with applicable generally accepted accounting principles; (ii) such minor encumbrances, easements or reservations of, or rights of others for, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning restrictions as to the use of real properties, which do not materially interfere with the use, occupation and enjoyment of the property subject to the Lien by and in connection with the applicable business; (iii) Liens incurred in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other types of social security; and (iv) Liens in favor of customs authorities arising as a matter of

law to secure payment of customs duties in connection with the importation of goods to the extent accrued on the relevant Financial Statements.

(v) "*Person*" shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, association or entity or government agency or authority.

(w) "*Registration Rights Agreement*" shall mean the Fourth Amended and Restated Registration Rights Agreement, dated September 27, 2000 among the Company and the parties named therein.

(x) "*Right of First Refusal and Co-Sale Agreement*" means the Third Amended and Restated Right of First Refusal and Founders' Co-Sale Agreement dated September 27, 2000, by and among the Company and holders of the Company's Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock and Alnoor Shivji, Shekhar Mandal, Rafat Pirzada, Sunil Tomar and Diosdado Banatao.

(y) "*Subsidiary*" of a Person shall mean any corporation, partnership, joint venture or other entity in which such person (a) owns, directly or indirectly, 50% or more of the outstanding voting securities or equity interests or (b) is a general partner.

(z) "*Tax*" (and, with correlative meaning, "*Taxes*" and "*Taxable*") shall mean any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, value-added, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority.

(aa) "*Tax Return*" shall mean any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

SECTION 8.8. Notices.

Any notice, request, demand, waiver, consent, approval, or other communication which is required or permitted to be given to any party hereunder shall be in writing and shall be deemed given only if delivered to the party personally or sent to the party by facsimile transmission (promptly followed by a hard-copy delivered in accordance with this Section 8.8) or by registered or certified mail (return receipt requested), with postage and registration or certification fees thereon prepaid, addressed to the party at its address set forth below:

If to CIENA:

CIENA Corporation
1201 Winterson Road
Linthicum, Maryland 21090
Attention: General Counsel

with a copy to:

Hogan & Hartson L.L.P.
111 South Calvert Street, 16th Floor
Baltimore, Maryland 21202
Attention: Michael J. Silver

If to the Company:

Cyras Systems, Inc.
47100 Bayside Parkway
Fremont, California 94538
Attention: General Counsel

with a copy to:

Brobeck, Phleger & Harrison LLP
Two Embarcadero Place
2200 Geng Road
Palo Alto, CA 94303
Attention: Warren T. Lazarow

or to such other address or Person as any party may have specified in a notice duly given to the other party as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered, telegraphed or mailed.

SECTION 8.9. Amendment.

This Agreement may be amended, modified or supplemented at any time prior to the Effective Time by mutual agreement of the respective Boards of Directors of the Company and CIENA, except as provided in Section 251(d) of the DGCL. Any amendment, modification or revision of this Agreement and any waiver of compliance or consent with respect hereto shall be effective only if in a written instrument executed by the parties hereto.

SECTION 8.10. Governing Law.

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Delaware as applied to contracts made and fully performed in such state.

SECTION 8.11. No Benefit to Others.

The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto, and their respective successors and assigns, and they shall not be construed as conferring, and are not intended to confer, any rights on any other Person except as provided in Article I and Section 5.13 and 7.3(b).

SECTION 8.12. Severability.

If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of the Agreement shall remain in full force and effect. Upon such determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to give effect to the original intent of the parties to the fullest extent permitted by applicable law.

SECTION 8.13. Section Headings.

All section headings are for convenience only and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 8.14. Schedules and Exhibits.

All Schedules and Exhibits referred to herein are intended to be and hereby are specifically made a part of this Agreement.

SECTION 8.15. Extensions.

At any time prior to the Effective Time, CIENA, on the one hand, and the Company on the other may by corporate action, extend the time for compliance by or waive performance of any representation, warranty, condition or obligation of the other party subject to the provisions of Section 8.9 regarding the manner of waiver.

SECTION 8.16. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and the Company and CIENA may become a party hereto by executing a counterpart hereof. This Agreement and any counterpart so executed shall be deemed to be one and the same instrument.

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**Agreement and Plan of Merger
by and among CIENA Corporation,
Cyras Systems, Inc. and CO Acquisition Corp.
Signature Page**

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have duly executed this Agreement and Plan of Merger as of the date first above written.

CIENA CORPORATION

By: 

Patrick H. Nettles, Ph.D.

President and Chief Executive Officer

CO ACQUISITION CORP.

By: 

Name: _____

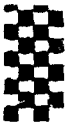
Title: _____

CYRAS SYSTEMS, INC.

By: _____

Name: _____

Title: _____



Agreement and Plan of Merger
by and among CIENA Corporation,
Cyras Systems, Inc. and CO Acquisition Corp.
Signature Page

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound
hereby, have duly executed this Agreement and Plan of Merger as of the date first above
written.

CIENA CORPORATION

By: _____
Patrick H. Nicolas, Ph.D.
Chairman

CO ACQUISITION CORP.

By: _____
Name: _____
Title: _____

CYRAS SYSTEMS, INC.

By: _____
Name: ASHLEY SCHULTZ
Title: President and CEO

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DEC.19.2000 3:36PM BROECK PA 2710

NO.621 P.2

DEC.19.2000 4:00PM BROECK PA 2710

GLOSSARY OF DEFINED TERMS

<i>DEFINED TERM</i>	<i>LOCATION OF DEFINITION</i>
Acquisition Proposal	Section 5.4
Affiliate	Section 8.7
Aggregate Share Consideration	Section 1.5
Aggregate Value	Section 1.5
Agreement	Preamble
Assets	Section 8.7
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Balance Sheet Date	Section 2.6
Board Recommendation	Section 5.6
Business Day	Section 8.7
Certificates	Section 1.8
Change in the Board Recommendation	Section 8.5
CIENA	Preamble
CIENA Charter Documents	Section 3.2
CIENA Common Stock	Section 1.5
CIENA Indemnatee	Section 7.4
CIENA Material Adverse Effect	Section 8.7
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ERISA	Section 8.7
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DEFINED TERM**LOCATION OF DEFINITION**

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Series E Preferred Stock	Recitals
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Stock Plan	Section 5.10

DEFINED TERM***LOCATION OF DEFINITION***

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Stockholders	Section 1.5
Stockholders' Meeting	Section 5.6
Stockholders' Representative	Section 7.3
Subsidiary	Section 8.7
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