

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
BSI Acquisitions, Inc.	01/01/2005
RECEIVING PARTY DATA	
Name:	PurpleComm, Inc.
Street Address:	2620 Augustine Drive
Internal Address:	Suite 100
City:	Santa Clara
State/Country:	CALIFORNIA
Postal Code:	95054
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	09611178
CORRESPONDENCE DATA	
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ATTORNEY DOCKET NUMBER:	UNI-0001 (032771-002)
NAME OF SUBMITTER:	David B. Ritchie

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Total Attachments: 32
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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), is entered into this 1st day of January, 2005 (the "Effective Date") by and among BSI Acquisitions, Inc., a California corporation (the "Seller"), and PurpleComm, Inc., a Delaware corporation (the "Buyer").

RECITALS

- A. Seller wishes to sell substantially all of its assets to Buyer upon the terms and conditions set forth in this Agreement.
- B. Buyer wishes to purchase substantially all of Seller's assets upon the terms and conditions set forth in this Agreement.
- C. Seller intends that the transactions contemplated by this Agreement shall constitute a Type C Reorganization under section 368(a)(1)(C) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder that this Agreement shall constitute a "plan of reorganization" as contemplated by sections 354(a)(1) and 361(a) of the Code, and that Seller and Buyer will be treated as parties to the reorganization.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

In this Agreement, terms shall have the meanings set forth in Appendix A.

ARTICLE 2

PURCHASE AND SALE

2.1 Purchased Assets. Upon the terms and conditions set forth in this Agreement, at the Closing, Buyer shall purchase from Seller, and Seller shall sell, transfer, assign and deliver to Buyer, free and clear of all Liens, all of the assets, properties and business of the Business (whether owned or held by Seller or any of its Affiliates), of every kind and description, wherever located, tangible or intangible, owned, held, licensed, leased or otherwise used in or necessary for the conduct of the Business, as the same shall exist on the Closing Date, including, without limitation, all assets shown on the Seller Balance Sheet and not disposed of in the ordinary course of business since the Balance Sheet Date (and, if disposed of after the Balance

Sheet Date, in conformance with the terms hereof), and all assets and properties used in or necessary to the Business thereafter acquired by Seller or any Affiliate of Seller and held on the Closing Date (collectively, the "Purchased Assets"). Without limiting the generality of the foregoing, the Purchased Assets shall include all of Seller's right, title and interest in, to and under:

(a) all of the fixed and other tangible personal property used in or necessary to the Business, including, without limitation, all of the Equipment and other tangible personal property described in Exhibit A;

(b) all Intellectual Property owned by Seller or used in the conduct of the Business, including, without limitation, all of the Intellectual Property described in Exhibit A;

(c) all Contracts described in Exhibit A (the "Assumed Contracts");

(d) the originals or true copies of all books and records relating to the Business;

(e) all goodwill associated with the Purchased Assets;

2.2 Assumption of Liabilities. Upon the terms and conditions of this Agreement, at the Closing, Buyer shall assume all Liabilities first arising after the Closing Date under the Assumed Contracts as well as those Liabilities listed on Exhibit B (together, the "Assumed Liabilities"). Buyer will not assume any other Liabilities of Seller.

2.3 Purchase Price. The purchase price for the Purchased Assets without regard to the Assumed Liabilities (the "Purchase Price") shall be equal to Four Hundred Thousand Dollars (\$400,000) and shall take the form of Two Million One Hundred Sixteen thousand Four Hundred Thirteen (2,116,413) shares of Common Stock (the "Shares") in Buyer. It is understood that the certificates evidencing the Securities may bear one or all of the following legends: "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to the Buyer that such registration is not required or unless sold pursuant to Rule 144 of such Act."

2.4 Transitional Matters. Seller will designate a representative to assist with the orderly transfer of the Assets to Buyer and the assumption of the Assumed Liabilities by Buyer as soon as practicable after the Closing. Seller will also adopt a plan of liquidation and dissolution as soon as practicable after the Closing and shall cause such plan of liquidation and dissolution to be completed reasonably soon after the Closing.

2.5 Closing. The closing of the purchase and sale of the Purchased Assets and assumption of the Assumed Liabilities hereunder (the "Closing") shall take place at the offices of the Buyer, 3333 Bowers Avenue, Suite 195, Santa Clara, California 95054, as soon as possible, but in no event later than three (3) business days after satisfaction or waiver of the last of the conditions set forth in Article 6 of this Agreement, or at such other time or place as the parties

hereto may agree in writing (such date, the "Closing Date"). At the Closing, Buyer and Seller shall deliver the documents set forth in Article 6 of this Agreement.

2.6 Tax Matters. At or as soon as practicable after Closing, Seller will distribute all the Shares, stock, securities and other property received from Buyer for the Purchased Assets, and its other properties, to its shareholders and Seller will thereafter be dissolved under state law pursuant to its plan of liquidation. The Sale of Assets pursuant to this Agreement and liquidation of Seller are intended to constitute a reorganization within the meaning of Section 368 of the Code. The parties to this Agreement hereby adopt this Agreement as a "plan of reorganization" within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the United States Treasury Regulations. Neither Seller nor Buyer will take any position on any federal or state income tax return that is inconsistent with this section 2.6.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the Disclosure Schedule delivered by Seller to Buyer in connection herewith (the "Disclosure Schedule"), the Seller jointly and severally represent and warrant that:

3.1 Organization and Qualification; Subsidiaries; Investments.

(a) Subsidiaries; Organization. Seller does not hold any direct or indirect equity interest in any other person. Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted. Seller has delivered to Buyer accurate and complete copies of its Articles of Incorporation and Bylaws, as currently in full force and effect.

(b) Qualifications. Seller is duly qualified or licensed and in good standing to do business in California which is the only jurisdiction in which Seller is required to be qualified or licensed.

3.2 Sufficiency of and Title to the Purchased Assets. Upon consummation of the transactions contemplated by this Agreement, Seller will have assigned, transferred and conveyed to Buyer all of the Purchased Assets, which constitute substantially all of the properties and assets now held or used by Seller in connection with the Business.

3.3 Authority Relative to this Agreement; Recommendation. Each Seller Party has all necessary corporate or other power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Seller's Board of Directors (the "Seller Board") and a majority of the shareholders of Seller, and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each Seller Party and, assuming the due authorization, execution and delivery hereof by Buyer, constitutes a valid, legal and binding agreement of such Seller Party, enforceable against such

Seller Party in accordance with its terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or to general principles of equity.

3.4 Financial Statements.

(a) Seller Balance Sheet. Seller has delivered to Buyer copies of Seller's balance sheet ("Seller Balance Sheet") dated as of June 30, 2004 ("Balance Sheet Date"). The Seller Balance Sheet does not contain as of the date thereof any untrue statement of a material fact or omitted to state a material fact required to be stated or incorporated by reference therein or necessary in order to make the statements therein in light of the circumstances under which they were made not misleading.

(b) Accounts Receivable. All of the accounts receivable of Seller shown or reflected on the Seller Balance Sheet are valid and enforceable claims for services fully performed and are not subject to any set-off or counterclaim.

3.5 Interested Party Transactions. There are no transactions between Seller (or involving Seller) and any of its current or former shareholders, officers, directors or Affiliates that have either (a) resulted in an asset reflected on the Seller Balance Sheet or (b) created any Liability on the part of Seller (such as an account payable, note payable or guaranty or indemnity obligation).

3.6 Consents and Approvals; No Violations. No filing permit, authorization, consent or approval of any Governmental Entity is necessary for the execution and delivery by Seller of this Agreement or the consummation by the Seller of the transactions contemplated hereby. Neither the execution, delivery and performance of this Agreement by the Seller nor the consummation by the Seller of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws of Seller, (ii) result in a violation or breach of, permit another party thereto to reprise or otherwise renegotiate, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration or Lien on the Purchased Assets) under any of the terms, conditions or provisions of any Assumed Contract or Seller Permit or other Contract by which Seller, the Purchased Assets or the Business may be bound, or (iii) violate any order, writ, injunction, decree, law, statute, rule or regulation applicable to the Purchased Assets, the Business or the Seller.

3.7 No Default. Seller is not in breach, default or violation (and no event has occurred that with notice or the lapse of time or both would constitute a breach, default or violation) of any term, condition or provision of (i) its Articles of Incorporation or Bylaws, (ii) Assumed Contract or Contract by which Seller, the Purchased Assets or the Business may be bound, or (iii) any order, writ, injunction or decree of any Governmental Entity applicable to Seller, the Purchased Assets or the Business.

3.8 No Undisclosed Liabilities; Absence of Changes. Seller has no liabilities or obligations of any nature, whether or not accrued, contingent or otherwise other than liabilities and obligations reflected on the Seller Balance Sheet or incurred in the ordinary course of

business consistent with past practices after such date. Seller is not a party to any material "off-balance-sheet" transactions. Since the Balance Sheet Date, there have been no events, changes or effects with respect to the operations, assets or Liabilities (including contingent Liabilities), earnings or other results of operations or the condition (financial or otherwise) of Seller that have had or reasonably would be expected to have a Material Adverse Effect on Seller, the Purchased Assets or the Business. Since the Balance Sheet Date, there has not been any material adverse change to Seller.

3.9 Litigation. There are no suits, claims, actions, proceedings or investigations pending or, to Seller's knowledge, threatened against Seller or any of Seller's properties or assets (including the Purchased Assets). Seller is not subject to any outstanding order, writ, injunction or decree that would reasonably be expected to result in any Liability to Seller.

3.10 Compliance with Applicable Law. Seller holds all permits, licenses, variances, exemptions, orders and approvals of all Governmental Entities necessary for the lawful conduct of the Business and the use of the Purchased Assets (collectively, the "Seller Permits"). Seller is in compliance with the terms of Seller Permits held by it, except where the failure so to comply would not, individually or in the aggregate, result in any charge, assessment, levy, fine or other liability being imposed upon the Purchased Assets or the Business exceeding Five Thousand Dollars (\$5,000). The Business is being conducted in compliance with all Applicable Laws. No investigation or review by any Governmental Entity with respect to Seller is pending or, to Seller's knowledge, threatened.

3.11 Employee Benefit Plans; Labor Matters.

(a) Section 3.11(a) of the Disclosure Schedule lists as of the date hereof all (i) "employee benefit plans" as such term is defined in ERISA and (ii) all other employee benefit plans or arrangements (U.S. or foreign, written or oral, funded or unfunded, benefiting current or former employees, executives, or directors, whether subject to ERISA or not, and relating to stock, cash, or any other form of benefit); to which Seller or any Affiliate has any liability or obligation, contingent or otherwise ("Employee Plans"). Seller has made available to Buyer copies of all such Employee Plans and related documents. All such Employee Plans comply and have been maintained and administered in compliance with applicable provisions of ERISA, the Code, and all other U.S. and foreign laws, statutes, and Governmental Entity requirements applicable to such Employee Plans. Neither Seller nor any Affiliate has incurred any liability pursuant to ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in ERISA), and no event has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by Seller or any Affiliate.

(b) Neither Seller nor any Affiliate maintains or contributes to, or has ever maintained or contributed to, any "multiemployer plan" or "multiple employer plan" (as such terms are defined in ERISA) or a plan subject to Title IV of ERISA.

(c) Seller and each Affiliate has made full and timely payment of amounts required to be contributed or paid as expenses under the terms of each Employee Plan, and all U.S. or foreign laws, statutes, and Governmental Entity requirements applicable to such Employee Plans.

(d) Neither Seller nor any Affiliate has any liability or obligation to provide any post-employment payment or benefit. No Employee Plan that is a "welfare benefit plan" (as defined in ERISA) provides benefits to former employees of Seller or an Affiliate other than pursuant to Applicable Law.

(e) Neither Seller nor any Affiliate has or ever has had any collective bargaining agreements with any of its employees. There is no labor union organizing activity, strikes, slowdowns, or other labor disruptions pending or, to the knowledge of Seller, threatened with respect to Seller.

(f) None of Seller's employees participate in a "group health plan" (as defined in Section 4980B(g)(2) of the Code or Sections 607(1) or 733(a) of ERISA.

3.12 Environmental Laws. (a) Seller has been in compliance with all applicable Environmental Laws; (b) to the knowledge of Seller, there are no circumstances or conditions (including the assumption or retention of Liabilities by Contract) involving Seller that could reasonably be expected to result in any Liability, investigation or restriction on the ownership, use or transfer of any real property of which Seller is or was the owner or operator pursuant to any Environmental Law; (c) to the knowledge of Seller, there has been no disposal, release or threatened release of any Hazardous Substance on, under, in, from or about any property currently or formerly owned or operated by Seller that has resulted or would be reasonably likely to result in any Liability to Seller exceeding Ten Thousand Dollars (\$10,000); (d) Seller has not received any notice, demand, letter, claim or request for information alleging violation of or liability under any Environmental Law, and there are no proceedings, actions, orders, decrees, injunctions or other claims nor, to Seller's knowledge, is any of the foregoing threatened, relating to or otherwise alleging Liability under any Environmental Law; and (e) except with respect to such matters as have been fully and finally resolved and as to which there are no remaining Liabilities, Seller has not entered into or agreed to or is subject to any consent decree, order or settlement or other agreement in any judicial, administrative, arbitral or other similar forum relating to its compliance with or Liability under any Environmental Law.

3.13 Taxes.

(a) Within the times and in the manner prescribed by law, Seller has properly prepared and filed all Tax Returns required by law and has paid all Taxes due and payable (whether or not shown on any Tax Return). All such Tax Returns are true, correct and complete in all material respects. Seller (i) is not a party to or bound by any closing agreement, offer in compromise or any other agreement with any Tax authority or any Tax indemnity or Tax sharing agreement with any person that could bind Buyer, (ii) has no present or contingent liabilities for Taxes for which Buyer could be held liable, and (iii) is not a party to an agreement that could give rise to an "excess parachute payment" within the meaning of Section 280G of the Code. There are and have been no (1) actual or, to Seller's knowledge, proposed or threatened, assessments, audits, examinations or disputes as to Taxes relating to Seller or (2) waivers or extensions of the statute of limitations with respect to Taxes for which Buyer could be held liable. Seller does not know of any basis for the assertion by a taxing authority of a Tax deficiency against Seller.

(b) For purposes hereof: (i) "Taxes" means (A) all federal, state, local, foreign and other taxes and other governmental assessments, fees, duties or charges of any kind or nature whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, (B) any liability for payment of amounts described in clause (A) whether as a result of transferee liability or otherwise by operation of law and (C) any liability for the payment of amounts described in clause (A) or (B) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to pay or indemnify any other person (and the term "Tax" means any one of the foregoing Taxes; and (ii) "Tax Returns" means all returns, declarations, reports, statements and other documents required to be filed in respect of Taxes (and the term "Tax Return" means any one of the foregoing Tax Returns).

3.14 Intellectual Property.

(a) Exhibit A lists: (i) all Patents, registered Copyrights, mask works, Marks, any renewal rights for any of the foregoing, and any applications and registrations for any of the foregoing, that are owned by Seller and are being, and/or have been, used or are currently under development for use in the Business as it has been, is currently or is currently anticipated to be, conducted (the "Seller Owned Intellectual Property"); (ii) all hardware products and tools, software products and tools, and services that are currently published, offered, or under development by Seller; (iii) all licenses, sublicenses and other agreements to which Seller is a party and pursuant to which any other person is authorized to have access to or use the Seller Owned Intellectual Property or exercise any other right with regard thereto (except standard form, unmodified end user license agreements for Seller's commercially distributed products, entered into between Seller and the end users of Seller products); (iv) all license and other rights held by Seller in any Intellectual Property owned by a third party (other than license agreements for standard "shrink wrapped," off the shelf, commercially available, third party products used by Seller but including any software tools or "open source" licenses) (the "Seller Licensed Intellectual Property" and together with Seller Owned Intellectual Property, the "Seller Intellectual Property"); and (v) any obligations of exclusivity, noncompetition, nonsolicitation, right of first refusal or first negotiation to which Seller is subject.

(b) The Seller Intellectual Property consists solely of items and rights that (A) are either: (i) owned by Seller, (ii) in the public domain, or (iii) rightfully used and authorized for use by Seller and its successors pursuant to a valid license or other agreement, and (B) are being, and/or have been, used, or are currently under development for use, in the business of Seller as it has been, is currently or is currently anticipated to be, conducted. Seller has all rights in the Seller Intellectual Property reasonably necessary to carry out Seller's current activities, and has or had all rights in the Seller Intellectual Property reasonably necessary to carry out Seller's former activities, including without limitation, rights to make, use, exclude others from using, reproduce, modify, adapt, create derivative works based on, translate, distribute (directly and indirectly), transmit, display and perform publicly, license, rent, lease, assign, and sell the Seller Intellectual Property in all geographic locations and fields of use, and to sublicense any or all such rights to third parties, including the right to grant further sublicenses.

(c) Seller is not, nor as a result of the execution or delivery of this Agreement, or performance of Seller's obligations hereunder, will Seller be, in violation of any license,

sublicense or other agreement relating to the Seller Intellectual Property to which Seller is a party. Except pursuant to the terms of the agreements listed in the Exhibit A, Seller is not obligated to provide any consideration (whether financial or otherwise) to any third party, nor is any third party otherwise entitled to any consideration, with respect to any exercise of rights by Seller or its successors in the Seller Intellectual Property.

(d) The use, reproduction, distribution, licensing, sublicensing, sale, or any other exercise of rights in any Seller Owned Intellectual Property (including, without limitation, the right to create derivative works) or any other authorized exercise of rights in or to the Seller Owned Intellectual Property by Seller or its licensees does not and will not infringe any Copyright, Patent, Mark, mask work, Moral Right, other intellectual property right, right of privacy, right of publicity or right in personal or other data of any person. To the knowledge of Seller, no claims (i) challenging the validity, effectiveness, or ownership by Seller of any of the Seller Owned Intellectual Property, or (ii) to the effect that the use, reproduction, manufacturing, distribution, licensing, sublicensing, sale or any other exercise of rights in any Seller Owned Intellectual Property by Seller (including, without limitation, the right to create derivative works) or its licensees infringes, or will infringe on, any intellectual property or other proprietary or personal right of any person, have been asserted or, to the knowledge of Seller, are threatened by any person nor are there any valid grounds for any bona fide claim of any such kind. All granted or issued Patents and mask works and all registered marks listed in Exhibit A and all Copyright registrations held by Seller are valid, enforceable and subsisting. To the knowledge of Seller, there is no unauthorized use, infringement or misappropriation of any of the Seller Owned Intellectual Property by any third party, employee or former employee.

(e) No parties other than Seller possess any current or contingent rights to any source code that is part of the Seller Owned Intellectual Property (including, without limitation, through any escrow account). No portion of software, products or other items of Seller Intellectual Property that were developed using (or in any way incorporate, link to or are combined or distributed with) any "Freeware", "Shareware" or "Open Source" software and freeware ("Integrated Seller Intellectual Property") that does not constitute the original (nor those Seller modifications made specifically to the original) "freeware," "shareware" and/or "open source" software and firmware incorporated therein or otherwise linked thereto or combined or distributed therewith (such resulting portions of the Integrated Seller Intellectual Property referred to as the "Proprietary Portions") is or will be subject to any of the obligations, restrictions or covenants of the license agreements covering such "freeware," "shareware" and/or "open source" software and firmware. In addition, no intellectual property rights or source code to any of the Proprietary Portions are required (under any agreement to which Seller may be bound) to be licensed or disclosed to any licensee, assignee or purchaser of any of the Integrated Seller Intellectual Property or portions thereof (including, without limitation, any license to Seller's (or its successor's or assignee's) patents or patent applications, any license to modifications and derivative works of any of the Proprietary Portions, and any license to allow such licensees and/or purchasers to modify and/or create derivative works of any of the Proprietary Portions).

(f) Exhibit A lists all parties who have created any material portion of, or otherwise have any rights in or to, the Seller Owned Intellectual Property other than employees of Seller whose work product was created by them entirely within the scope of their employment

by Seller and constitutes works made for hire owned by Seller. Seller has secured from all parties who have created any material portion of, or otherwise have any rights in or to, the Seller Owned Intellectual Property valid and enforceable written assignments or licenses of any such work or other rights to Seller and has provided true and complete copies of such assignments or licenses to Buyer.

(g) Exhibit A includes a true and complete list of support and maintenance agreements relating to Seller Owned Intellectual Property or to which Seller is a party as to Seller Licensed Intellectual Property including the identity of the parties and the respective dates of such agreements and remedies for their breach.

(h) Seller has obtained legally binding written agreements from all employees and third parties with whom Seller has shared confidential proprietary information (i) of Seller, or (ii) received from others which Seller is obligated to treat as confidential, which agreements require such employees and third parties to keep such information confidential. Seller has delivered to Buyer copies of all such agreements.

3.15 Material Contracts.

(a) Seller has disclosed and delivered to Buyer all Contracts to which Seller is a party or to which Seller, or any of its properties, is otherwise bound, as follows (each a "Material Contract"): each Contract (i) pursuant to which Seller received (or was entitled to receive) or paid (or was purportedly obligated to pay) in excess of Ten Thousand Dollars (\$10,000) in the year ended June 30, 2004; (ii) that requires payment by or to Seller after the date of this Agreement of more than Ten Thousand Dollars (\$10,000) or that is not cancelable without penalty to Seller upon thirty (30) days notice or less; (iii) that contains non-competition restrictions, including restrictions relating to the conduct of the Business, the sale of Seller's products or services or geographic restrictions, or that would otherwise prohibit or restrict Seller, Seller's employees, or Buyer from conducting the Business; (iv) that requires any consent or other action by any person for, or will be subject to default, termination, repricing or other renegotiation, or cancellation because of, the transactions contemplated hereby; (v) relating to indebtedness for borrowed money or the deferred purchase price of property (whether incurred, assumed, guaranteed or secured by any asset); (vi) relating to partnership, joint venture or other similar Contracts affecting Seller; (vii) relating to custody, transfer agent, brokerage or other similar Contracts; (viii) pursuant to which Seller licenses any material Intellectual Property; and (ix) that is otherwise material to Seller, the Purchased Assets, the Assumed Liabilities or the Business.

(b) Seller is not a party to or otherwise bound by any Contract relating to or containing: (i) any severance pay or post-employment liabilities or obligations; (ii) any fidelity or surety bond or completion bond; (iii) any liquidated damages provision for failure to meet performance or quality milestones; (iv) any indemnification or guaranty; (v) any provisions relating to the disposition or acquisition of assets, property or any interest in any business enterprise outside the ordinary course of Seller's business; or (vi) any distribution, joint marketing or development provisions.

(c) Subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or to general principles of equity, each Material Contract is a legal, valid and binding obligation of Seller and, to Seller's knowledge, each other person who is a party thereto, enforceable against Seller and each such person in accordance with its terms, and neither Seller nor, to Seller's knowledge, any other party thereto is in material default thereunder.

3.16 Title to Properties; Absence of Liens and Encumbrances. Seller does not own any real property, nor has it ever owned any real property. Complete and correct copies of all current leases or subleases ("Leases") have been delivered to Buyer in full force and effect, are valid and effective in accordance with their respective terms, and there is not, under any of such Leases, any existing material default or event of default (or event which, with notice or lapse of time, or both, would constitute a default) by Seller or, to Seller's knowledge, by any other party to such Lease. Seller has good and valid title to or valid licenses to or leasehold interests in, all of its properties and assets that are Purchased Assets, tangible and intangible (including all Intellectual Property), real, personal and mixed, used or held for use in its business, free and clear of any Liens.

3.17 Brokers. No broker, finder or investment banker is entitled to any 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 Seller.

3.18 Full Disclosure. The information contained in this Agreement with respect to the Business, the Purchased Assets, Assumed Liabilities and the results of operations and financial condition of the Business are correct and complete in all material respects and do not omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

3.19 Investment Representations and Warranties. Seller hereby represents and warrants that:

(a) Authorization. Seller has full power and authority to enter into this Agreement and such Agreement constitutes its valid and legally binding obligation, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) Purchase Entirely for Own Account. This Agreement is made with Seller in reliance upon such Seller's representation to the Buyer, which by such Seller's execution of this Agreement such Seller hereby confirms, that the Shares to be received by such Seller will be acquired for investment for such Seller's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Seller has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, such Seller further represents that such Seller does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Shares.

(c) Disclosure of Information. Seller believes it has received all the information it considers necessary or appropriate for deciding whether to purchase the Shares. Seller further represents that it has had an opportunity to ask questions and receive answers from the Buyer regarding the terms and conditions of the offering of the Shares and the business, properties, prospects and financial condition of the Buyer. The foregoing, however, does not limit or modify the representations and warranties of the Buyer in Section 2 of this Agreement or the right of the Seller to rely thereon.

(d) Investment Experience. Seller is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Stock. If other than an individual, Seller also represents it has not been organized for the purpose of acquiring the Stock.

(e) Restricted Shares. Seller understands that the Shares it is purchasing are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Buyer in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, Seller represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

(f) Further Limitations on Disposition. Without in any way limiting the representations set forth above, Seller further agrees not to make any disposition of all or any portion of the Shares unless and until the transferee has agreed in writing for the benefit of the Buyer to be bound by this Section 3 and to the extent this Section is then applicable, and:

(1) There is then in effect a Registration Statement under the Act covering such proposed disposition and such disposition is made in accordance with such Registration Statement; or

(2) (i) Seller shall have notified the Buyer of the proposed disposition and shall have furnished the Buyer with a detailed statement of the circumstances surrounding the proposed disposition, and (ii) if reasonably requested by the Buyer, Seller shall have furnished the Buyer with an opinion of counsel, reasonably satisfactory to the Buyer that such disposition will not require registration of such shares under the Act. It is agreed that the Buyer will not require opinions of counsel for transactions made pursuant to Rule 144 except in unusual circumstances.

(g) Seller hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Buyer's initial public offering and ending on the date specified by the Buyer and the managing underwriter (such period not to exceed one hundred eighty (180) days) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or

exercisable or exchangeable for Common Stock (whether such shares or any such securities are then owned by the Seller or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing provisions of this Section 3.19(g) shall apply only to the Buyer's initial public offering of equity securities, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Seller if all officers and directors and greater than one percent (1%) stockholders of the Buyer enter into similar agreements. The Seller also agrees to sign the underwriter's standard lock-up agreement that reflects this Section 3.19(g). The underwriters in connection with the Buyer's initial public offering are intended third party beneficiaries of this Section 3.19(g) and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. In order to enforce the foregoing covenant, the Buyer may impose stop-transfer instructions with respect to the Registrable Shares of Seller (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to the Seller as follows:

4.1 Organization.

(a) Buyer is duly organized, validly existing and in good standing under the laws of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted.

(b) Buyer is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect on Buyer.

4.2 Authority Relative to this Agreement. Buyer has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the board of directors of Buyer, and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and, assuming the due authorization, execution and delivery hereof by Seller, constitutes a valid, legal and binding agreement of Buyer, enforceable against it in accordance with its terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or to general principles of equity.

4.3 Consents and Approvals; No Violations. No permit authorization, consent or approval of any Governmental Entity is necessary for the execution and delivery by Buyer of this Agreement or the consummation by Buyer of the transactions contemplated hereby, except where the failure to obtain any such permits, authorizations, consents or approvals or to make such filings or give any such notice would not, individually or in the aggregate, have or would reasonably be expected to have a Material Adverse Effect on Buyer. Neither the execution, delivery and performance of this Agreement by Buyer nor the consummation by Buyer of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the charter documents of Buyer, (ii) result in a violation or breach of or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration or Lien) under any of the terms, conditions or provisions of any Contract to which Buyer is a party or by which any of them or any of their respective properties or assets may be bound, or (iii) violate any order, writ, injunction, decree, law, statute, rule or regulation applicable to Buyer or any of its respective properties or assets except, in the case of (ii) or (iii), for violations, breaches or defaults that would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect on Buyer.

4.4 Shares Validly Issued. When issued and delivered in accordance with the terms of this Agreement, for consideration expressed herein, the Shares will be duly authorized, fully paid, nonassessable and, subject to the accuracy of the representations made by Seller's shareholders in investment questionnaires furnished by Buyer to such shareholders (if any), issued in compliance with all federal and state securities laws.

4.5 Brokers. No broker finder or investment banker is entitled to any 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 Buyer.

ARTICLE 5

COVENANTS

5.1 Access to Information. Between the date hereof and the Closing Date, Seller will permit Buyer and its authorized representatives reasonable access to all employees, offices and other facilities and to all books and records of Seller as Buyer may reasonably require, and will cause its officers to furnish Buyer with such financial and operating data (including monthly financial statements) and other information with respect to the business, properties and prospects of Seller as Buyer may from time to time reasonably request. Each of the parties hereto will hold, and will cause its agents, representatives, consultants and advisers to hold, in confidence all documents and information furnished to it by or on behalf of another party to this Agreement in connection with the transactions contemplated by this Agreement.

5.2 Certain Filings; Reasonable Efforts. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use its reasonable best efforts to take or cause to be taken all action and to do or cause to be done all things reasonably necessary, proper or advisable under Applicable Laws to consummate and make effective the transactions contemplated by this Agreement, including using all reasonable efforts to do the following: (i) cooperate in the preparation of any filings under laws or regulations of Governmental Entities; (ii) obtain

consents of all Governmental Entities, Clients and other persons necessary, proper or advisable for the consummation of the transactions contemplated by this Agreement; (iii) contest any legal proceeding relating to this Agreement or the transactions contemplated hereby; and (iv) execute any additional instruments necessary to consummate the transactions contemplated hereby.

5.3 Public Announcements. Buyer and the Seller, as the case may be, will consult with one another before issuing any press release or otherwise making any public statements with respect to the transactions contemplated hereby and shall not issue any such press release or make any such public statement prior to such consultation except as may be required by Applicable Law.

5.4 Tax Matters.

(a) Cooperation. The parties hereto agree to furnish or cause to be furnished to one another, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets, the Assumed Liabilities and the Business as is reasonably necessary for the filing of all Tax Returns, and making of any election related to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax Return. The parties hereto shall cooperate with each other in the conduct of any audit or other proceeding related to Taxes involving the Business and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 5.7(a). The parties shall also cooperate to enable Buyer to obtain any available exemptions from successor liability for Taxes of Seller.

(b) Allocation of Taxes. All real and personal property taxes and assessments and similar ad valorem obligations levied with respect to any of the Purchased Assets for a taxable period that includes (but does not end on) the Closing Date shall be apportioned between Seller and Buyer as of the Closing Date based on the number of days of such taxable period included in any Tax period (or portion thereof) ending on or before the Closing Date (the "Pre-Closing Tax Period") and the number of days of such taxable period included in any Tax period (or portion thereof) ending after the Closing Date (the "Post-Closing Tax Period"). Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. Within a reasonable period after the Closing Date, Seller and Buyer shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 5.7(b), together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other within ten (10) days after delivery of such statement. Thereafter, Seller shall notify Buyer upon receipt of any bill for real or personal property taxes or assessments relating to any of the Purchased Assets, part or all of which are attributable to the Post-Closing Tax Period, and shall promptly deliver such bill to Buyer who shall pay the same to the appropriate taxing authority, provided that if such bill covers any part of the Pre-Closing Tax Period, Seller shall also remit prior to the due date of assessment to Buyer payment for the proportionate amount of such bill that is attributable to the Pre-Closing Tax Period. In the event that either Seller or Buyer shall thereafter make a payment for which it is entitled to reimbursement under this Section 5.7(b), the other party shall make such reimbursement promptly, but in no event later than thirty (30) days after the presentation of a statement setting

forth the amount of reimbursement to which the presenting party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. Any payment required under this Section 5.7(b) and not made within ten (10) days after delivery of the statement shall bear interest at the rate per annum determined, from time to time, under the provisions of Section 6621(a)(2) of the Code for each day until paid. Sales and use taxes arising out of the transactions contemplated by this Agreement shall be borne by Buyer.

(c) Responsibility for Payment. Except as provided in Section 5.7(b), Seller shall pay as and when due any and all Liabilities for Taxes imposed on Seller that are not accrued or reserved against on the Seller Balance Sheet.

ARTICLE 6

CONDITIONS TO CLOSING

6.1 Conditions to Each Party's Obligations to Closing. The respective obligations of each party hereto to effect the transactions contemplated hereby are subject to the satisfaction at or prior to the Closing Date of each of the following conditions:

(a) no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or enforced by any Governmental Entity that prohibits, restrains, enjoins or restricts the consummation of the transactions contemplated hereby; and

(b) any notices to, approvals from or other requirements of any Governmental Entity necessary to consummate the transactions contemplated hereby and to operate the Business after the Closing in all material respects as they were operated prior thereto shall have been given, obtained or complied with, as applicable.

6.2 Conditions to the Obligations of the Seller. The obligation of the Seller to effect the transactions contemplated hereby is subject to the satisfaction at or prior to the Closing Date of each of the following conditions:

(a) the representations and warranties of Buyer contained in this Agreement shall have been true and correct in all material respects at and as of the date of this Agreement and shall be true and correct in all material respects at and as of the Closing Date with the same effect as if made at and as of the Closing Date (except to the extent such representations specifically related to an earlier date, in which case such representations shall be true and correct in all material respects as of such earlier date);

(b) each of the covenants and obligations of Buyer to be performed at or before the Closing Date pursuant to this Agreement shall have been duly performed in all material respects at or before the Closing Date;

(c) Buyer shall have executed and delivered to Seller all Transaction Documents to which Buyer is a party and paid the Purchase Price (with the share certificate evidencing Seller's shares of Common Stock in Buyer being issued to Seller upon Buyer's completing an increase in authorized shares not later than the Final Date);

6.3 Conditions to the Obligations of Buyer. The obligations of Buyer to effect the transactions contemplated hereby are subject to the satisfaction at or prior to the Closing Date of each of the following conditions:

(a) the representations and warranties of the Seller contained in this Agreement shall have been true and correct in all material respects at and as of the date of this Agreement and shall be true and correct in all material respects at and as of the Closing Date with the same effect as if made at and as of the Closing Date (except to the extent such representations specifically related to an earlier date, in which case such representations shall be true and correct in all material respects as of such earlier date);

(b) each of the covenants and obligations of the Seller to be performed at or before the Closing Date pursuant to this Agreement shall have been duly performed in all material respects at or before the Closing Date;

(c) there shall have been no circumstances, changes in or effects on Seller that, individually or in the aggregate, have had or would reasonably be expected to have, a Material Adverse Effect on Seller;

(d) Seller shall have obtained the consent or approval of each person whose consent or approval shall be required in order to permit the assumption by Buyer of any Assumed Contract; and

(e) Seller shall have executed and delivered to Buyer all Transaction Documents to which Seller is a party.

ARTICLE 7

TERMINATION

7.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

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

(b) by Buyer or Seller if (i) any Governmental Entity shall have issued a final order, decree or ruling, or taken any other final action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and such order, decree, ruling or other action is or shall have become nonappealable; or (ii) the transactions contemplated by this Agreement have not been consummated on or before December 31, 2005 (the "Final Date"), provided that no party may terminate this Agreement pursuant to this clause (ii) if such party's failure to fulfill any of its obligations under this Agreement shall have been the reason that the Closing Date shall not have occurred on or before said date;

(c) by Seller if (i) Buyer breaches any representation or warranty set forth in this Agreement or if any such representation or warranty shall have become untrue such that the condition set forth in Section 6.2(a) would be incapable of being satisfied by the Final Date,

provided that Seller has not breached any of its representations and warranties or obligations hereunder in any material respect; or (ii) Buyer breaches any of its covenants or agreements hereunder and Buyer has not cured such breach within ten (10) business days after notice by Seller thereof, provided that Seller has not breached any of its representations and warranties or obligations hereunder in any material respect; or

(d) by Buyer if (i) Seller breaches any representation or warranty set forth in this Agreement or if any such representation or warranty shall have become untrue such that the condition set forth in Section 6.3(a) would be incapable of being satisfied by the Final Date, provided that Buyer have not breached any of its representations and warranties or obligations hereunder in any material respect; or (ii) Seller breaches its covenants or agreements hereunder, and Seller has not cured such breach within ten (10) business days after notice by Buyer thereof, provided that Buyer has not breached any of its representations and warranties or obligations hereunder in any material respect.

7.2 Effect of Termination. In the event of the termination and abandonment of this Agreement pursuant to Section 7.1, this Agreement shall forthwith become void and have no effect without any liability on the part of any party hereto or any of its affiliates, directors, officers and shareholders other than this Section 7.2 and Section 7.3. Nothing contained in this Section 7.2 shall relieve any party from liability for any breach of this Agreement prior to such termination.

7.3 Fees and Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each party hereto shall bear its own expenses in connection with this Agreement and the transactions contemplated hereby.

ARTICLE 8

INDEMNIFICATION

8.1 General Survival. Regardless of any investigation made by Buyer, the representations and warranties of the Seller contained in this Agreement shall survive the execution and delivery of this Agreement for a period beginning on the date hereof and ending at 5:00 p.m., California time, on the first anniversary of the Closing Date (the "Survival Period"). Notwithstanding the foregoing, the following claims for indemnification shall survive until barred by the applicable statute of limitations: (a) claims asserted within the Survival Period, (b) claims relating to Excluded Liabilities and (c) claims based on fraud or intentional misconduct.

8.2 Indemnification of Indemnitees; Indemnification Generally.

(a) Subject to Section 8.1, from and after the Closing Date, Buyer and its Affiliates, officers, directors, shareholders, representatives and agents (collectively, the "Indemnitees") shall be jointly and severally indemnified and held harmless by the Seller from and against and in respect of any and all Losses incurred by, resulting from, arising out of, relating to, imposed upon or incurred by Buyer or any other Indemnitee by reason of: (i) any

inaccuracy in or breach of any of Seller's representations, warranties, covenants or agreements contained in this Agreement as of the date of this Agreement or as of the Closing Date; (ii) any misrepresentation contained in the Disclosure Schedule or in any other written statement or certificate furnished to Buyer or any other Indemnitee by or on behalf of the Seller in connection with the transactions contemplated by this Agreement; or (iii) any Excluded Liability. For purposes of this Agreement, the term "Losses" means any and all deficiencies, judgments, settlements, demands, claims, suits, actions or causes of action, assessments, liabilities, losses, damages (whether direct, indirect, incidental or consequential), interest, taxes, fines, penalties, costs, expenses (including reasonable legal, accounting and other costs and expenses of professionals) incurred in connection with investigating, defending, settling or satisfying any and all demands, claims, actions, causes of action, suits, proceedings, assessments, judgments or appeals, and in seeking indemnification therefor, and interest on any of the foregoing from the date incurred until paid at five percent (5%) per annum. For purposes of any Indemnification Claim, the amount of any Losses shall be determined without regard to any reference to any materiality or dollar qualifiers or thresholds contained in the representations, warranties, covenants or agreements of the Seller.

(b) Any claims for indemnification hereunder must be set forth in writing, contain a reasonably detailed description of the nature of and the events or circumstances underlying the claim for indemnification hereunder and be received by Seller not later than the expiration of the applicable Survival Period (an "Indemnification Claim"). The failure of an Indemnitee to give notice of any claim for indemnification promptly, but within the Survival Period, shall not adversely affect such Indemnitee's right to indemnity hereunder except and to the extent that the Seller is prejudiced as a result of such failure. If an Indemnitee makes an Indemnification Claim, such Claim shall be resolved in accordance with the Indemnity Escrow Agreement. The Seller's liability for indemnification under this Article 8 shall be limited to the Escrow Shares.

ARTICLE 9

MISCELLANEOUS

9.1 Entire Agreement; Assignment. This Agreement and the other Transaction Documents, (a) constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all other prior agreements and understandings both written and oral between the parties with respect to the subject matter hereof and (b) shall not be assigned by operation of law or otherwise; provided, however, that Buyer may assign any or all of its rights and obligations under this Agreement to any Affiliate of Buyer.

9.2 Validity. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and, to such end, the provisions of this Agreement are agreed to be severable.

9.3 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given

upon receipt) by delivery in person, by facsimile or by registered or certified mail (postage prepaid, return receipt requested) to each other party at their known current address or to such other address as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

9.4 Governing Law.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its principles of conflicts of law.

(b) Each of the parties hereto consents to the jurisdiction of any state or federal court located within the San Jose metropolitan area of the State of California, and irrevocably agrees that all actions or proceedings relating to this Agreement or the transactions contemplated hereby shall be litigated in one of such courts, and each of the parties waives any objection that it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in any such court and waives personal service of any and all process upon it, and consent to all such service of process made in the manner set forth in Section 9.3. Nothing contained in this Section 9.4(b) shall affect the right of any party to serve legal process on any other party in any other manner permitted by law.

9.5 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and its successors and permitted assigns and, except as expressly provided herein, nothing in this Agreement is intended to or shall confer upon any other person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

9.6 Specific Performance. The parties hereby acknowledge and agree that the failure of any party to perform its agreements and covenants hereunder, including its failure to take all actions as are necessary on its part to the consummation of the transactions contemplated by this Agreement, will cause irreparable injury to the other parties, for which damages, even if available, will not be an adequate remedy. Accordingly, each party hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such party's obligations and to the granting by any court of the remedy of specific performance of its obligations hereunder.

9.7 Counterparts. This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

9.8 Amendment. This Agreement may be amended by written action taken by the Seller and Buyer at any time before or after approval of the transactions contemplated by this Agreement but after any such approval no amendment shall be made that requires the approval of such shareholders under Applicable Law without such approval.

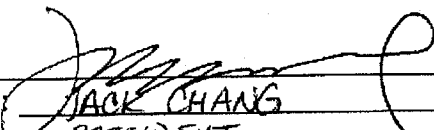
9.9 Extension; Waiver. Any agreement on the part of either party hereto to any extension of the time for performance of any obligation herein or waiver of any term hereof shall be valid only if set forth in an instrument, in writing, signed by the such party. The failure of either party hereto to assert any of its rights hereunder shall not constitute a waiver of such rights.

9.10 Representation; Preparation. All parties to this Agreement have been advised by the counsel of their choice, and both parties have participated in the preparation of this Agreement.

9.11 Dispute Resolution. All disputes arising directly under this Agreement shall be resolved as follows: The senior management of the parties involved in any dispute shall meet to attempt to resolve such dispute. If the dispute is not resolved by the senior management, either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute. Within thirty (30) days after such written notification, the parties agree to meet for one (1) day with an impartial mediator and consider dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within thirty (30) days after the one (1) day mediation, either party may begin litigation proceedings. Notwithstanding anything to the contrary herein, any party may begin litigation proceedings without complying with this Section 9.11 if compliance with this Section 9.11 would cause such party to fail to make a claim prior to the expiration of any applicable statute of limitations.

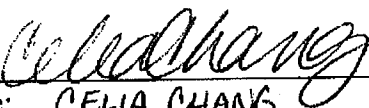
SELLER:

BSI ACQUISITIONS, INC.,
a California corporation

By: 
Name: JACK CHANG
Title: PRESIDENT

BUYER:

PURPLECOMM, Inc.,
a Delaware corporation

By: 
Name: CELIA CHANG
Title: PRESIDENT

APPENDIX A

DEFINITIONS

1. "Accounts Receivable" means any accounts receivable, book debt or other form of right to payment of monetary obligations now owned or hereafter acquired or received by or belonging or owing to Seller or in which Seller now holds or hereafter acquires or receives any right or interest.
2. "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or under common control with the first-mentioned person.
3. "Applicable Law" means the statutes, regulations, rules, ordinances or other laws of all Governmental Entities having jurisdiction over the party in question.
4. "Assumed Contracts" shall have the meaning set forth in Section 2.1(c).
5. "Assumed Liabilities" shall have the meaning set forth in Section 2.2.
6. "Balance Sheet Date" shall have the meaning set forth in Section 3.4(a).
7. "Bill of Sale" means the Bill of Sale in the form attached as Exhibit C hereto which document shall be executed by the parties and delivered at the Closing.
8. "Business" means BSI Acquisitions, Inc.
9. "Business Day" means any day other than a day on which banks in San Francisco, California are closed.
10. "Capital Stock" means common stock, preferred stock, partnership interests, limited liability company interests or other interests entitling the holder thereof to vote with respect to matters involving the issuer thereof.
11. "Closing" shall have the meaning given set forth in Section 2.5.
12. "Closing Date" shall have the meaning set forth in Section 2.5.
13. "Contract" means written or oral contracts, agreements, loans, notes, bonds, indentures, options, leases, licenses, sales and purchase orders, warranties, commitments and other obligations or instruments of any kind.
14. "Copyrights" means (a) all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof or any other country; (b) registrations, applications, recordings and proceedings in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any other country; (c) any continuations, renewals or extensions thereof; (d) any registrations to be issued in any pending applications, and shall include any right or interest in and to work protectable by any of the

foregoing which are presently or in the future owned, created or authorized (as a work for hire for the benefit of Seller) or acquired by Seller in whole or in part; (e) prior versions of work covered by copyright and all works based upon, derived from or incorporating such works; (f) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to copyrights, including, without limitation, damages, claims and recoveries for past, present or future infringement; (g) rights to sue for past, present and future infringements of any copyright; and (h) any other rights corresponding to any of the foregoing rights throughout the world.

15. "Disclosure Schedule" shall have the meaning set forth in the preamble to Article 3.

16. "Employment Offeree" shall have the meaning set forth in Section 5.1(b)(8).

17. "Employee Plan" shall have the meaning set forth in Section 3.11(a).

18. "Environmental Laws" means federal, state, local and foreign laws relating to pollution or the protection of human health or the environment.

19. "Equipment" means all machinery, equipment, furniture, office equipment, communications equipment, computer equipment, spare and replacement parts, fixtures (to the extent they do not form a part of the real property) and other tangible personal property (and interests in any of the foregoing) used in or necessary to the Business.

20. "ERISA" means the Employee Retirement Income and Security Act of 1974, as amended and the rules and regulations thereunder.

21. "Excluded Liability" means any liability of Seller which is not an Assumed Liability.

22. "Final Date" shall have the meaning set forth in Section 7.1(b).

23. "Governmental Entities" means any United States (federal, state or local) or foreign court or tribunal government or regulatory body, labor organization or administrative agency or authority.

24. "Hazardous Substance" means any substance, material or waste that is listed, classified or regulated in any concentration pursuant to any Environmental Law.

25. "Indemnification Claim" shall have the meaning set forth in Section 8.2(b).

26. "Indemnitees" shall have the meaning set forth in Section 8.2(a).

27. "Indemnity Escrow Agreement" shall have the meaning set forth in Section 2.3.

28. "Intellectual Property" means (a) all Marks, Patents, Copyrights, Trade Secrets, Moral Rights, mask works, computer software programs or applications (in both source code and object code form), (b) all documents relating to the foregoing and any records and files related to design, end user documentation, manufacturing quality control, sales, marketing or customer support and (c) all other tangible or intangible proprietary information and materials.

29. "Knowledge" or "Known" means, in the case of an individual, actual knowledge and in the case of an entity, means the actual knowledge of the Shareholders.

30. "Leases" shall have the meaning set forth in Section 3.16.

31. "Liability" means any loss, expense, charge, assessment, levy, fine or other liability.

32. "Liens" means with respect to any asset, any mortgage, lien, pledge, charge, security interest, restriction, encumbrance or adverse claim of any kind.

33. "Marks" means (a) any trademarks, trade names, corporate names, company names, business names, trade styles, trade dress, service marks, logos, other source or business identifiers (including domain names), prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registration and recordings thereof and any applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country; (b) any reissues, extensions or renewals of the foregoing; (c) the goodwill of the business symbolized by or associated with the foregoing; (d) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to the foregoing, including, without limitation, damages, claims and recoveries for past, present and future infringement; and (e) rights to sue for past, present and future infringements with respect to the foregoing.

34. "Material Adverse Effect" means any circumstance, change in or effect on a party (a) that is materially adverse to the assets or business of the party or (b) that would reasonably be expected to impair the ability of the party to consummate the transactions contemplated by this Agreement in a timely manner.

35. "Material Contract" shall have the meaning set forth in Section 3.15(a).

36. "Moral Rights" means moral rights, publicity rights and other proprietary, intellectual or industrial property rights of any kind or nature that do not comprise or are not protected by Marks, Patents, Copyrights or Trade Secrets.

37. "Patents" means (a) all letters patent of the United States or any other country, all registration and recordings thereof and all applications for letter patent of the United States or any other country, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country; (b) all reissues, divisions, continuations, renewals, continuations-in-part or extensions thereof; (c) all petty patents, divisionals and patents of addition; (d) all patents to issue in any such applications; (e) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to patents, including, without limitation, damages, claims and recoveries for past, present or future infringement; and (f) rights to sue for past, present and future infringements of any patent.

38. "Person" means an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other legal entity.

39. "Pre-Closing Tax Period" shall have the meaning set forth in Section 5.7(b).
40. "Post-Closing Tax Period" shall have the meaning set forth in Section 5.7(b).
41. "Proprietary Portions" shall have the meaning set forth in Section 3.14(e).
42. "Purchased Assets" shall have the meaning set forth in Section 2.1.
43. "Purchase Price" shall have the meaning set forth in Section 2.3.
44. "Seller Balance Sheet" shall have the meaning set forth in Section 3.4(a).
45. "Seller Board" shall have the meaning set forth in Section 3.3.
46. "Seller Intellectual Property" shall have the meaning set forth in Section 3.14(a).
47. "Seller Licensed Intellectual Property" shall have the meaning set forth in Section 3.14(a).
48. "Seller Owned Intellectual Property" shall have the meaning set forth in Section 3.14(a).
49. "Seller Permits" shall have the meaning set forth in Section 3.10.
50. "Shares" shall have the meaning set forth in Section 2.3.
51. "Survival Period" shall have the meaning set forth in Section 8.1(a).
52. "Tax" or "Taxes" shall have the meaning set forth in Section 3.13(b)(i).
53. "Tax Return" or "Tax Returns" shall have the meaning set forth in Section 3.13(b)(i).
54. "Third Party Acquisition" shall have the meaning set forth in Section 5.2.
55. "Trade Secrets" means know-how, inventions, methods, processes, technical data and other proprietary or technical information.
56. "Transaction Documents" means this Agreement and all documents attached as exhibits or schedules to this Agreement, including, without limitation, the Bill of Sale.

DISCLOSURE SCHEDULE

This Disclosure Schedule, dated January 1, 2005, is made and given pursuant to that certain Asset Purchase Agreement by and between BSI Acquisitions, Inc., a California corporation, and PurpleComm, Inc., a Delaware corporation,

None.

EXHIBIT A
PURCHASED ASSETS

Equipment

N/A

Inventory

N/A

Intellectual Property

BSI Unified Messaging b1, b2, and b3 technologies including source code

BSI pending US patent Serial Number 09/611,178

Expenses and Deposits

N/A

Assumed Contracts

BSI/Chung-Hwa Telecom HiNet contract dated January 1, 2005

Accounts Receivable

N/A

EXHIBIT B
ASSUMED LIABILITIES

None.

EXHIBIT C
BILL OF SALE

C-1

4830-9303-4752\2

BILL OF SALE

This Bill of Sale is made in connection with that Asset Purchase Agreement dated January 1, 2005 ("~~Agreement~~") ^{cc. j} ~~Code~~ with respect to certain purchased assets.

For adequate consideration, receipt of which is acknowledged, received from PurpleComm, Inc., a Delaware corporation (hereinafter the "**Buyer**"), BSI Acquisitions, Inc. (hereinafter the "**Seller**") hereby sells, transfers and assigns to Buyer all of Seller's right, title and interest, if any, in and to the personal property described in Exhibit A (the "**Purchased Assets**") attached hereto and incorporated herein. The share certificate evidencing Seller's shares of Common Stock in Buyer shall be issued to Seller upon Buyer's completing an increase in authorized shares not later than December 31, 2005 (the "Final Date" as set forth in the Asset Purchase Agreement.)

The Purchased Assets being sold pursuant to this Bill of Sale are being sold without representation or warranty except for those limited warranties expressly set forth in the Asset Purchase Agreement between Buyer and Seller.

Seller shall have no liability or responsibility for recording or issuing any documents or title covering all or a portion of the Purchased Assets, or for reflecting the transfer of Seller's right, title and interest, if any, in and to the Purchased Assets in any public or private records except as specifically set forth in the Asset Purchase Agreement. All such recordations, filings, and changes to any public or private records shall be performed by Buyer, at its sole discretion and at its sole expense.

Buyer and Seller agree that this Bill of Sale may be executed in one or more counterparts but all of the counterparts shall constitute one agreement and this Bill of Sale shall be effective when executed by all of the parties hereto.

Buyer and Seller agree that this Bill of Sale may be executed via facsimile. Facsimile signatures shall constitute originals for any and all purposes herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Bill of Sale as of January 1, 2005.

SELLER:

BSI ACQUISITION, INC.

By: _____

Name: JACK CHANG

Title: PRESIDENT

[Signature continued on next page.]

BUYER:

PURPLECOMM, INC.

By: 

Name: CELIA CHANG

Title: PRESIDENT

Exhibit A to Bill of Sale

Purchased Assets

1. BSI Unified Messaging b1, b2 and b3 technologies including source code.
2. BSI/Chung-Hwa Telecom HiNet contract dated January 1, 2005
3. BSI pending US patent Serial Number 09/611,178.

9/13/05 -- cb

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