

PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT																				
NATURE OF CONVEYANCE:	MERGER																				
EFFECTIVE DATE:	08/11/2000																				
CONVEYING PARTY DATA																					
<table border="1"> <thead> <tr> <th>Name</th> <th>Execution Date</th> </tr> </thead> <tbody> <tr> <td>Apptitude, Inc</td> <td>05/12/2000</td> </tr> </tbody> </table>		Name	Execution Date	Apptitude, Inc	05/12/2000																
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RECEIVING PARTY DATA																					
Name:	Hi/Fn, Inc.																				
Street Address:	: 750 University Avenue																				
City:	Los Gatos																				
State/Country:	CALIFORNIA																				
Postal Code:	95032-7695																				
PROPERTY NUMBERS Total: 9																					
<table border="1"> <thead> <tr> <th>Property Type</th> <th>Number</th> </tr> </thead> <tbody> <tr> <td>Application Number:</td> <td>60141903</td> </tr> <tr> <td>Patent Number:</td> <td>6651099</td> </tr> <tr> <td>Patent Number:</td> <td>6954789</td> </tr> <tr> <td>Patent Number:</td> <td>6665725</td> </tr> <tr> <td>Patent Number:</td> <td>6839751</td> </tr> <tr> <td>Patent Number:</td> <td>6771646</td> </tr> <tr> <td>Patent Number:</td> <td>6789116</td> </tr> <tr> <td>Patent Number:</td> <td>7299282</td> </tr> <tr> <td>PCT Number:</td> <td>US2000018330</td> </tr> </tbody> </table>		Property Type	Number	Application Number:	60141903	Patent Number:	6651099	Patent Number:	6954789	Patent Number:	6665725	Patent Number:	6839751	Patent Number:	6771646	Patent Number:	6789116	Patent Number:	7299282	PCT Number:	US2000018330
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OP \$360.00 60141903

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ATTORNEY DOCKET NUMBER:

APPT-001-ALL_TOHIFN

NAME OF SUBMITTER:

Dov Rosenfed, Reg. No. 38687

Total Attachments: 80

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AGREEMENT AND PLAN OF REORGANIZATION

BY AND AMONG

HI/FN, INC.,

APPTITUDE ACQUISITION CORPORATION

AND

APPTITUDE, INC.

Dated as of May 12, 2000

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
<u>Exhibit A</u>	Form of Agreement of Merger
<u>Exhibit B</u>	Form of Employment and Non-Competition Agreement
<u>Exhibit C</u>	Form of Legal Opinion of Wilson Sonsini Goodrich & Rosati
<u>Exhibit D</u>	Form of Legal Opinion of Gagen, McCoy, McMahon & Armstrong

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AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement") is made and entered into as of May 12, 2000 by and among Apptitude, Inc., a California corporation (the "Company"), hi/fn, inc., a Delaware corporation ("Parent"), Apptitude Acquisition Corporation, a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub"), and, with respect to the matters set forth in Articles VII and X hereof only, the Shareholder Representative and the Escrow Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in Article IX hereof.

RECITALS

A. The Boards of Directors of each of the Company, Parent and Merger Sub believe it is in the best interests of each company and their respective shareholders that Parent acquire the Company through the statutory merger of the Company with and into Merger Sub or the statutory merger of Merger Sub with and into the Company (the "Merger") and, in furtherance thereof, have approved the Merger.

B. Pursuant to the Merger, among other things, (i) all of the issued and outstanding shares of capital stock of the Company (other than Dissenting Shares) shall be converted into the right to receive consideration from Parent, (ii) all of the issued and outstanding options to acquire any shares of Company Common shall be assumed by Parent at the Effective Time, and (iii) all of the issued and outstanding warrants and other rights to acquire any shares of capital stock of the Company shall terminate on the Closing Date if not exercised prior thereto.

C. Prior to the closing of the Merger, as a material inducement to Parent and Merger Sub to enter into this Agreement, certain employees of the Company are entering into employment and non-competition agreements with Parent (the "Employment and Non-Competition Agreements") in the form of Exhibit B attached hereto.

D. The Company, Parent and Merger Sub desire to make certain representations and warranties and other agreements in connection with the Merger.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the parties agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. Except as otherwise contemplated by Section 1.11 hereof, at the Effective Time and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the General Corporation Law of the State of California ("California Law") and the Delaware General Corporation Law ("Delaware Law"), the Company shall be merged with

and into Merger Sub, the separate corporate existence of the Company shall cease and Merger Sub shall continue as the surviving corporation and as a wholly-owned subsidiary of Parent. The surviving corporation after the Merger is sometimes referred to hereinafter as the "Surviving Corporation."

1.2 Effective Time. Unless this Agreement is earlier terminated pursuant to Section 8.1, the closing of the Merger (the "Closing") will take place as promptly as practicable, but no later than five (5) business days, following satisfaction or waiver of the conditions set forth in Article VI, at the offices of Wilson, Sonsini, Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California, unless another place or time is agreed to in writing by Parent and the Company. The date upon which the Closing actually occurs is herein referred to as the "Closing Date." On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing an Agreement of Merger (or like instrument) and the accompanying officers' certificates, each in the form of Exhibit A, with the Secretary of State of the States of California and Delaware, respectively (the "Agreement of Merger"), in accordance with the relevant provisions of California Law and Delaware Law (the time of acceptance by the Secretary of State of the States of California and Delaware of such filing being referred to herein as the "Effective Time").

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of California Law and Delaware Law. 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 Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Certificate of Incorporation; Bylaws.

(a) Unless otherwise determined by Parent prior to the Effective Time, the certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation at the Effective Time until thereafter amended in accordance with Delaware Law and as provided in such certificate of incorporation; provided, however, that Article I of the certificate of incorporation of the Surviving Corporation shall be amended to read as follows: "The name of the corporation is Apptitude, Inc."

(b) Unless otherwise determined by Parent prior to the Effective Time, the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation at the Effective Time until thereafter amended in accordance with Delaware Law and as provided in such bylaws.

1.5 Directors and Officers. Unless otherwise determined by Parent prior to the Effective Time, the director(s) of Merger Sub immediately prior to the Effective Time shall be the initial director(s) of the Surviving Corporation immediately after the Effective Time, each to hold the office of a director of the surviving corporation in accordance with the provisions of Delaware Law and the certificate of incorporation and bylaws of the Surviving Corporation until his or her successor is duly qualified and elected. Unless otherwise determined by Parent prior to the Effective Time, the

officers of Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the bylaws of the Surviving Corporation.

1.6 Effect of Merger on Capital Stock of the Constituent Corporations.

(a) Company Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the Shareholders, each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares) will be canceled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such share of Company Capital Stock and upon the terms and subject to the conditions set forth below and throughout this Agreement, including without limitation, this Section 1.6, Section 1.8 hereof and the provisions of Article VII hereof, the sum of (i) the cash amount equal to the Cash Exchange Ratio and (ii) the number of shares of Parent Common Stock equal to the Share Exchange Ratio.

(b) Company Options. At the Effective Time, each issued and outstanding Company Option not yet exercised, whether vested or unvested, will be assumed or replaced by Parent in connection with the Merger. No cash will be paid in lieu of fractional shares which are rounded down pursuant to this Section 1.6(b). It is the intention of the parties hereto that the Company Options assumed by Parent pursuant to this Section 1.6(b) will, to the extent permitted by applicable law, qualify as incentive stock options as defined in Section 422 of the Code, to the extent any such Company Options qualified as incentive stock options immediately prior to the Effective Time.

(i) Vested Company Options. Each vested Company Option so assumed by Parent under this Agreement shall continue to have, and be subject to, the same terms and conditions set forth in the Option Plan[s] and/or as provided in the respective option agreements immediately prior to the Effective Time (including, without limitation, any vesting schedule or repurchase rights), except that (A) each vested Company Option will also be automatically converted into the right to receive a cash amount equal to the product obtained by multiplying the Cash Exchange Ratio by the number of shares of Company Common that were issuable upon exercise of such vested Company Option immediately prior to the Effective Time; and (B) (1) each vested Company Option will be exercisable for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common that were issuable upon exercise of such vested Company Option immediately prior to the Effective Time multiplied by the Share Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock, and (2) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed vested Company Option will be equal to the quotient determined by dividing the exercise price per share of Company Capital Stock at which such vested Company Option was exercisable immediately prior to the Effective Time by the Share Exchange Ratio, rounded up to the nearest whole cent.

(ii) Unvested Company Options. Each unvested Company Option so assumed by Parent under this Agreement shall continue to have, and be subject to, the same terms

and conditions set forth in the Option Plan[s] and/or as provided in the respective option agreements immediately prior to the Effective Time (including, without limitation, any vesting schedule or repurchase rights), except that (A) each unvested Company Option will be exercisable for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common that were issuable upon exercise of such unvested Company Option immediately prior to the Effective Time multiplied by the Option Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock, and (B) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed unvested Company Option will be equal to the quotient determined by dividing the exercise price per share of Company Capital Stock at which such unvested Company Option was exercisable immediately prior to the Effective Time by the Option Exchange Ratio, rounded up to the nearest whole cent.

(c) Assumption Agreement. As soon as practicable following the Closing, Parent shall issue to each holder of a Company Option to be assumed or replaced by Parent a document evidencing the assumption or replacement of such Company Option by Parent, and each former holder of a Company Option so assumed or replaced by Parent shall acknowledge the receipt of the same in exchange for the assumption or replacement of such holder's Company Option.

(d) Company Warrants. Parent shall not assume any Company Warrants in connection with the Merger, and all Company Warrants shall terminate at the Effective Time. The Company shall take all actions necessary to effect the purpose of this Section 1.6(d), including, without limitation, taking all actions necessary to cause all Company Warrants to expire at the Effective Time.

(e) Capital Stock of Merger Sub. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub or the Company, each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation, then comprising all of the issued and outstanding capital stock of the Surviving Corporation.

(f) Shareholder Loans. In the event that any Shareholder has outstanding loans from the Company as of the Effective Time, the number of shares of Parent Common Stock issuable pursuant to Section 1.6(a) hereof shall be reduced by an amount equal to the outstanding principal plus accrued interest of such Shareholder loans as of the Effective Time.

(g) Cancellation of Treasury Stock. Each share of Company Capital Stock held in the treasury of the Company shall be cancelled and extinguished without any conversion thereof.

(h) Fractional Shares. No fraction of a share of Parent Common Stock will be issued in the Merger. In lieu thereof, any fractional share resulting from the conversion pursuant to Section 1.6(a) hereof shall be rounded to the nearest whole share of Parent Common Stock (with a fraction greater than .5 being rounded up).

(i) Adjustments to Parent Common Stock. The number of shares of Parent Common Stock issuable pursuant to Section 1.6(a) hereof shall be adjusted to reflect fully the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Parent Common Stock or Company Capital Stock), reorganization, recapitalization or the other like change with respect to Parent Common Stock or Company Capital Stock after the date hereof.

(j) Special Merger Consideration. Notwithstanding anything to the contrary set forth in this Agreement, the parties acknowledge and agree that, at the Effective Time and upon the terms and subject to the conditions set forth in this Agreement, including without limitation, this Section 1.6, Section 1.8 hereof and the provisions of Article VII hereof, (i) each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares) will also be automatically converted into the right to receive an additional number of shares of Parent Common Stock equal to the Special Merger Exchange Ratio; and (ii) each vested Company Option issued and outstanding immediately prior to the Effective Time will also be automatically converted into the right to receive, upon the terms and subject to the conditions set forth in this Agreement, including without limitation, this Section 1.6, Section 1.8 hereof and the provisions of Article VII hereof, an additional number of shares of Parent Common Stock equal to the number of shares of Company Common subject to such vested Company Option multiplied by the Special Merger Exchange Ratio.

(k) Bonus Pool. Notwithstanding anything to the contrary set forth in this Agreement, the parties acknowledge and agree that, at the Effective Time and upon the terms and subject to the conditions set forth in this Agreement, including without limitation, this Section 1.6, Section 1.8 hereof and the provisions of Article VII hereof, Five Hundred Fifty Thousand Dollars (USD\$550,000) (the "Bonus Cash Pool") and Thirty-Three Thousand (33,000) shares of Parent Common Stock (the "Bonus Share Pool") will be deducted from the Cash Amount and the Merger Shares, respectively, immediately prior to any distribution of the Aggregate Merger Consideration pursuant to the terms of this Agreement. At the Effective Time and upon the terms and subject to the conditions set forth in this Agreement, including without limitation, this Section 1.6, Section 1.8 hereof and the provisions of Article VII hereof, the Bonus Cash Pool and the Bonus Share Pool will be distributed to those persons and in those amounts as determined by the Board of Directors of the Company and set forth on Schedule 1.6(k) hereto, which shall be attached hereto no later than five (5) days prior to the Closing.

1.7 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, any shares of Company Capital Stock held by a holder who has exercised and perfected dissenters' rights for such shares in accordance with California Law and who, as of the Effective Time, has not effectively withdrawn or lost such dissenters' rights ("Dissenting Shares"), shall not be converted into or represent a right to receive the consideration for Company Capital Stock set forth in Section 1.6(a) hereof, but the holder thereof shall only be entitled to such rights as are provided by California Law.

(b) Notwithstanding the provisions of Section 1.7(a) hereof, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's dissenters' rights under California Law, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration for Company Capital Stock set forth in Section 1.6(a) hereof, without interest thereon, upon surrender of the certificate representing such shares.

(c) The Company shall give Parent (i) prompt notice of any written demand for appraisal received by the Company pursuant to the applicable provisions of California Law and (ii) the opportunity to participate in all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any such demands or offer to settle or settle any such demands. To the extent that Parent or the Company makes any payment or payments in respect of any Dissenting Shares, Parent shall be entitled to recover under the terms of Article VII hereof the aggregate amount by which such payment or payments exceed the aggregate consideration that otherwise would have been payable in respect of such shares pursuant to Section 1.6(a) hereof.

1.8 Surrender of Certificates.

(a) Exchange Agent. A designee of Parent shall serve as the exchange agent ("Exchange Agent") for the Merger.

(b) Parent to Provide Common Stock and Cash; Escrow Amount. At the Effective Time, Parent shall deposit with the Exchange Agent for exchange in accordance with this Article I, the Aggregate Merger Consideration issuable (in the case of the Merger Shares, the Special Merger Consideration and the Additional Parent Shares) and payable (in the case of the Cash Amount) pursuant to Section 1.6(a) hereof in exchange for all of the outstanding shares of Company Capital Stock, less a cash amount equal to ten percent (10%) of the sum of (A) the Cash Amount and (B) the product obtained by multiplying the Merger Shares by the Trading Price (the "Escrow Amount"), which shall be deducted from the Cash Amount and shall be available to Parent to set off any Losses in accordance with Article VII.

(c) Exchange Procedures. Promptly after the Effective Time, the Exchange Agent shall cause to be mailed to each holder of record of a certificate or certificates (each a "Certificate" and collectively, the "Certificates") representing shares of Company Capital Stock that were outstanding immediately prior to the Effective Time, (i) a letter of transmittal in such form and having such provisions as Parent may reasonably request (including but not limited to provisions whereby such holder agrees to be bound by the provisions of Article VII of this Agreement, consents to the appointment of the Shareholder's Representative, and agrees to terminate and waive any further rights that such holder may have under any Shareholder Agreement) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Aggregate Merger Consideration. Upon surrender of a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange therefor that portion of the Aggregate Merger Consideration pursuant to Section 1.6(a) hereof represented by such

Certificate and the Certificate so surrendered shall be canceled. Until so surrendered, each outstanding Certificate that, prior to the Effective Time, represented shares of Company Capital Stock, will be deemed from and after the Effective Time to evidence only the right to receive the Aggregate Merger Consideration in respect of each such share.

(d) Transfers of Ownership. If any Parent Common Stock is to be issued to a person other than the holder in whose name the Certificate surrendered in exchange therefor is registered, it will be a condition of the issuance thereof that the Certificate so surrendered will be properly endorsed and accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid.

1.9 No Further Ownership Rights in Company Capital Stock. The right to receive Aggregate Merger Consideration upon the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof shall be deemed to be full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, certificates evidencing shares of Company Capital Stock are presented to the Surviving Corporation for any reason, they shall be cancelled and the right of the holder or holders of such certificates shall be limited to the right to receive that portion of the Aggregate Merger Consideration represented by such certificate, which portion shall be delivered to the person entitled thereto.

1.10 Lost, Stolen or Destroyed Certificates. In the event any certificates evidencing shares of Company Capital Stock shall have been lost, stolen or destroyed, Parent shall, in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof, issue such Parent Common Stock as may be required pursuant to Section 1.6(a) hereof; provided, however, that Parent may, in its sole discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificates to deliver an agreement (in form and substance satisfactory to it) to indemnify Parent against any claim that may be made against Parent with respect to the certificates alleged to have been lost, stolen or destroyed.

1.11 Tax and Accounting Treatment. The parties intend for the Merger to constitute a tax-free forward triangular reorganization within the meaning of Section 368(a)(1)(A) and Section 368(a)(2)(D) of the Code; *provided, however,* that if the value of the number of shares of Parent Common Stock equal to the Share Exchange Ratio is less than the value of the cash amount equal to the Cash Exchange Ratio, as determined by Parent in its sole discretion, the parties agree that the Merger will be structured as a taxable reverse triangular merger whereby Merger Sub will be merged with and into the Company, with the Company as the surviving corporation in the merger. If the Merger is restructured as a taxable reverse triangular merger in accordance with this Section 1.11, then all references in this Agreement to the "Merger" shall be deemed to refer to the merger described in this Section 1.11; all references in this Agreement to the "Agreement of Merger" shall be deemed to refer to an agreement of merger which reflects the merger described in this Section 1.11; and all references in this Agreement to the "Surviving Corporation" shall be deemed to refer to the Company. The Merger will be treated as a purchase for financial accounting purposes.

1.12 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and Merger Sub, Parent and the Surviving Corporation are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary and/or desirable action.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Sub, subject to such exceptions as are specifically disclosed in the disclosure letter (referencing the appropriate section and paragraph numbers) supplied by the Company to Parent (the "Company Schedules") and dated as of the date hereof, that on the date hereof and as of the Effective Time as though made at the Effective Time as follows; provided, that the representations and warranties made as of a specified date will be true and correct as of such date:

2.1 Organization and Authority of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently being conducted. The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified or licensed would have, or could reasonably be expected to have, a Company Material Adverse Effect. The term "Material Adverse Effect" when used in connection with an entity means any change, event, violation, inaccuracy, circumstance or effect that is, or could reasonably be expected to be, materially adverse to (a) the business, assets (including intangible assets), capitalization, financial condition or results of operations of such entity, and (b) the ability of such person to perform its obligations under this Agreement and to consummate the transactions provided for hereunder, or (c) the ability of such entity to conduct its business as presently conducted. "Company Material Adverse Effect" means a Material Adverse Effect with respect to the Company, and "Parent Material Adverse Effect" means a Material Adverse Effect with respect to Parent. All jurisdictions in which the Company conducts its business are set forth on Company Schedule 2.1. The Company has not taken any action that in any respect conflicts with, constitutes a default under or results in a violation of any provision of its Organizational Documents. Company Schedule 2.1 sets forth (i) true and correct copies of the Organizational Documents of the Company, each as in effect on the date hereof, and (ii) the directors and officers of the Company. The operations now being conducted by the Company are not now and have never been conducted by the Company under any other name.

2.2 Company Capital Structure.

(a) The authorized capital stock of the Company consists of: (i) 47,000,000 shares of Common Stock, 7,565,211 shares of which are issued and outstanding as of the date hereof; (ii)

3,000,000 shares of Series A Preferred Stock, 3,000,000 shares of which are issued and outstanding as of the date hereof; (iii) 5,000,000 shares of Series B Preferred Stock, 3,200,004 shares of which are issued and outstanding as of the date hereof; (iv) 2,600,000 shares of Series C Preferred Stock, 2,500,000 shares of which are issued and outstanding as of the date hereof; (v) 4,083,660 shares of Series D Preferred Stock, 4,083,660 shares of which are issued and outstanding as of the date hereof; (vi) 3,333,333 shares of Series E Preferred Stock, 2,140,617 shares of which are issued and outstanding as of the date hereof; (vii) 5,000,000 shares of Series F Preferred Stock, 3,834,477 shares of which are issued and outstanding as of the date hereof; and (viii) 2,000,000 shares of Series G Preferred Stock, none of which are issued and outstanding as of the date hereof. The Company has no other capital stock authorized, issued or outstanding. The Company Capital Stock is held by the persons with the domicile addresses and in the amounts set forth on Company Schedule 2.2(a). Company Schedule 2.2(a) sets forth, as of the date hereof, the total number of shares of Company Common Stock outstanding as of immediately prior to the Effective Time assuming the conversion, exercise or exchange of all securities convertible into, or exercisable or exchangeable for, shares of Company Common Stock, and the exercise of all Company Options and Company Warrants. All outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, the Organizational Documents of the Company, or any agreement to which the Company is a party or by which it is bound, and have been issued in compliance with the registration or qualification requirements of applicable securities laws. Except as set forth on Company Schedule 2.2(a), there are no declared or accrued but unpaid dividends with respect to any shares of Company Capital Stock.

(b) Except for the Option Plan[s], the Company has never adopted or maintained any stock option plan or other plan providing for equity compensation of any person. The Company has reserved 10,985,762 shares of Company Common Stock for issuance to employees and directors of, and consultants to, the Company upon the exercise of options granted under the Option Plans, 6,628,261 shares of which are issuable, as of the date hereof, upon the exercise of outstanding, unexercised options granted under the Option Plan[s]. No shares have been issued, as of the date hereof, upon the exercise of options granted under the Option Plan[s]. Company Schedule 2.2(a) sets forth for each outstanding Company Option and Company Warrant, the name of the holder of such security, the domicile address of such holder, the number of shares of Company Capital Stock issuable upon the exercise of such option, the exercise price of such option, the vesting schedule for such option, including the extent vested to date and whether the vesting of such option will be accelerated by the transactions contemplated by this Agreement and whether such option is intended to qualify as an incentive stock option as defined in Section 422 of the Code. Except for the Company Options and the Company Warrants, there are no options, warrants, calls, rights, commitments or agreements of any character, written or oral, to which the Company is a party or by which it is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or other similar rights with respect to the Company. Except as contemplated hereby, there are no voting trusts,

proxies, or other agreements or understandings with respect to the voting stock of the Company. As a result of the Merger, and assuming Parent owns all outstanding shares of Merger Sub and all rights to acquire any shares of Merger Sub, Parent will be the sole record and beneficial holder of all issued and outstanding Company Capital Stock and all rights to acquire or receive any shares of Company Capital Stock, whether or not such shares of Company Capital Stock are outstanding.

2.3 Subsidiaries. Except as set forth on Company Schedule 2.3, the Company does not have, and has never had, any subsidiaries or affiliated companies and does not otherwise own, and has not otherwise owned, any shares of capital stock or any interest in, or control, directly or indirectly, any other corporation, partnership, association, joint venture or other business entity.

2.4 Authority. The Company has all requisite power and authority to enter into this Agreement and any Related Agreements (as hereinafter defined in this Section 2.4) to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company, and no further action is required on the part of the Company to authorize the Agreement and any Related Agreements to which it is a party and the transactions contemplated hereby and thereby, subject only to the approval of this Agreement by the Shareholders. This Agreement and the Merger have been unanimously approved by the Board of Directors of the Company. This Agreement and each of the Related Agreements to which the Company is a party has been duly executed and delivered by the Company, and assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by principles of public policy and laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies. For all purposes of this Agreement, the term "Related Agreements" shall mean the Agreement of Merger.

2.5 No Conflict. The execution and delivery by the Company of this Agreement and any Related Agreement to which the Company is a party, and the consummation of the transactions contemplated hereby and thereby, will not conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (any such event, a "Conflict") (i) any provision of the Organizational Documents of the Company, (ii) any Contract, or (iii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its properties (tangible and intangible) or assets. The Company is in material compliance with and has not materially breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any Contract, nor is the Company aware of any event that would constitute such a material breach, violation or default with the lapse of time, giving of notice or both. Each Contract is in full force and effect and the Company is not in default thereunder nor, to the Company's knowledge, is any party obligated to the Company pursuant to any such Contract in material default thereunder. The Company has obtained, or will obtain prior to the Effective Time, all necessary consents, waivers and approvals of parties to any Contract as are required (i) thereunder in connection with the Merger, (ii) and for any such Contract

to remain in full force and effect without limitation, modification or alteration after the Effective Time. After the Effective Time, Parent will be permitted to exercise all of the rights under the Contracts that were vested in the Company prior to the Effective Time without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company would otherwise be required to pay pursuant to the terms of such Contracts had the transactions contemplated by this Agreement not occurred.

2.6 Consents. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with any Governmental Entity or any third party, including a party to any agreement with the Company (so as not to trigger any Conflict), is required by or with respect to the Company in connection with the execution and delivery of this Agreement and any Related Agreement to which the Company is a party or the consummation of the transactions contemplated hereby and thereby, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws and the HSR Act; (ii) the filing of the Agreement of Merger with the Secretaries of State of the States of California and Delaware, respectively; and (iii) such other consents, waivers, approvals, orders, authorizations, registrations, declarations and filings that are not material.

2.7 Company Financial Statements. Company Schedule 2.7 sets forth the Company's (i) audited balance sheets as of December 31, 1998 and as of December 31, 1997, and the related audited statements of income, cash flow and stockholders' equity for the twelve (12) month periods ended December 31, 1998 and December 31, 1997, respectively, and an unaudited balance sheet as of December 31, 1999, and the related unaudited statements of income, cash flow and stockholders' equity for the twelve (12) month period ended December 31, 1999 (collectively, the "Year-End Financials"), and (ii) unaudited balance sheet as of March 31, 2000, and the related unaudited statements of income, cash flow and stockholders' equity for the three-month period then ended (the "Interim Financials"). The Year-End Financials and the Interim Financials have been prepared in accordance with GAAP consistently applied on a basis consistent throughout the periods indicated and consistent with each other. The Year-End Financials and Interim Financials present fairly the financial condition, operating results and cash flows of the Company as of the dates and during the periods indicated therein, subject in the case of the Interim Financials to normal year-end adjustments, which are not material in amount in any individual case or in the aggregate. The Company's unaudited balance sheet as of March 31, 2000 is referred to hereinafter as the "Current Balance Sheet."

2.8 Accounts Receivable. Company Schedule 2.8 sets forth a list of all accounts receivable of the Company (collectively the "Accounts Receivable") as of March 31, 2000 along with a range of days elapsed since invoice. Except as set forth on Company Schedule 2.8, the Accounts Receivable (net of allowances for doubtful accounts as reflected on the Current Balance Sheet and as determined in accordance with GAAP consistently applied or, for Accounts Receivable arising subsequent to March 31, 2000, as reflected on the books and records of the Company, which are prepared in accordance with GAAP) are or shall be valid Accounts Receivable arising in the ordinary course of business, and, to the Company's knowledge, are or shall be collectible within ninety (90) days after the day on which each Account Receivable first becomes due and payable, subject to no counterclaims or set-offs. No third party has any Lien on the Accounts Receivable or

any part thereof, and no agreement for deduction, free goods, discount or other deferred price or quantity adjustment has been made with respect to any of the Accounts Receivable.

2.9 Inventory. Except as set forth on Company Schedule 2.9 and subject to any reserve as reflected on the Current Balance Sheet, all inventory (including raw materials, work-in-process, and finished goods) of the Company consists of a quality and quantity usable and salable in the ordinary course of business, and is not excess, obsolete or damaged. The presentation of inventory on the Current Balance Sheet conforms to GAAP and such inventory is stated at the lower of cost (determined using the first-in, first-out method) or net realizable value.

2.10 No Undisclosed Liabilities. The Company does not have any material liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or other (whether or not required to be reflected in financial statements in accordance with GAAP), which has not been reflected on the Current Balance Sheet. Company Schedule 2.10 sets forth a schedule of all Company Indebtedness (including the amounts of Company Indebtedness, names of creditors, and a summary of the pertinent terms of such Company Indebtedness) as of the date of this Agreement. The parties shall mutually agree upon any changes made to Company Schedule 2.10 after the date of this Agreement.

2.11 No Changes. Except as set forth on Company Schedule 2.11, since December 31, 1999, there has not been, occurred or arisen any:

- (a) transaction by the Company except in the ordinary course of business as conducted on that date and consistent with past practices;
- (b) capital expenditure or commitment by the Company in excess of USD \$25,000 individually or USD \$50,000 in the aggregate;
- (c) destruction of, damage to or loss of any material assets, business or customer of the Company (whether or not covered by insurance);
- (d) claim of wrongful discharge or other unlawful labor practice or action;
- (e) change in accounting methods or practices (including any change in depreciation or amortization policies or rates) by the Company, except as may be required by GAAP;
- (f) amendments or changes to the Organizational Documents of the Company;
- (g) revaluation by the Company of any of its assets;
- (h) declaration, setting aside or payment of a dividend or other distribution with respect to the capital stock of the Company, or any direct or indirect redemption, purchase or other acquisition by the Company of any of its Company Capital Stock;
- (i) acquisition, sale, license or other disposition or transfer of any of the assets or properties of the Company or any creation of any security interest in such assets or properties, except

for sales of inventory in the ordinary course of business as conducted on that date and consistent with past practices;

(j) amendment or termination of any material contract, agreement or license to which the Company is a party or by which it or its properties or assets is bound;

(k) loan by the Company to any person or entity, incurring by the Company of any indebtedness, guaranteeing by the Company of any indebtedness, issuance or sale of any debt securities of the Company or guaranteeing of any debt securities of others;

(l) waiver or release of any right or claim of the Company, including any write-off or other compromise of any account receivable of the Company other than in accordance with the Company's allowance for doubtful accounts as reflected on the Current Balance Sheet;

(m) the commencement, settlement, notice or, to the knowledge of the Company threat of, any lawsuit or proceeding by or against the Company or investigation of the Company or its affairs;

(n) notice of any claim (i) of ownership by a third party of any of the Company's Intellectual Property Rights or (ii) of infringement by the Company of any third party's Intellectual Property Rights;

(o) issuance or sale by the Company of any of its shares of capital stock, or securities exchangeable, convertible or exercisable therefor, or of any other of its securities, or acceleration of vesting of any option or other security of the Company;

(p) sales returns, notice of product deficiency, obsolescence or other indication that any product sold by the Company did not perform as expected or was defective in some manner;

(q) increase in the salary or other compensation payable or to become payable by the Company to any of its officers, directors, shareholders, employees or advisors (other than normal annual raises for non-officers in accordance with past practice), or the declaration, payment or commitment or obligation of any kind for the payment, by the Company, of a bonus or other additional salary or compensation to any such person;

(r) adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other employee benefit plan for or with any employees of the Company;

(s) change in any material election in respect of Taxes, adoption or change in any accounting method in respect of Taxes, agreement or settlement of any claim or assessment in respect of Taxes, or extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(t) entry into, termination, modification or extension of, or receipt of notice of termination of (i) any license, lease, distributorship, dealer, sales representative, joint venture, credit,

customer, supplier or similar agreement, or (ii) any contract or transaction involving a total remaining commitment by or to the Company of at least USD \$25,000; or

(u) agreement, whether oral or written, by the Company or any officer or employee thereof to do any of the foregoing (other than negotiations with Parent and its representatives regarding the transactions contemplated by this Agreement).

2.12 Tax and Other Returns and Reports.

(a) Tax Returns and Audits. Except as set forth on Company Schedule 2.12(a):

(i) As of the Effective Time, the Company will have prepared and timely filed all required federal, state, local and foreign returns, estimates, information statements and reports ("Returns") relating to any and all Taxes concerning or attributable to the Company or its operations, including the calculations of net operating losses for purposes of such Returns, and such Returns are true and correct in all material respects and have been completed in accordance with applicable law.

(ii) As of the Effective Time, the Company (A) will have paid all Taxes it is required to pay and will have withheld with respect to its employees all federal and state income taxes, FICA, FUTA and other Taxes required to be withheld, and (B) will have accrued on the Current Balance Sheet all Taxes attributable to the periods preceding the Current Balance Sheet and will not have incurred any liability for Taxes for the period commencing after the date of the Current Balance Sheet and ending immediately prior to the Effective Time, other than in the ordinary course of business.

(iii) The Company has not been delinquent in the payment of any Tax, nor is there any Tax deficiency outstanding, assessed or proposed against the Company, nor has the Company executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) No audit or other examination of any Return of the Company is presently in progress, nor has the Company been notified of any request for such an audit or other examination.

(v) The Company does not have any material liabilities for unpaid Taxes which have not been accrued or reserved on the Current Balance Sheet, whether asserted or unasserted, contingent or otherwise, and the Company has not incurred any liability for Taxes since the date of the Current Balance Sheet other than in the ordinary course of business.

(vi) The Company has made available to Parent or its legal counsel, copies of all foreign, federal, state and local income and all state and local sales and use Returns for the Company filed for all periods since its inception.

(vii) There are (and immediately following the Effective Time there will be) no Liens on the assets of the Company relating to or attributable to Taxes other than Liens for Taxes not yet due and payable.

(viii) The Company has no knowledge of any basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any material Lien on the assets of the Company.

(ix) None of the Company's assets is treated as "tax-exempt use property," within the meaning of Section 168(h) of the Code.

(x) The Company has not filed any consent agreement under Section 341(f) of the Code or agreed to have Section 341(f)(4) of the Code apply to any disposition of a subsection (f) asset (as defined in Section 341(f)(4) of the Code) owned by the Company.

(xi) The Company is not a party to any tax sharing, indemnification or allocation agreement nor does the Company owe any amount under any such agreement.

(xii) The Company's tax basis in its assets for purposes of determining its future amortization, depreciation and other federal income Tax deductions is accurately reflected on the Company's tax books and records.

(xiii) The Company is not, and has not been at any time, a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(xiv) No adjustment relating to any Return filed by the Company has been proposed formally or, to the Company's knowledge, informally by any tax authority to the Company or any representative thereof.

(xv) The Company has not constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code (i) in the two years prior to the date of this Agreement or (ii) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the Merger

(xvi) The Company has not taken any action nor knows of any fact, agreement, plan or other circumstance that is reasonably likely to prevent the Merger from qualifying as a reorganization under Section 368(a) of the Code.

(b) Executive Compensation Tax. There is no contract, agreement, plan or arrangement to which the Company is a party, including, without limitation, the provisions of this Agreement, covering any employee or former employee of the Company, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G, 404 or 162(m) of the Code.

2.13 Restrictions on Business Activities. There is no agreement (non-compete or otherwise), commitment, judgment, injunction, order or decree to which the Company is a party or, to the Company's knowledge, is otherwise binding upon the Company which has or may reasonably be expected to have the effect of prohibiting or impairing any business practice of the Company, any acquisition of property (tangible or intangible) by the Company, the conduct of business by the Company or otherwise limiting the freedom of the Company to engage in any line of business or to compete with any person.

2.14 Title of Properties; Absence of Liens and Encumbrances; Condition of Equipment.

(a) The Company does not own any real property, nor has it ever owned any real property. Company Schedule 2.14(a) sets forth a list of all real property currently leased by the Company, the name of the lessor, the date of the lease and each amendment thereto and, with respect to any current lease, the aggregate annual rental and/or other fees payable under any such lease. All such current leases are 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 default or event of default (or event which with notice or lapse of time, or both, would constitute a default).

(b) The Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets used or held for use in its business, free and clear of any Liens, except as reflected on the Current Balance Sheet and except for Liens for Taxes not yet due and payable and such imperfections of title and encumbrances, if any, which are not material in character, amount or extent, and which do not materially detract from the value, or materially interfere with the present use, of the property subject thereto or affected thereby.

(c) Company Schedule 2.14(c) lists all material items of equipment owned or leased by the Company and such equipment is (i) adequate for the conduct of the business of the Company as currently conducted and (ii) in good operating condition, regularly and properly maintained, subject to normal wear and tear.

2.15 Intellectual Property.

(a) Company Schedule 2.15(a) lists all of Company's United States and foreign: (i) patents, patent applications (including provisional applications); (ii) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations related to trademarks; (iii) registered copyrights and applications for copyright registration; (iv) any other Intellectual Property Rights of the Company that is the subject of an application, certificate or registration filed with, issued by, or recorded by, any state, government or other public legal authority (all of the foregoing, the "Registered Intellectual Property").

(b) Each item of Registered Intellectual Property is valid and subsisting, all necessary registration, maintenance and renewal fees in connection with such Registered Intellectual Property have been paid and all necessary documents and certificates in connection with such Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or

other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Registered Intellectual Property.

(c) (i) No third party has any rights to use any of the Company's Intellectual Property Rights; and (ii) the Company has not granted to any third party, nor authorized any third party to retain, any of the Company's Intellectual Property Rights.

(d) (i) The Company owns and has good and exclusive title to each item of Registered Intellectual Property listed on Company Schedule 2.15(a), free and clear of any Liens; and (ii) the Company owns, or has the right, pursuant to a valid Contract to use or operate under, all other Intellectual Property Rights of the Company.

(e) The operation of the business of the Company as it currently is conducted does not infringe or misappropriate the Intellectual Property Rights of any other third party, violate the rights of any third party (including rights to privacy or publicity), or constitute unfair competition nor has the Company received notice from any third party claiming that such operation constitutes any such infringement, misappropriation, violation or unfair competition.

(f) The Company owns or has the right to all Intellectual Property Rights necessary to the conduct of its business as it currently is conducted.

(g) There are no Contracts between the Company and any other third party with respect to Intellectual Property Rights of the Company under which there is any dispute, to the Company's knowledge, regarding the scope of such agreement, or performance under such agreement including with respect to any payments to be made or received by the Company thereunder.

(h) To the Company's knowledge, no third party is infringing or misappropriating any of the Company's Intellectual Property Rights.

(i) No Intellectual Property Right of the Company or product or service of the Company is subject to any outstanding decree, order, judgment, or stipulation restricting in any manner the licensing or use thereof by the Company.

2.16 Agreements, Contracts and Commitments.

(a) Except as set forth on Company Schedule 2.16(a), the Company does not have, is not a party to nor is it bound by:

(i) any employment or consulting agreement, contract or commitment with an employee or individual consultant or salesperson or consulting or sales agreement, contract or commitment with a firm or other organization;

(ii) any agreement or plan, including, without limitation, any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased by, or the vesting of benefits of which will be accelerated by, or which would require the

consent of any party thereto as a result of, the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(iii) any fidelity or surety bond or completion bond;

(iv) any lease of personal property having a value in excess of USD \$25,000 individually or USD \$50,000 in the aggregate;

(v) any agreement, contract or commitment relating to capital expenditures and involving future payments in excess of USD \$25,000 individually or USD \$50,000 in the aggregate;

(vi) any agreement, contract or commitment relating to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of the Company's business;

(vii) any licensing agreement or other contract with respect to Intellectual Property Rights;

(viii) any joint venture, partnership, and other contract involving a sharing of profits, losses, costs, or liabilities by the Company with any third party;

(ix) any contract containing covenants that in any way purport to restrict the business activity of the Company or any affiliate or limit the freedom of the Company or any affiliate of the Company to engage in any line of business or to compete with any third party;

(x) any power of attorney or other similar agreement or grant of agency;

(xi) any contract entered into other than in the ordinary course of business that contains or provides for an express undertaking by the Company to be responsible for consequential damages;

(xii) any oral or written warranty, guaranty, and or other similar undertaking with respect to product or contractual performance sold or extended by the Company other than in the ordinary course of business; or

(xiii) any amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

(b) All of the Contracts set forth or required to be set forth on Company Schedule 2.16(a) ("Contracts") are valid, binding and enforceable in accordance with their respective terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and other laws of general application effecting enforcement of creditors' rights generally, rules of law governing specific performance, injunctive relief or other equitable remedies, and limitations of public policy; and shall be in full force and effect without penalty in accordance with their terms

upon consummation of the transactions contemplated hereby. The Company has performed all material obligations required to be performed by it and is not in default in any material respect under or in breach in any material respect of nor in receipt of any claim of default or breach under any Contract set forth or required to be set forth on Company Schedule 2.16(a); no event has occurred which, with the passage of time or the giving of notice or both, would result in a default, breach or event of noncompliance by the Company in any material respect under any such Contract; the Company does not have any present expectation or intention of not fully performing on a timely basis all such obligations required to be performed by the Company under any Contract set forth or required to be set forth on Company Schedule 2.16(a); no partially-filled or unfilled material customer purchase order or sales order is subject to cancellation or any other material modification by the other party thereto or is subject to any penalty, right of set-off or other charge by the other party thereto for late performance or delivery; and the Company does not have any knowledge of any cancellation or anticipated cancellation or any breach by the other parties to any Contract set forth or required to be set forth on Company Schedule 2.16(a). The Company is not a party to any Contract the performance of which could reasonably be expected to have a Company Material Adverse Effect.

(c) Parent has been supplied with a true and correct copy of each of the written Contracts that are set forth on Company Schedule 2.16(a), together with all amendments, waivers or other changes thereto.

2.17 Interested Party Transactions. No officer, director or, to the Company's knowledge, shareholder of the Company (nor any ancestor, sibling, descendant or spouse of any of such persons, or any trust, partnership or corporation in which any of such persons has or has had an interest), has or has had, directly or indirectly, (i) an interest in any entity which furnished or sold, or furnishes or sells, services or products that the Company furnishes or sells, or proposes to furnish or sell, or (ii) any interest in any entity that purchases from or sells or furnishes to the Company, any goods or services, or (iii) a beneficial interest in any Contract to which the Company is a party; provided, however, that ownership of no more than five percent (5%) of the outstanding voting stock of a publicly traded corporation shall not be deemed to be an "interest in any entity" for purposes of this Section 2.17.

2.18 Year 2000 Compliance. Except as set forth on Company Schedule 2.18, all of the Company's products (including products currently under development) (a) record, store, process, calculate and present calendar dates falling on and after (and if applicable, spans of time including) January 1, 2000, and calculate any information dependent on or relating to such dates in the same manner, and with the same functionality, data integrity and performance, as the products record, store, process, calculate and present calendar dates on or before December 31, 1999, or calculate any information dependent on or relating to such dates (collectively, "Year 2000 Compliant"); (b) have lost no functionality with respect to the introduction of records containing dates falling on or after January 1, 2000; and (c) are interoperable with other products used and distributed by the Company that may reasonably deliver records to the Company's products or receive records from the Company's products, or interact with the Company's products, including but not limited to back-up and archived data. The Company's Information Technology is Year 2000 Compliant, and has not caused a material interruption in the ongoing operations of the Company's business. To the Company's knowledge, the Information Technology of the Company's customers and suppliers is

Year 2000 Compliant and has not caused an interruption in the ongoing operations of the Company's business.

2.19 Litigation. There is no action, suit, investigation, claim, arbitration or proceeding ("Action") of any nature pending, or to the Company's knowledge threatened, against the Company, its properties (tangible or intangible) or any of its officers or directors by or before any third party, nor to the Company's knowledge is there any reasonable basis therefor. No third party has at any time challenged or questioned the legal right of the Company to conduct its operations as previously or presently conducted.

2.20 Environmental Matters.

(a) Condition of Property. As of the Closing, except in compliance with Environmental Laws in a manner that could not reasonably be expected to subject the Company to liability, to the knowledge of the Company after reasonable inquiry, no Hazardous Materials are present on any Business Facility currently owned, operated, occupied, controlled or leased by the Company or were present on any other Business Facility at the time it ceased to be owned, operated, occupied, controlled or leased by the Company. Except as set forth on Company Schedule 2.20(a), there are no underground storage tanks, asbestos which is friable or likely to become friable or PCBs present on any Business Facility currently owned, operated, occupied, controlled or leased by the Company or as a consequence of the acts of the Company or its agents.

(b) Hazardous Materials Activities. The Company has conducted all Hazardous Material Activities relating to its business in compliance in all material respects with all applicable Environmental Laws. The Hazardous Materials Activities of the Company prior to the Closing have not resulted in the exposure of any person to a Hazardous Material in a manner which has caused or could reasonably be expected to cause an adverse health effect to any such person.

(c) Permits. Company Schedule 2.20(c) accurately describes all of the Environmental Permits currently held by the Company and relating to its business and the listed Environmental Permits are all of the Environmental Permits necessary for the continued conduct of any Hazardous Material Activity of the Company relating to its business as such activities are currently being conducted. All such Environmental Permits are valid and in full force and effect. The Company has complied in all material respects with all covenants and conditions of any Environmental Permit which is or has been in force with respect to its Hazardous Materials Activities. No circumstances exist which could cause any Environmental Permit to be revoked, modified, or rendered non-renewable upon payment of the permit fee. All Environmental Permits and all other consent and clearances required by any Environmental Law or any agreement to which the Company is bound as a condition to the performance and enforcement of this Agreement, have been obtained or will be obtained prior to the Closing at no cost to Parent or Merger Sub.

(d) Environmental Litigation. Except as set forth on Company Schedule 2.20(d), no Action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending, or to the best of the Company's knowledge, threatened, concerning or relating to any

Environmental Permit or any Hazardous Materials Activity of the Company relating to its business, or any Business Facility.

(e) Offsite Hazardous Material Disposal. The Company has transferred or released Hazardous Materials only to those Disposal Sites set forth on Company Schedule 2.20(e); and no Action, proceeding, liability or claim exists or is threatened against any Disposal Site or against the Company with respect to any transfer or release of Hazardous Materials relating to the business of the Company to a Disposal Site which could reasonably be expected to subject the Company to liability.

(f) Environmental Liabilities. The Company is not aware of any fact or circumstance, which could result in any environmental liability which could reasonably be expected to result in a material adverse effect on the business or financial status of the Company.

(g) Reports and Records: The Company has delivered to Parent or made available for inspection by Parent and its agents, representatives and employees all records in the Company's possession concerning the Hazardous Materials Activities of the Company relating to its business and all environmental audits and environmental assessments of any Business Facility conducted at the request of, or otherwise in the possession of the Company. The Company has complied with all environmental disclosure obligations imposed by applicable law with respect to this transaction.

2.21 Brokers' and Finders' Fees; Third Party Expenses. Except as set forth on Company Schedule 2.21, the Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Agreement or any transaction contemplated hereby. Company Schedule 2.21 sets forth the principal terms and conditions of any agreement, written or oral, with respect to such fees. Company Schedule 2.21 sets forth the Company's current reasonable estimate of all Third Party Expenses expected to be incurred by the Company in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby.

2.22 Employee Matters and Benefit Plans.

(a) Schedule. Company Schedule 2.22(a) contains an accurate and complete list of each Company Employee Plan, International Employee Plan, and each Employment Agreement. The Company does not have any plan or commitment to establish any new Company Employee Plan, International Employee Plan, or Employment Agreement, to modify any Company Employee Plan or Employment Agreement (except to the extent required by law or to conform any such Company Employee Plan or Employment Agreement to the requirements of any applicable law, in each case as previously disclosed to Parent in writing, or as required by this Agreement), or to adopt or enter into any Company Employee Plan, International Employee Plan, or Employment Agreement.

(b) Documents. The Company has provided to Parent correct and complete copies of: (i) all documents embodying each Company Employee Plan, International Employee Plan, and each Employment Agreement including (without limitation) all amendments thereto and all

related trust documents, administrative service agreements, group annuity contracts, group insurance contracts, and policies pertaining to fiduciary liability insurance covering the fiduciaries for each Plan; (ii) the most recent annual actuarial valuations, if any, prepared for each Company Employee Plan; (iii) the three (3) most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan; (iv) if the Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets; (v) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Plan; (vi) all IRS determination, opinion, notification and advisory letters, and all applications and correspondence to or from the IRS or the DOL with respect to any such application or letter; (vii) all communications material to any Company Group Employee or Company Group Employees relating to any Company Employee Plan and any proposed Company Employee Plans, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events which would result in any material liability to the Company; (viii) all correspondence to or from any governmental agency relating to any Company Employee Plan; (ix) all COBRA forms and related notices (or such forms and notices as required under comparable law); (x) the three (3) most recent plan years discrimination tests for each Company Employee Plan; and (xi) all registration statements, annual reports (Form 11-K and all attachments thereto) and prospectuses prepared in connection with each Company Employee Plan.

(c) Employee Plan Compliance. Except as set forth on Company Schedule 2.22(c), (i) the Company has performed in all material respects all obligations required to be performed by it under, is not in default or violation of, and has no knowledge of any default or violation by any other party to each Company Employee Plan, and each Company Employee Plan has been established and maintained in all material respects in accordance with its terms and in compliance with all applicable laws, statutes, orders, rules and regulations, including but not limited to ERISA or the Code; (ii) each Company Employee Plan intended to qualify under Section 401(a) of the Code and each trust intended to qualify under Section 501(a) of the Code has either received a favorable determination, opinion, notification or advisory letter from the IRS with respect to each such Company Employee Plan as to its qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation, or has remaining a period of time under applicable Treasury regulations or IRS pronouncements in which to apply for such a letter and make any amendments necessary to obtain a favorable determination as to the qualified status of each such Company Employee Plan; (iii) no "prohibited transaction", within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 4975 of the Code or Section 408 of ERISA (or any administrative class exemption issued thereunder), has occurred with respect to any Company Employee Plan; (iv) there are no actions, suits or claims pending, or, to the knowledge of the Company, threatened or reasonably anticipated (other than routine claims for benefits) against any Company Employee Plan or against the assets of any Company Employee Plan; (v) each Company Employee Plan (other than any stock option plan) can be amended, terminated or otherwise discontinued after the Effective Time, without material liability to the Parent, the Company or any of its Related Parties (other than ordinary administration expenses); (vi) there are no audits, inquiries or proceedings pending or, to the

knowledge of the Company or any Related Parties, threatened by the IRS or DOL with respect to any Company Employee Plan; and (vii) neither the Company nor any Related Party is subject to any penalty or tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code.

(d) Pension Plan. Neither the Company nor any Related Party has ever maintained, established, sponsored, participated in, or contributed to, any Pension Plan which is subject to Title IV of ERISA or Section 412 of the Code.

(e) Collectively Bargained, Multiemployer and Multiple Employer Plans. At no time has the Company or any Related Party contributed to or been obligated to contribute to any Multiemployer Plan. Neither the Company, nor any Related Party has at any time ever maintained, established, sponsored, participated in, or contributed to any multiple employer plan, or to any plan described in Section 413 of the Code.

(f) No Post-Employment Obligations. Except as set forth on Company Schedule 2.22(f), no Company Employee Plan provides, or reflects or represents any liability to provide retiree health to any person for any reason, except as may be required by COBRA or other applicable statute, and the Company has never represented, promised or contracted (whether in oral or written form) to any Company Group Employee (either individually or to Company Group Employees as a group) or any other person that such Company Group Employee(s) or other person would be provided with retiree health, except to the extent required by statute.

(g) Health Care Compliance. Neither the Company nor any Related Party has, prior to the Effective Time and in any material respect, violated any of the health care continuation requirements of COBRA, the requirements of FMLA, the requirements of the Health Insurance Portability and Accountability Act of 1996, the requirements of the Women's Health and Cancer Rights Act of 1998, the requirements of the Newborns' and Mothers' Health Protection Act of 1996, or any amendment to each such act, or any similar provisions of state law applicable to its Company Group Employees.

(h) Effect of Transaction.

(i) Except as set forth on Company Schedule 2.22(h), the execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Employee Plan, Employment Agreement, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Company Group Employee.

(ii) Except as set forth on Company Schedule 2.22(h), no payment or benefit which will or may be made by the Company or its Related Parties with respect to any Company Group Employee will be characterized as a "parachute payment", within the meaning of Section 280G(b)(2) of the Code.

(i) Employment Matters. The Company: (i) is in compliance in all respects with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Company Group Employees; (ii) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Company Group Employees; (iii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing; and (iv) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Company Group Employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no pending, threatened or reasonably anticipated claims or actions against the Company under any worker's compensation policy or long-term disability policy.

(j) Labor. No work stoppage or labor strike against the Company is pending, threatened or reasonably anticipated. The Company does not know of any activities or proceedings of any labor union to organize any Company Group Employees. Except as set forth on Company Schedule 2.22(j), there are no actions, suits, claims, labor disputes or grievances pending, or, to the knowledge of the Company, threatened or reasonably anticipated relating to any labor, safety or discrimination matters involving any Company Group Employee, including, without limitation, charges of unfair labor practices or discrimination complaints, which, if adversely determined, would, individually or in the aggregate, result in any material liability to the Company. Neither the Company nor any of its subsidiaries has engaged in any unfair labor practices within the meaning of the National Labor Relations Act. Except as set forth on Company Company Schedule 2.22(j), the Company is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Company Group Employees and no collective bargaining agreement is being negotiated by the Company.

(k) International Employee Plan. The Company does not now, nor has it ever had the obligation to, maintain, establish, sponsor, participate in, or contribute to any International Employee Plan.

2.23 Compliance with Legal Requirements. The Company has complied in all material respects with, is not in violation of, and has not received any notices of violation with respect to, any foreign, federal, state or local statute, law or regulation.

2.24 Insurance. Company Schedule 2.24 sets forth a list of all insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company or any affiliate. There is no claim by the Company or any affiliate pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid, and the Company and its affiliates are otherwise in material compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). The Company has no knowledge of threatened termination of, or premium increase with respect to, any of such policies.

2.25 Employees. Company Schedule 2.25 contains a complete and accurate list of the following information for each employee (including full-time, part-time and contract employees) and director of the Company, including each employee on leave of absence; employer (for contract employees); name; job title; age; race; gender; current compensation paid or payable and any change in compensation since January 1, 1999; vacation accrued; number of options held (if any); and service credited for purposes of vesting and eligibility to participate under the Company's various benefit plans. To the Company's knowledge, except as set forth on Company Schedule 2.25, no employee of the Company has the immediate intention to terminate his or her employment with the Company.

2.26 Product Warranty. All products and equipment manufactured, sold, leased or delivered by the Company and all services rendered by the Company have been in conformity with all applicable contractual commitments and all express and implied warranties, and the Company does not have any liability for replacement or repair thereof or other damages in connection therewith in excess of any warranty reserve established with respect thereto and included on the Current Balance Sheet. Except as set forth on Company Schedule 2.26, no products or equipment manufactured, sold, leased or delivered by the Company and no services rendered by the Company are subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of such sale, lease or service (including as a result of any course of conduct between the Company and any third party or as a result of any statements in any of the Company's product or promotional literature). Company Schedule 2.26 includes copies of such standard terms and conditions of sale, lease and service for the Company (containing applicable guaranty, warranty and indemnity provisions). The Company has not been notified in writing of any claims for (and the Company has no knowledge of any threatened claims for) any extraordinary product returns, warranty obligations or product services relating to any of its products or services.

2.27 Product Liability; Product Recalls, etc. To the Company's knowledge, except as set forth on Company Schedule 2.27, the Company does not have any liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any products or equipment manufactured, sold, leased or delivered by the Company or with respect to any services rendered by the Company. Except as set forth on Company Schedule 2.27, there have been no product or equipment recalls, withdrawals or seizures with respect to any products or equipment manufactured, sold, leased or delivered by the Company or with respect to any services rendered by the Company.

2.28 Books and Records. The minute books of the Company contain accurate and complete records of all meetings held of, and material corporate action taken by, the shareholders and the Board of Directors. No material action has been taken by a committee of the Board of Directors of the Company for which minutes have not been prepared and are not contained in such minute books. As of the Closing, no meeting of the Boards of Directors or the shareholders will have been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of the minute books will be in the possession of the Company.

2.29 Customers and Suppliers. Company Schedule 2.29 sets forth the names and addresses of the ten (10) most significant customers and suppliers of the Company by dollar volume

of sale and purchases, respectively for each of the fiscal years ended December 31, 1998 and December 31, 1999. Except as set forth on Company Schedule 2.29, the Company has not received any notice that any of such customers of the Company has ceased, or will cease, to use the products, equipment, goods or services of the Company, or has substantially reduced, or will substantially reduce, the use of such products, equipment, goods or services at any time. Except as set forth on Company Schedule 2.29, the Company has not received any notice from any of such suppliers of the Company to the effect that such supplier will stop, materially decrease the rate of, or materially change the terms (whether related to payment, price or otherwise) with respect to, supplying materials, products or services to the Company (whether as a result of the consummation of the transactions contemplated hereby or otherwise).

2.30 Complete Copies of Materials. The Company has delivered or made available true and complete copies of each document (or summaries of same) that has been requested by Parent or its counsel.

2.31 Representations Complete. Neither any of the representations or warranties made by the Company (as modified by the Company Schedules) in this Agreement, nor any statements made in any exhibit, schedule or certificate furnished by the Company pursuant to this Agreement taken as a whole contains or will contain at the Effective Time, any untrue statement of a material fact, or omits or will omit at the Effective Time to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not misleading. The information regarding the Company furnished on or in any documents mailed, delivered or otherwise furnished to Shareholders in connection with the solicitation of their consent to this Agreement and the Merger, will not contain, at or prior to the Effective Time, any untrue statement of a material fact and will not omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made, not misleading with respect to the Company.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub hereby represent and warrant to the Company that on the date hereof and as of the Effective Time as though made at the Effective Time as follows:

3.1 Organization, Standing and Power. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Parent and Merger Sub has the corporate power to own its properties and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the failure to be so qualified or licensed would have a Parent Material Adverse Effect.

3.2 Authority. Each of Parent and Merger Sub has all requisite corporate power and authority to enter into this Agreement and any Related Agreements to which it is a party and to

consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub. This Agreement and any Related Agreements to which Parent and Merger Sub are parties have been duly executed and delivered by Parent and Merger Sub and constitute the valid and binding obligations of Parent and Merger Sub, enforceable in accordance with their terms, except as such enforceability may be limited by principles of public policy and laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies.

3.3 Capital Resources. Parent has sufficient capital resources to perform its obligations with respect to the Aggregate Merger Consideration and to consummate all of the transactions contemplated by the Agreement and the Related Agreements.

3.4 Consents. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, or any third party is required by or with respect to Parent or Merger Sub in connection with the execution and delivery of this Agreement and any Related Agreements to which Parent or Merger Sub is a party or the consummation of the transactions contemplated hereby and thereby, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws and the HSR Act; (ii) the filing of the Agreement of Merger with the Secretaries of State of the States of California and Delaware, respectively; and (iii) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which, if not obtained or made, would not have a Parent Material Adverse Effect.

3.5 Capital Structure.

(a) The authorized stock of Parent consists of 100,000,000 shares of Common Stock, USD \$.001 par value, of which approximately 8,846,458 shares were issued and outstanding as of February 4, 2000, and 10,000,000 shares of undesignated Preferred Stock, USD \$.001 par value. No shares of Preferred Stock are issued or outstanding. All such shares have been duly authorized, and all such issued and outstanding shares have been validly issued, are fully paid and nonassessable and are free of any liens or encumbrances other than any liens or encumbrances created by or imposed upon the holders thereof. Parent has also reserved approximately 3,874,900 shares of Common Stock for issuance pursuant to its employee and director stock and option plans. There are no other options, warrants, calls, rights, commitments or agreements of any character to which Parent is a party or by which it is bound obligating Parent to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of Parent or obligating Parent to grant, extend or enter into any such option, warrant, call, right, commitment or agreement.

(b) The shares of Parent Common Stock to be issued pursuant to the Merger will be duly authorized, validly issued, fully paid, non-assessable, free of any liens or encumbrances and not subject to any preemptive rights or rights of first refusal created by statute or the certificate of

incorporation or bylaws of Parent or any agreement to which Parent is a party or is bound except as provided in this Agreement.

3.6 SEC Filings; Parent Financial Statements. Parent has filed all forms, reports and documents required to be filed with the SEC since January 1, 1999 (collectively, the "Parent SEC Reports"), and has heretofore made available to the Company, in the form filed with the SEC, the Parent SEC Reports. The Parent SEC Reports (i) were, as of their respective dates, prepared in accordance with, in all material respects, the requirements of the Securities Exchange Act of 1934, as amended, and (ii) to Parent's knowledge, did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except to the extent corrected prior to the date hereof by a subsequently filed Parent SEC Report. The financial statements of Parent, including the notes thereto, included in the Parent SEC Reports (the "Parent Financial Statements") comply as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with United States generally accepted accounting principles consistently applied (except as may be indicated in the notes thereto) and present fairly in all material respects the consolidated financial position of Parent at the dates thereof and of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal audit adjustments).

3.7 Litigation. There is no Action: (a) against Parent, its properties or assets or, to Parent's knowledge, against any officer, director or employee of Parent in connection with such officer's, director's or employee's relationship with, or actions taken on behalf of, Parent which Parent believes is reasonably likely to have a Parent Material Adverse Effect, or (b) that seeks to prevent, enjoin, alter or delay the transactions contemplated by this Agreement. No Action by Parent is currently pending nor does Parent intend to initiate any Action which is reasonably likely to have a Parent Material Adverse Effect.

ARTICLE IV

CONDUCT PRIOR TO THE EFFECTIVE TIME

4.1 Conduct of Business of the Company. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, the Company agrees, except to the extent that Parent shall otherwise consent in writing, to carry on the Company's business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay the debts and Taxes of the Company when due, to pay or perform other obligations when due, and, to the extent consistent with such business, use commercially reasonable efforts consistent with past practice and policies to preserve intact the Company's present business organizations, keep available the services of the Company's present officers and key employees and preserve the Company's relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, all with the goal of

preserving unimpaired the Company's goodwill and ongoing business at the Effective Time. The Company shall promptly notify Parent of any event or occurrence or emergency not in the ordinary course of business of the Company and any material event involving the Company. From and after the date hereof, the Company will use commercially reasonable efforts to collect any and all appropriate and necessary reseller certificates on a timely basis from any reseller to whom sales are made. Except as expressly contemplated by this Agreement as set forth on Schedule 4.1 hereto, the Company shall not without the prior written consent of Parent:

(a) make any expenditures or enter into (i) any commitment or transaction exceeding USD \$25,000 individually or in the aggregate or (ii) any commitment or transaction of the type described in Section 2.11 hereof;

(b) except in the ordinary course of business or as previously disclosed in writing to Parent, (i) sell, license or transfer to any person or entity any rights to any of the Company's Intellectual Property Rights or enter into any agreement with respect to any of the Company's Intellectual Property Rights with any third party or with respect to any Intellectual Property Right of any third party, (ii) buy or license any Intellectual Property Rights or enter into any agreement with respect to the Intellectual Property Rights of any third party, (iii) enter into any agreement with respect to the development of any Intellectual Property Rights with a third party, (iv) or change pricing or royalties charged by the Company to its customers or licensees, or the pricing or royalties set or charged by third parties who have licensed Intellectual Property Rights to the Company;

(c) enter into or amend any Contract pursuant to which any other party is granted marketing, distribution, development or similar rights of any type or scope with respect to any products or technology of the Company, except in the ordinary course of business consistent with past practice;

(d) amend, modify or terminate (or agree to do so), except in the ordinary course of business, or violate the terms of, any of the Contracts;

(e) commence or settle any litigation;

(f) declare, set aside or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Company Capital Stock, or split, combine or reclassify any Company Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for, shares of Company Capital Stock, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of Company Capital Stock (or options, warrants or other rights exercisable therefor) except for (i) repurchases of Company Capital Stock upon the termination of service of any service providers of the Company in accordance with the standard terms set forth in the agreements governing such repurchases, all of which agreements have been provided or made available to Parent, and (ii) the exercise of Company Warrants;

(g) issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, or purchase or propose the purchase of, any shares of Company Capital Stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or

commitments of any character obligating it to issue or purchase any such shares or other convertible securities, except for the issuance of Additional Options or the exercise of Company Warrants, or accelerate the vesting of any outstanding option or other security;

(h) cause or permit any amendments to the Organizational Documents of the Company;

(i) acquire or agree to acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the Company's business;

(j) sell, lease, license or otherwise dispose of any of its properties or assets, except properties or assets which are not Intellectual Property Rights and only in the ordinary course of business and consistent with past practices;

(k) incur any indebtedness or guarantee any indebtedness or issue or sell any debt securities or guarantee any debt securities of others except for borrowings under existing credit facilities;

(l) grant any loans to others or purchase debt securities of others or amend the terms of any outstanding loan agreement;

(m) grant any severance or termination pay to any director or officer, or to any other employee, except for obligations under existing agreements which have been previously delivered to Parent's legal counsel;

(n) adopt or amend any employee benefit plan, or enter into any employment contract, pay or agree to pay any special bonus or special remuneration to any director or employee, or increase the salaries or wage rates of its employees;

(o) revalue any of its assets, including without limitation writing down the value of inventory or writing off notes or Accounts Receivable other than in the ordinary course of business;

(p) pay, waive, discharge or satisfy, in an amount in excess of USD \$25,000 in any one case, or USD \$50,000 in the aggregate, any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction of liabilities incurred in the ordinary course of business;

(q) make or change any material election in respect of Taxes, adopt or change any accounting method in respect of Taxes, enter into any closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

- (r) enter into any strategic alliance or joint marketing arrangement or agreement;
- (s) hire any employee, except to replace a terminated employee or except as reasonably necessary consistent with the needs of the business of the Company; not terminate the employment of any employee other than for "cause";
- (t) engage in any action that could reasonably be expected to cause the Merger to fail to qualify as a "reorganization" under Section 368(a) of the Code whether or not otherwise permitted by the provisions of this Article 4.1; or
- (u) take, or agree in writing or otherwise to take, any of the actions described in Sections 4.1(a) through 4.1(t) hereof, or any other action that would prevent the Company from performing or cause the Company not to perform its covenants hereunder.

4.2 No Solicitation. Until the earlier of (i) the Effective Time, or (ii) the date of termination of this Agreement pursuant to the provisions of Section 8.1 hereof, the Company shall not (nor shall the Company permit, as applicable, any of the Company's officers, directors, employees, agents, or representatives to), directly or indirectly, take any of the following actions with any party other than Parent and its designees: (a) solicit, encourage, initiate or participate in any inquiry, negotiations or discussions, or enter into any agreement, with respect to any offer or proposal to acquire all or any material part of the Company's business, properties or technologies, or any material amount of the Company Capital Stock (whether or not outstanding), whether by merger, purchase of assets, tender offer or otherwise, or effect any such transaction, (b) disclose any information not customarily disclosed to any third party concerning the Company's business, technologies or properties, or afford to any person or entity access to its properties, technologies, books or records, not customarily afforded such access, (c) assist or cooperate with any third party to make any proposal to purchase all or any material part of the Company Capital Stock or assets of the Company other than inventory in the ordinary course of business, or (d) enter into any agreement with any third party providing for the acquisition of the Company, whether by merger, purchase of assets, tender offer or otherwise. Without limiting the generality of the preceding sentence, the preceding sentence shall not prohibit any officer or director of the Company from furnishing any information to the Shareholders which, based on the written advice of the Company's outside legal counsel, is required to be furnished in order to prevent such officer or director from breaching his or her fiduciary duties to the Shareholders under California Law; provided, however, to the extent permitted by applicable law, the Company shall concurrently furnish such information to the Parent. In the event that the Company or any of the Company's affiliates shall receive, prior to the Effective Time or the termination of this Agreement, any offer, proposal, or request, directly or indirectly, of the type referenced in clause (a) or (c) above, or any request for disclosure or access pursuant to clause (b) above, the Company shall immediately notify Parent thereof, including information as to the identity of the offeror or the party making any such offer or proposal and the specific terms of such offer or proposal, as the case may be, and such other information related thereto as Parent may reasonably request. The parties hereto agree that irreparable damage would occur in the event that the provisions of this Section 4.2 were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Parent shall be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Section 4.2 and to enforce

specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Parent may be entitled at law or in equity.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Shareholder Approval. The Company shall promptly submit this Agreement and the transactions contemplated hereby to the Shareholders for approval and adoption as provided by California Law and the Organizational Documents of the Company. The Company shall use its commercially reasonable efforts to obtain the consent of the Shareholders sufficient to approve the Merger and this Agreement and to enable the Closing to occur as promptly as practicable. The materials to be submitted to the Shareholders in connection with the solicitation of their approval of the Merger and this Agreement shall be subject to review and approval by Parent and shall include information regarding the Company, Parent, the terms of the Merger and this Agreement and the recommendation of the Board of Directors of the Company in favor of the Merger and this Agreement.

5.2 Access to Information. The Company shall afford Parent and its accountants, counsel and other representatives, reasonable access during the period prior to the Effective Time to (i) all of the Company's properties, books, contracts, commitments and records, (ii) all other information concerning the business, properties and personnel of the Company as Parent may reasonably request, and (iii) all employees of the Company as identified by Parent. The Company agrees to provide to Parent and its accountants, counsel and other representatives copies of internal financial statements (including Returns and supporting documentation) promptly upon request. No information or knowledge obtained in any investigation pursuant to this Section 5.2 shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger in accordance with the terms and provisions hereof.

5.3 Confidentiality. Each of the parties hereto hereby agrees that the information obtained in any investigation pursuant to Section 5.2 hereof, or pursuant to the negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, shall be governed by the terms of the Confidentiality Agreement.

5.4 Expenses. Whether or not the Merger is consummated, all fees and expenses incurred in connection with the Merger including, without limitation, all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties ("Third Party Expenses") incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective party incurring such fees and expenses. Notwithstanding the foregoing, in the event the Merger is consummated, the Shareholders shall pay, on behalf of the Company, the fees and expenses of the Company out of available cash reserves of the Company; provided, however, that the Company acknowledges and agrees that Parent shall have full recourse to the Escrow Fund for payment of all

Third Party Expenses of the Company that exceed the available cash reserves of the Company immediately prior to the Closing Date.

5.5 Public Disclosure. Unless otherwise required by law, prior to the Effective Time, no disclosure (whether or not in response to an inquiry) shall be made by any party hereto regarding the subject matter of this Agreement unless approved by the other party hereto prior to release.

5.6 Consents. The Company shall use commercially reasonable efforts to obtain the consents, waivers, assignments and approvals under any of the Contracts as may be required in connection with the Merger so as to preserve all rights of, and benefits to, the Company thereunder.

5.7 FIRPTA Compliance. On the Closing Date, the Company shall deliver to Parent a properly executed statement in a form reasonably acceptable to Parent for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3).

5.8 Reasonable Efforts. Subject to the terms and conditions provided in this Agreement, each of the parties hereto shall use commercially reasonable efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated hereby, to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement; provided that Parent shall not be required to agree to any divestiture by Parent or the Company or any of Parent's subsidiaries or affiliates of shares of capital stock or of any business, assets or property of Parent or its subsidiaries or affiliates or of the Company or its affiliates, or the imposition of any material limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, properties and stock.

5.9 Securities Laws Compliance.

(a) Preparation of Permit Application, Hearing Request, Hearing Notice and Information Statement. As promptly as practicable after the date hereof, Parent and the Company shall prepare and file with the California Commissioner of Corporations the documents required by the California Corporate Securities Law of 1968, as amended (the "CCSL") including, but not limited to, any required "Permit Application," "Hearing Request," and "Hearing Notice," pursuant to Sections 25121 and 25142 of the CCSL (collectively, the "Notice Materials"), in connection with the Merger in order to obtain a permit to issue securities (the "Permit") and perfect the exemption from registration provided in Section 3(a)(10) of the Securities Act. Each of Parent and the Company shall use all reasonable efforts to have the Permit Application, Hearing Request and Hearing Notice declared effective under the CCSL as promptly as practicable after such filing. In addition, the Company and Parent will prepare and the Company will distribute an information statement (the "Information Statement") along with the Notice Materials, as may be required by California Law, at the earliest practicable date to submit this Agreement, the Merger and related matters for the consideration and approval of the Shareholders, which approval will be recommended by the

Company's Board of Directors and management. Such Information Statement will contain information, and will be solicited, in compliance with applicable law. Each of Parent and the Company will promptly provide all information relating to their respective business and operations necessary for inclusion in the Notice Materials to satisfy all requirements of applicable state and federal securities laws. Each of Parent and the Company shall be solely responsible for any statement, information or omission in the Notice Materials relating to it or its affiliates based upon written information furnished by it.

(b) S-4 Registration Statement. If Parent determines, in its sole discretion, that the Permit is not available or that obtaining the Permit is not practical, the Company will assist Parent and cooperate fully with Parent in connection with preparation and filing of a Registration Statement on Form S-4 to register the offer and sale of securities by Parent in connection with the Merger and the solicitation of proxies or written consents for the approval of this Agreement and the Merger by the Shareholders (the "S-4") which Parent will prepare and file with the SEC. Each of Parent and the Company shall use reasonable efforts to cause the S-4 to become effective as promptly as practicable. The S-4, including the proxy statement/prospectus used in connection therewith and all related materials will contain information, and all related materials will contain information, and such proxies will be solicited, in accordance with applicable law. Each of Parent and the Company will promptly provide all information relating to Parent or the Company, as applicable, for inclusion in the S-4 and such proxy statement/prospectus to satisfy the requirements of all applicable state and federal securities laws. Each of Parent and the Company shall be solely responsible for any statement, information or omission in the S-4 and such proxy statement/prospectus relating to it or its affiliates based upon written information furnished by it.

5.10 Notification of Certain Matters; Financial Statements.

(a) The Company shall give prompt notice to Parent of (i) any Action initiated by or against the Company or threatened against the Company, (ii) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which is likely to cause any representation or warranty of the Company contained in this Agreement to be untrue or inaccurate at or prior to the Effective Time and (iii) any failure of the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder in each case such that the conditions contained in Section 6.3(a) would not be satisfied; provided, however, that the delivery of any notice pursuant to this Section 5.10 shall not (x) limit or otherwise affect any remedies available to the party receiving such notice or (y) constitute an acknowledgment or admission of a breach of this Agreement by the Company. No disclosure by the Company pursuant to this Section 5.10, however, shall be deemed to amend or supplement the Company Schedules or prevent or cure any misrepresentations, breach of warranty or breach of covenant.

(b) Parent shall give prompt notice to the Company of (i) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which is likely to cause any representation or warranty of Parent contained in this Agreement to be untrue or inaccurate at or prior to the Effective Time and (ii) any failure of Parent to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder in each case such that the conditions contained in Section 6.2(a) would not be satisfied; provided, however, that the delivery of

any notice pursuant to this Section 5.10 shall not limit or otherwise affect any remedies available to the party receiving such notice or constitute an acknowledgment or admission of a breach of this Agreement by Parent. No disclosure by Parent pursuant to this Section 5.10, however, shall be deemed to prevent or cure any misrepresentations, breach of warranty or breach of covenant.

(c) The Company shall deliver to Parent as soon as practicable but in any event within fifteen (15) calendar days after the end of each monthly accounting period beginning with the month ended May 31, 2000 and ending with the monthly accounting period occurring before the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, an unaudited consolidated balance sheet and a statement of operations for the Company, which financial statements shall be prepared in the ordinary course of business, in accordance with the Company's books and records and shall fairly present the consolidated financial position of the Company as of their respective dates and the results of the Company's operations for the periods then ended.

5.11 Additional Documents and Further Assurances. Each party hereto, at the request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of this Agreement and the transactions contemplated hereby

5.12 S-3 Registration Rights. The parties hereby agree as follows with respect to S-3 registration rights, provided that this Section 5.12 shall be automatically null and void and have no further force or effect upon the effectiveness of the S-4 filed (if at all) by Parent pursuant to Section 5.9(b) hereof:

(a) Restricted Securities. Except as contemplated by Section 5.9 hereof, the parties hereto acknowledge and agree that the shares of Parent Common Stock issuable to the Shareholders pursuant to Section 1.6 hereof shall constitute "restricted securities" within the meaning of the 1933 Act. The certificates for shares of Parent Common Stock to be issued in the Merger shall bear appropriate legends to identify such privately placed shares as being restricted under the 1933 Act, to comply with applicable state securities laws. It is acknowledged and understood that Parent is relying upon certain written representations made by each Shareholder.

(b) Registration. Parent hereby agrees that, as soon as reasonably practicable but in any event within ninety (90) days after the Closing, Parent shall file a Registration Statement on Form S-3, or such other form that the Parent may be eligible to use, under the 1933 Act (the "S-3 Registration") to register the shares of Parent Common Stock issued to the Shareholders at the Effective Time pursuant to Section 1.6 hereof for resale by such Shareholders and shall use its best efforts to have such S-3 Registration declared effective by the SEC as soon as practicable thereafter. The S-3 Registration shall remain effective for no more than one hundred twenty (120) days. The offering made pursuant to the S-3 Registration shall not be underwritten.

(c) Postponement of Registration. Notwithstanding Section 5.12(b) hereof, Parent shall be entitled to postpone the declaration of effectiveness of the S-3 Registration for a reasonable period of time (not to exceed ninety (90) calendar days) if the Board of Directors of Parent, acting in good faith, determines that there exists material non-public information about

Parent. In addition, if the Board of Directors of Parent, acting in good faith, determines that material non-public information regarding Parent exists, the immediate disclosure of which would be detrimental to Parent, or an offering of Registrable Securities would materially interfere with a proposed material acquisition, disposition or similar corporate transaction, Parent may suspend sales under or delay the effectiveness of the S-3 Registration. In either case, Parent's obligation to maintain the effectiveness of the S-3 Registration for one hundred twenty (120) days pursuant to Section 5.12(c) hereof shall be extended by the period of time for which the S-3 Registration is suspended or delayed.

(d) Daily Trading Volume Limits. As a material inducement for Parent to grant the S-3 Registration in accordance with Section 5.12(b) hereof, each Shareholder agrees not to sell more than the greater of 50,000 shares or fifty percent (50%) of such Shareholder's Registrable Securities on all securities exchanges upon which such Registrable Securities are currently or hereafter listed in any twenty-four (24) hour period. The foregoing daily trading volume limit is in addition to any limits that may be imposed by Rule 144 or Rule 145 under the 1933 Act.

(e) Obligations of Parent. Parent shall (i) prepare and file with the SEC the S-3 Registration in accordance with Section 5.12(b) hereof with respect to the shares of Registrable Securities; (ii) prepare and file with the SEC such amendments and supplements to the S-3 Registration and the prospectus used in connection therewith, as may be necessary to comply with the provisions of the 1933 Act with respect to the sale or other disposition of all securities proposed to be registered under the S-3 Registration; (iii) furnish to each Holder such number of copies of any prospectus (including any preliminary prospectus and any amended or supplemented prospectus) in conformity with the requirements of the 1933 Act, and such other documents, as each Holder may reasonably request in order to effect the offering and sale of the shares of the Registrable Securities to be offered and sold, but only while Parent shall be required under the provisions hereof to cause the S-3 Registration to remain current; (iv) use its best efforts to register or qualify the shares of the Registrable Securities covered by the S-3 Registration under the securities or blue sky laws of such jurisdictions as each Holder shall reasonably request (provided that Parent shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such jurisdiction where it has not been qualified), and do any and all other acts or things which may be necessary or advisable to enable each Holder to consummate the public sale or other disposition of such stock in such jurisdictions; (v) notify each Holder upon the happening of any event as a result of which a prospectus included in the S-3 Registration, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing; (vi) so long as the S-3 Registration remains effective, promptly prepare, file and furnish to each Holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of the Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing; (vii) notify each Holder, promptly after it shall receive notice thereof, of the date and time the S-3 Registration and each post-effective amendment thereto has become effective or a supplement to any prospectus forming a part of the S-3 Registration has been filed; (viii) notify each Holder promptly of any request by the SEC for the

amending or supplementing of the S-3 Registration or prospectus or for additional information; and (ix) advise each Holder, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of the S-3 Registration or the initiation or threatening of any proceeding for that purpose, and promptly use its best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued.

(f) Expenses. Parent shall pay all of the out-of-pocket expenses incurred, in connection with the S-3 Registration, including, without limitation, all SEC, NASD and blue sky registration and filing fees, printing expenses, transfer agents' and registrars' fees, and the reasonable fees and disbursements of Parent's outside counsel and independent accountants and a single counsel for all of the Holders who shall be selected by a majority-in-interest of the Holders and whose fees and expenses shall not exceed \$7,500.

(g) Indemnification. In the event of any offering registered pursuant to the S-3 Registration:

(i) Parent will indemnify each Holder and each person controlling such Holder within the meaning of Section 15 of the 1933 Act, with respect to all expenses, claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in the S-3 Registration (or any related prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such registration, qualification or compliance), or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or any violation by Parent of any rule or regulation promulgated under the 1933 Act, or state securities laws, or common law, applicable to Parent in connection with any such registration, qualification or compliance, and will reimburse each such Holder, and each person controlling such Holder, for any legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, provided that Parent will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based in any untrue statement or omission or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to Parent for use therein in an instrument duly executed by such Holder.

(ii) Each Holder will, if Registrable Securities held by such Holder are included in the securities as to which the S-3 Registration, qualification or compliance is being effected, indemnify Parent, each of its directors and officers, each person who controls Parent within the meaning of Section 15 of the 1933 Act, and each other such Holder, and each person controlling such Holder within the meaning of Section 15 of the 1933 Act, against all claims, losses, damages and liabilities (or actions in respect thereof) including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) or a material fact contained in the S-3 Registration, or any related prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the

circumstances under which they were made, not misleading, and will reimburse Parent, such Holders and control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to Parent for use therein in an instrument duly executed by such Holder; provided, however, that the obligations of each such Holder hereunder and under subsection (iv) below shall be limited to an amount equal to the gross proceeds before expenses and commissions of each such Holder from the sale of Registrable Securities pursuant to the S-3 Registration.

(iii) Each party entitled to indemnification under this Section 5.12(g) (the "S-3 Indemnified Party") shall give notice to the party required to provide indemnification (the "S-3 Indemnifying Party") promptly after such S-3 Indemnified Party has written notice of any claim as to which indemnity may be sought, and shall permit the S-3 Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the S-3 Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the S-3 Indemnified Party (whose approval shall not be unreasonably withheld), and the S-3 Indemnified Party may participate in such defense at such S-3 Indemnified Party's expense, and provided further that the failure of any S-3 Indemnified Party to give notice as provided herein shall not relieve the S-3 Indemnifying Party of its obligations under this Agreement, except to the extent, but only to the extent, that the S-3 Indemnifying Party's ability to defend against such claim or litigation is impaired as a result of such failure to give notice. In no event shall the S-3 Indemnifying Party be liable in respect of any amounts paid in settlement of any action unless the S-3 Indemnifying Party shall have approved the terms of such settlement; provided that such consent shall not be unreasonably withheld. No S-3 Indemnifying Party shall, without the prior written consent of the S-3 Indemnified Party, effect any settlement of any pending or threatened proceeding in respect of which any S-3 Indemnified Party is or could have been a party and indemnification could have been sought hereunder by such S-3 Indemnified Party, unless such settlement includes an unconditional release of such S-3 Indemnified Party from all liability on claims that are the subject matter of such proceeding. If any such S-3 Indemnified Party shall have been advised by counsel chosen by it that there may be one or more legal defenses available to such S-3 Indemnified Party which are different from or additional to those available to the S-3 Indemnifying Party, the S-3 Indemnifying Party shall not have the right to assume the defense of such action on behalf of such S-3 Indemnified Party and will promptly reimburse such S-3 Indemnified Party and any person controlling such S-3 Indemnified Party for the reasonable fees and expenses of any counsel retained by the S-3 Indemnified Party, it being understood that the S-3 Indemnifying Party shall not, in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for such S-3 Indemnified Party or controlling person, which firm shall be designated in writing by the S-3 Indemnified Party to the S-3 Indemnifying Party.

(iv) If the indemnification provided for above in this Section 5.12(g) is held by a court of competent jurisdiction to be unavailable to an S-3 Indemnified Party, then each of

the Parent and the Holders hereby agrees to contribute to the amount paid or payable by such party in such proportion as is appropriate to reflect the relative fault of the Parent or the Holders, as the case may be.

(v) The obligations of Parent and each Holder under this Section 5.12(g) shall survive the completion of any offering of stock in the S-3 Registration under this Agreement or the termination of the registration rights granted hereunder.

5.13 Notice to Holders of Company Options and Company Warrants. The Company shall give notice of the transactions contemplated hereby to holders of Company Options and Company Warrants in accordance with the terms of such Company Options and Company Warrants or otherwise obtain the written waiver of such notice obligations. The Company shall enter into a Warrant Termination Agreement with each holder of a Company Warrant.

5.14 Conversion of Company Preferred. The Company shall use its best efforts to cause all of the outstanding shares of Company Preferred to be converted into shares of Company Common as of immediately prior to the Closing.

5.15 S-8 Registration Rights. If available for use by Parent, Parent shall file a registration statement on Form S-8 to register shares of Parent Common Stock issuable upon exercise of assumed Company Options within thirty (30) days after the Effective Time, and shall use its reasonable efforts to maintain the effectiveness of such registration statement (and maintain the current status of the prospectus or prospectuses contained therein) for so long as the options remain outstanding.

5.16 Termination of Company Employee Plans. The Company agrees (i) to cause its 401(k) plan to terminate effective as of the day immediately preceding the Closing Date and (ii) to cause all of its other Company Employee Plans to terminate as soon as practicable following the Closing.

5.17 Satisfaction of Conditions Precedent. Each party will use all commercially reasonable efforts to satisfy or cause to be satisfied all the conditions precedent which are set forth in Section 6 hereof, and each party will use all commercially reasonable efforts to cause the transactions provided for in this Agreement to be consummated.

5.18 Issuance of Additional Options. Prior to the Closing Date, the Company agrees to issue the Additional Options to the service providers of the Company identified by Parent at an exercise price of not less than one-hundred percent (100%) of the quotient obtained by dividing (i) the per share exercise price of Company Capital Stock at which such Company Option was exercisable immediately prior to the Effective Time by (ii) the Option Exchange Ratio.

5.19 Audited Financial Statements. The Company shall use all reasonable efforts to generate and deliver to Parent as soon as practicable (and in no event later than May 31, 2000) an audited balance sheet, income statement and statement of cash flows, and related footnotes, together with the report of the Company's independent accountants, prepared in accordance with generally

accepted accounting principles, for each fiscal year since the Company's inception (including but not limited to fiscal year 1999) (collectively, the "Company Financial Statements").

ARTICLE VI

CONDITIONS TO THE MERGER

6.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of the Company and Parent to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) HSR Act. All applicable waiting periods (and any extensions thereof) under the HSR Act shall have expired or otherwise been terminated.

(b) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall be in effect; provided, that Parent, Merger Sub and the Company have used reasonable efforts to remove such injunction, order, restraint or prohibition; nor shall any proceeding brought by a Governmental Entity, domestic or foreign, seeking any of the foregoing be pending; nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger, which makes the consummation of the Merger illegal.

(c) Permit. The California Commissioner of Corporations shall have issued a permit declaring the Permit Application, Hearing Request and Hearing Notice with respect to the Merger effective, or the issuance of the Parent Common Stock in connection with the Merger shall have been registered pursuant to an S-4 Registration Statement declared effective by the SEC.

6.2 Additional Conditions to Obligations of Company. The obligations of the Company to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) Representations, Warranties and Covenants. (i) The representations and warranties of Parent and Merger Sub in this Agreement shall be true and correct as of the date hereof and shall be true and correct in all material respects on and as of the Closing Date as though made on and as of the Closing Date, except that, to the extent such representations and warranties address matters only as of a particular date, such representations and warranties shall, to such extent, be true and correct on and as of such particular date as if made on and as of such particular date, and (ii) Parent shall have performed and complied with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it as of the Effective Time.

(b) Certificate of Parent. Company shall have been provided with a certificate executed on behalf of Parent by an authorized officer to the effect that, as of the Effective Time:

(i) All representations and warranties of Parent and Merger Sub in this Agreement (other than the representations and warranties of Parent and Merger Sub as of a specified date, which will be true and correct as of such date) shall be true and correct in all material respects on and as of the Effective Time as though such representations and warranties were made on and as of such time; and

(ii) all covenants, obligations and conditions of this Agreement to be performed by Parent on or before such date have been so performed.

(iii) the condition set forth in Section 6.2(c) has been satisfied.

(c) No Material Adverse Changes. There shall not have occurred any change in the business, assets, prospects, financial condition or results of operations of Parent that would cause a Parent Material Adverse Effect.

(d) Legal Opinion. The Company shall have received a legal opinion from Wilson Sonsini Goodrich & Rosati, legal counsel to Parent, in the form attached as Exhibit C hereto.

6.3 Additional Conditions to the Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by Parent:

(a) Representations, Warranties and Covenants. (i) The representations and warranties of the Company in this Agreement shall be true and correct as of the date hereof and shall be true and correct in all material respects on and as of the Closing Date as though made on and as of the Closing Date, except that, to the extent such representations and warranties address matters only as of a particular date, such representations and warranties shall, to such extent, be true and correct on and as of such particular date as if made on and as of such particular date, and (ii) the Company shall have performed and complied with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it as of the Effective Time.

(b) Certificate of the Company. Parent shall have been provided with a certificate executed on behalf of the Company by its President to the effect that, as of the Effective Time:

(i) All representations and warranties of the Company in this Agreement (other than the representations and warranties of the Company as of a specified date, which will be true and correct as of such date) shall be true and correct in all material respects on and as of the Effective Time as though such representations and warranties were made on and as of such time;

(ii) all covenants, obligations and conditions of this Agreement to be performed by the Company on or before such date have been so performed;

(iii) the conditions set forth in Sections 6.3(b), (d), (e), (f) and (g) have been satisfied.

(c) Employment and Non-Competition Agreements. Each of the persons set forth on Schedule 6.3(c) to be attached hereto no later than five (5) days prior to the Closing (collectively, the "Key Employees") shall have executed and delivered to Parent an Employment and Non-Competition Agreement in the form attached as Exhibit B hereto, each such Employment and Non-Competition Agreement shall be in full force and effect, and each of the Key Employees shall be employed by the Company immediately prior to the Effective Time.

(d) Employment Offers. Each person listed on Company Schedule 2.25 who shall have received an offer of employment from Parent, as mutually determined by the Company and Parent, shall have accepted such offer of employment from Parent on the terms and subject to the conditions set forth in such offer; and each such person shall be employed by the Company immediately prior to the Effective Time.

(e) Third Party Consents. The consents, waivers, assignments and approvals listed on Schedule 6.3(e) hereto shall have been obtained.

(f) Shareholder Approval; Dissenters' Rights. Shareholders holding at least ninety-five percent (95%) of the Company Capital Stock, including not less than the requisite vote of outstanding shares of each series or class of Company Capital Stock necessary to approve this Agreement, the Merger and the transactions contemplated hereby and thereby, shall have approved this Agreement, the Merger and the transactions contemplated hereby and thereby.

(g) No Material Adverse Changes. There shall not have occurred any change in the business, assets, prospects, financial condition or results of operations of the Company that would cause a Company Material Adverse Effect.

(h) Company Warrants. Parent shall have received the Warrant Termination Agreements contemplated by Section 5.13 hereof, which shall be duly executed by each party thereto.

(i) Litigation. No Action shall have been initiated by or against the Company.

(j) Due Diligence. Parent shall have completed, and shall be reasonably satisfied with, its due diligence review of the Company.

(k) Conversion of Company Preferred. Each share of Company Preferred shall have been converted into shares of Company Common and there shall be no shares of Company Capital Stock outstanding other than shares of Company Common.

(l) Termination of 401(k) Plan. Parent shall be reasonably satisfied that the Company has taken all steps necessary to terminate the Company's 401(k) plan effective as of the day immediately preceding the Closing Date.

(m) Termination of Rights. Any registration rights, rights of first refusal, rights to any liquidation preference, redemption rights or any other right of any Shareholder held pursuant to any Shareholder Agreement or otherwise shall have been terminated or waived as of the Closing.

(n) Issuance of Additional Options. The Company shall have issued the Additional Options to the service providers of the Company identified by Parent at an exercise price of not less than one-hundred percent (100%) of the quotient obtained by dividing (i) the per share exercise price of Company Capital Stock at which such Company Option was exercisable immediately prior to the Effective Time by (ii) the Option Exchange Ratio.

(o) Audited Financial Statements. The Company shall have furnished Parent with the Company Financial Statements and Parent shall be reasonably satisfied with the Company Financial Statements that incorporate the Company's fiscal year 1999.

(p) Legal Opinion. Parent shall have received a legal opinion from Gagen, McCoy, McMahon & Armstrong, legal counsel to the Company, in the form attached as Exhibit D hereto.

ARTICLE VII

SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ESCROW

7.1 Survival of Representations, Warranties and Covenants. The representations, warranties and covenants of the Company in this Agreement or in any instrument delivered pursuant hereto shall terminate on the one (1) year anniversary of the Closing Date; provided, however, that the representations, warranties and covenants relating or pertaining to any Tax or Returns related to such Tax, shall survive until ninety (90) days following the expiration of all applicable statutes of limitations, or extensions thereof, governing each Tax or Returns related to such Tax (the "Escrow Termination Date"). The representations, warranties and covenants of Parent and Merger Sub in this Agreement or in any instrument delivered pursuant hereto shall terminate as of the Closing.

7.2 Indemnification.

(a) The Company and the Shareholders agree to indemnify and hold Parent and its officers, directors and affiliates (including the Surviving Corporation) (each, an "Indemnified Party" and collectively, the "Indemnified Parties") harmless against all claims, losses, liabilities, damages, deficiencies, costs and expenses, including reasonable attorneys' fees and expenses of investigation and defense (hereinafter individually, a "Loss" and collectively, "Losses") incurred by an Indemnified Party directly or indirectly as a result of: (i) any inaccuracy or breach of a representation or warranty of the Company contained in this Agreement; (ii) any failure by the Company to perform or comply with any covenant contained in this Agreement; (iii) the failure of the Company to pay prior to the Effective Time the Third Party Expenses incurred by the Company; (iv) any Action initiated by or against the Company (including any Action described in the Company Schedules); (v) any revised Company Schedules; or (vi) any undisclosed liabilities. The Shareholders shall not have any right of contribution from the Company with respect to any Loss claimed by an Indemnified Party after the Effective Time.

(b) : Parent agrees to indemnify and hold the Company and its officers, directors and affiliates (in all cases, only prior to the Effective Time if this Agreement is terminated for any reason) and the Shareholders (each, a "Company Indemnified Party" and collectively, the "Company Indemnified Parties") harmless against all Losses (up to an amount not to exceed the Escrow Amount) incurred by a Company Indemnified Party directly or indirectly as a result of (i) any inaccuracy or breach of a representation or warranty of Parent contained in this Agreement or (ii) any failure by Parent to perform or comply with any covenant contained in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, this Section 7.2(b) sets forth the sole and exclusive remedy of the Company Indemnified parties for all Losses arising out of this Agreement and the transactions contemplated hereby, other than Losses resulting from fraud by Parent.

7.3 Escrow Arrangements.

(a) Escrow Fund. As security for the indemnity provided for in Section 7.2 hereof and by virtue of this Agreement and the Agreement of Merger, at the Effective Time and without any act of the Company or the Shareholders, the Company and the Shareholders will be deemed to have received and deposited with a person or entity to be mutually determined by Parent and the Company (the "Escrow Agent") the Escrow Amount, such deposit to constitute an escrow fund (the "Escrow Fund") to be governed by the terms set forth herein. The portion of the Escrow Amount contributed on behalf of each Shareholder shall be in proportion to the Cash Amount and Merger Shares such Shareholder is otherwise entitled to receive in the Merger by virtue of ownership of shares of Company Capital Stock issued and outstanding immediately prior to the Effective Time. The Escrow Agent may execute this Agreement following the date hereof and prior to the Effective Time, and such latter execution shall not affect the binding nature of this Agreement as of the date hereof among the signatories hereto. The Escrow Fund shall be the sole and exclusive remedy of Parent for all Losses incurred by Parent, except with respect to any Losses resulting from fraud by the Company. Notwithstanding the preceding sentence, nothing herein shall limit the liability of Parent or the Company for any breach of any representation, warranty or covenant contained in this Agreement if the Merger does not close. Parent may not receive any cash from the Escrow Fund unless and until one or more Officer's Certificates identifying Losses in excess of Fifty Thousand Dollars (USD \$50,000) in the aggregate (the "Basket Amount") has or have been delivered to the Escrow Agent as provided in Section 7.3(d) hereof, in which case Parent shall be entitled to recover all Losses so identified, including without limitation the Basket Amount. Notwithstanding the foregoing, Parent shall be entitled to immediately receive cash out of the Escrow Fund for, and the Basket Amount shall not apply as a threshold to, any and all claims or payments made with respect to the failure of the Company to pay prior to the Effective Time Third Party Expenses incurred by the Company.

(b) Escrow Period; Distribution upon Termination of Escrow Period. Subject to the following requirements, the Escrow Fund shall be in existence immediately following the Effective Time and shall terminate at 5:00 p.m. (San Francisco Time) on the Escrow Termination Date (the "Escrow Period"); provided, however, that the Escrow Period shall not terminate with respect to any portion of the Escrow Fund which, in the reasonable judgment of Parent, subject to the objection of the Shareholder Representative, is necessary to satisfy any then pending and unsatisfied

claims specified in any Officer's Certificate delivered to the Escrow Agent prior to the termination of the Escrow Period with respect to facts and circumstances existing prior to the termination of such Escrow Period. As soon as all such claims have been resolved and all Third Party Expenses have been paid pursuant to Section 5.4 hereof, the Escrow Agent shall deliver to the Shareholders the remaining portion of the Escrow Fund, if any, not required to satisfy such claims and Third Party Expenses. Deliveries of Escrow Amounts to the Shareholders shall be made in proportion to their respective contributions to the Escrow Fund.

(c) Protection of Escrow Fund.

(i) The Escrow Agent shall hold and safeguard the Escrow Fund during the Escrow Period, shall treat such fund as a trust fund in accordance with the terms of this Agreement and not as the property of Parent and shall hold and dispose of the Escrow Fund only in accordance with the terms hereof.

(ii) The Escrow Amount shall be invested in U.S. Treasury bills with maturities of not more than thirty (30) days and any interest paid on such Escrow Amount shall be added to the Escrow Fund and deemed part thereof. For any period of time before such U.S. Treasury bills can be purchased by the Escrow Agent or after such bills mature, the Escrow Amount shall be invested in a business money market account of the Escrow Agent and any interest paid on such Escrow Amount during such time shall be added to the Escrow Fund and deemed part thereof. Each Shareholder shall be liable for any Taxes with respect to income earned on such Shareholder's portion of the Escrow Fund.

(d) Claims Against the Escrow Fund. Upon receipt by the Escrow Agent at any time on or before the last day of the Escrow Period of an Officer's Certificate, the Escrow Agent shall, subject to the provision of Section 7.3(e) hereof, deliver to Parent out of the Escrow Fund as promptly as possible, cash held in the Escrow Fund in an amount equal to the Losses specified in the Officer's Certificate. For purposes hereof, "Officer's Certificate" shall mean a certificate signed by any officer of Parent: (A) stating that Parent has paid, incurred or properly accrued or reasonably anticipates that it will have to pay, incur or accrue Losses; (B) specifying in reasonable detail the individual items of Losses included in the amount so stated, the date each such item was paid, incurred or properly accrued, or the basis for such anticipated liability, and the nature of the misrepresentation, breach of warranty or covenant to which such item is related; (C) specifying whether the Losses are subject to the Basket Amount as provided in Section 7.3(a) hereof; and (D) specifying the amount of cash to be delivered to Parent.

(e) Objections to Claims. At the time of delivery of any Officer's Certificate to the Escrow Agent, a duplicate copy of such certificate shall be delivered to the Shareholder Representative and for a period of thirty (30) days after such delivery, the Escrow Agent shall make no delivery to Parent of any Escrow Amounts pursuant to Section 7.3(d) unless the Escrow Agent shall have received written authorization from the Shareholder Representative to make such delivery. After the expiration of such thirty (30) day period, the Escrow Agent shall make delivery of cash from the Escrow Fund in accordance with Section 7.3(d) hereof; provided, however, that no such delivery may be made if the Shareholder Representative shall object in a written statement to the

claim made in the Officer's Certificate, and such statement shall contain specific bases upon which such objection is being made and shall have been delivered to the Escrow Agent prior to the expiration of such thirty (30) day period.

(f) Resolution of Conflicts; Arbitration.

(i) In case the Shareholder Representative shall object in writing to any claim or claims made in any Officer's Certificate, the Shareholder Representative and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If the Shareholder Representative and Parent should so agree, a memorandum setting forth such agreement shall be prepared and signed by Parent and the Shareholder Representative and shall be furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such memorandum and distribute cash from the Escrow Fund in accordance with the terms thereof.

(ii) If no such agreement can be reached after good faith negotiation, either Parent or the Shareholder Representative may demand arbitration of the matter unless the amount of the Loss is at issue in pending litigation with a third party, in which event arbitration shall not be commenced until such amount is ascertained or both parties agree to arbitration, and in either such event the matter shall be settled by arbitration conducted by one arbitrator mutually agreeable to Parent and the Shareholder Representative. In the event that within forty-five (45) days after submission of any dispute to arbitration, Parent and the Shareholder Representative cannot mutually agree on one arbitrator, Parent and the Shareholder Representative shall each select one arbitrator, and the two arbitrators so selected shall select a third arbitrator. The arbitrator or arbitrators, as the case may be, shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an opportunity, adequate in the sole judgment of the arbitrator or majority of the three arbitrators, as the case may be, to discover relevant information from the opposing parties about the subject matter of the dispute. The arbitrator or a majority of the three arbitrators, as the case may be, shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including attorneys' fees and costs, to the same extent as a competent court of law or equity, should the arbitrator or a majority of the three arbitrators, as the case may be, determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of the arbitrator or a majority of the three arbitrators, as the case may be, as to the validity and amount of any claim in such Officer's Certificate shall be binding and conclusive upon the parties to this Agreement, and notwithstanding anything in Section 7.3(e) hereof, the Escrow Agent shall be entitled to act in accordance with such decision and make or withhold delivery of cash from the Escrow Fund in accordance therewith. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator(s).

(iii) Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Any such arbitration shall be held in Santa Clara County, California, USA under the rules then in effect of the American Arbitration Association. The arbitrator(s) shall determine how all expenses relating to the arbitration shall be paid, including

without limitation, the respective expenses of each party, the fees of each arbitrator and the administrative fee of the American Arbitration Association.

(g) Third-Party Claims. In the event Parent becomes aware of a third-party claim which Parent reasonably believes may result in a demand against the Escrow Fund, Parent shall notify the Shareholder Representative of such claim, and the Shareholder Representative and the Shareholders of the Company shall be entitled, at their expense, to participate in, but not to determine or conduct, the defense of such claim. Parent shall have the right in its sole discretion to conduct the defense of and settle any such claim; provided, however, that except with the consent of the Shareholder Representative, no settlement of any such claim with third-party claimants shall be determinative of the amount of any claim for Losses relating to such matter. In the event that the Shareholder Representative has consented to any such settlement, neither the Shareholder Representative nor the Shareholders shall have any power or authority to object under any provision of this Article VII to the amount of any claim by Parent against the Escrow Fund with respect to such settlement.

7.4 Shareholder Representative.

(a) Concurrently with approving this Agreement and the Merger, the Shareholders shall appoint an individual or entity as their agent and attorney-in-fact, as the shareholder representative for and on behalf of the Shareholders (the "Shareholder Representative"), to give and receive notices and communications, to object to such retention, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, and to take all other actions that are either (i) necessary or appropriate in the judgment of the Shareholder Representative for the accomplishment of the foregoing or (ii) specifically mandated by the terms of this Agreement. Such agency may be changed by the Shareholders from time to time upon not less than thirty (30) days prior written notice to Parent; provided, however, that the Shareholder Representative may not be removed unless holders of a majority interest of the Shareholders agree to such removal and to the identity of the substituted agent. The Shareholder Representative may resign at any time upon written notice to Parent and the Shareholders. Any vacancy in the position of Shareholder Representative may be filled by the holders of a simple majority interest of the Escrow Fund. No bond shall be required of the Shareholder Representative, and the Shareholder Representative shall not receive compensation for its services. Notices or communications to or from the Shareholder Representative shall constitute notice to or from the Shareholders.

(b) The Shareholder Representative shall not be liable for any act done or omitted hereunder as the Shareholder Representative while acting in good faith and in the exercise of reasonable judgment. The Shareholders on whose behalf the Escrow Amount is contributed to the Escrow Fund shall indemnify the Shareholder Representative and hold the Shareholder Representative harmless against any loss, liability or expense incurred without negligence or bad faith on the part of the Shareholder Representative and arising out of or in connection with the acceptance or administration of the Shareholder Representative's duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Shareholder Representative.

(c) A decision, act, consent or instruction of the Shareholder Representative, including but not limited to an amendment, extension or waiver of this Agreement pursuant to Section 8.3 and Section 8.4 hereof, shall constitute a decision of the Shareholders and shall be final, binding and conclusive upon the Shareholders; and Parent may rely upon any such decision, act, consent or instruction of the Shareholder Representative as being the decision, act, consent or instruction of the Shareholders. The Parent is hereby relieved from any liability to any person for any acts done by them in accordance with such decision, act, consent or instruction of the Shareholder Representative.

(d) Subject to Parent's prior claims for indemnification against the Escrow Fund, the Shareholder Representative shall be entitled to receive payment for its reasonable and documented expenses therefrom, prior to any payments to the Shareholders.

7.5 Escrow Agent.

(a) Escrow Agent's Duties.

(i) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein, and as set forth in any additional written escrow instructions which the Escrow Agent may receive after the date of this Agreement which are signed by an officer of Parent and the Shareholder Representative, and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be charged with any knowledge of any agreements referred to herein, including this Agreement, except for Articles VII and X hereof. The Escrow Agent shall not be liable for any act done or omitted hereunder as Escrow Agent while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of such good faith.

(ii) The Escrow Agent is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person, excepting only orders or process of courts of law, and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(iii) The Escrow Agent shall not be liable in any respect on account of the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver this Agreement or any documents or papers deposited or called for hereunder.

(iv) The Escrow Agent shall not be liable for the expiration of any rights under any statute of limitations with respect to this Agreement or any documents deposited with the Escrow Agent.

(v) In performing any duties under this Agreement, the Escrow Agent shall not be liable to any party for damages, losses, or expenses, except for negligence or willful misconduct on the part of the Escrow Agent. The Escrow Agent shall not incur any such liability for (A) any act or failure to act made or omitted in good faith, or (B) any action taken or omitted in reliance upon any instrument, including any written statement of affidavit provided for in this Agreement that the Escrow Agent shall in good faith believe to be genuine, nor will the Escrow Agent be liable or responsible for forgeries, fraud, impersonations, or determining the scope of any representative authority. In addition, the Escrow Agent may consult with legal counsel in connection with performing the Escrow Agent's duties under this Agreement and shall be fully protected in any act taken, suffered, or permitted by the Escrow Agent in good faith in accordance with the advice of counsel. The Escrow Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Agreement.

(vi) If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents and the Escrow Amount and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in the Escrow Agent's discretion, may be required, despite what may be set forth elsewhere in this Agreement. In such event, the Escrow Agent will not be liable for damages. Furthermore, the Escrow Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Escrow Agent is authorized to deposit with the clerk of the court all documents and the Escrow Amounts held in escrow, except all costs, expenses, charges and reasonable attorney fees incurred by the Escrow Agent due to the interpleader action and which the parties jointly and severally agree to pay. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(vii) The parties and their respective successors and assigns agree jointly and severally to indemnify and hold the Escrow Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees, including allocated costs of in-house counsel and disbursements that may be imposed on Escrow Agent or incurred by the Escrow Agent in connection with the execution and delivery of, and the performance of its duties under, this Agreement, including but not limited to any litigation arising from this Agreement or involving its subject matter, other than those arising out of the negligence or willful misconduct of the Escrow Agent.

(viii) The Escrow Agent may resign at any time upon giving at least thirty (30) days written notice to the Parent and the Shareholder Representative; provided, however, that no such resignation shall become effective until the appointment of a successor escrow agent which shall be accomplished as follows: Parent and the Shareholder Representative shall use their best efforts to mutually agree on a successor escrow agent within thirty (30) days after receiving such notice. If the parties fail to agree upon a successor escrow agent within such time, the Escrow Agent shall have the right to appoint a successor escrow agent authorized to do business in the State of California. The successor escrow agent shall execute and deliver an instrument accepting such

appointment and it shall, without further acts, be vested with all the estates, properties, rights, powers, and duties of the predecessor escrow agent as if originally named as escrow agent. Upon appointment of a successor escrow agent, the Escrow Agent shall be discharged from any further duties and liability under this Agreement.

(b) Fees. All fees of the Escrow Agent for performance of its duties hereunder shall be paid by Parent in accordance with the standard fee schedule of the Escrow Agent. It is understood that the fees and usual charges agreed upon for services of the Escrow Agent shall be considered compensation for ordinary services as contemplated by this Agreement. In the event that the conditions of this Agreement are not promptly fulfilled, or if the Escrow Agent renders any service not provided for in this Agreement, or if the parties request a substantial modification of its terms, or if any controversy arises, or if the Escrow Agent is made a party to, or intervenes in, any litigation pertaining to the Escrow Fund or its subject matter, the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees, including allocated costs of in-house counsel, and expenses occasioned by such default, delay, controversy or litigation.

(c) Consequential Damages. In no event shall the Escrow Agent be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(d) Successor Escrow Agents. Any corporation into which the Escrow Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent in its individual capacity shall be a party, or any corporation to which substantially all the corporate trust business of the Escrow Agent in its individual capacity may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

8.1 Termination. Except as provided in Section 8.2 below, this Agreement may be terminated and the Merger abandoned at any time prior to the Closing:

- (a) by mutual agreement of the Company and Parent;
- (b) by the Company or Parent if: (i) the Closing has not occurred by July 15, 2000; provided, however, that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement; (ii) there shall be a final nonappealable order of a federal or state court in effect preventing consummation of the Merger; or (iii) there shall be any statute, rule, regulation or

order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity that would make consummation of the Merger illegal;

(c) by Parent if there shall be any action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity, which would: (i) prohibit Parent's ownership or operation of all or a portion of the business of the Company or (ii) compel Parent or the Company to dispose of or hold separate all or a portion of the business or assets of the Company or Parent as a result of the Merger;

(d) by Parent if it is not in material breach of its obligations under this Agreement and there has been a material breach of any provision contained in this Agreement on the part of the Company and such breach has not been cured within thirty (30) business days after written notice to the Company; provided, however, no cure period shall be required for a breach which by its nature cannot be cured; or

(e) by the Company if it is not in material breach of its obligations under this Agreement and there has been a material breach of any provision contained in this Agreement on the part of Parent or Merger Sub and such breach has not been cured within thirty (30) business days after written notice to Parent, provided, however, no cure period shall be required for a breach which by its nature cannot be cured.

Where action is taken to terminate this Agreement pursuant to this Section 8.1, it shall be sufficient for such action to be authorized by the Board of Directors (as applicable) of the party taking such action.

8.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, Merger Sub or the Company, or their respective officers, directors or shareholders; provided, however, each party shall remain liable for any breaches of this Agreement prior to its termination; and provided further, however, that, the provisions of Sections 5.3, 5.4 and 5.5, Articles VII, IX and X hereof and this Section 8.2 shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this Article VIII.

8.3 Amendment. This Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of each of the parties hereto. For purposes of this Section 8.3, the Shareholders agree that any amendment of this Agreement signed by the Shareholder Representative shall be binding upon and effective against the Shareholders whether or not they have signed such amendment.

8.4 Extension; Waiver. At any time prior to the Closing, Parent, on the one hand, and the Company and the Shareholder Representative, on the other hand, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party

hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. For purposes of this Section 8.4, the Shareholders agree that any extension or waiver signed by the Shareholder Representative shall be binding upon and effective against all Shareholders whether or not they have signed such extension or waiver.

ARTICLE IX

DEFINITIONS

9.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“1933 Act” shall mean the Securities Act of 1933, as amended.

“Accounts Receivable” shall have the meaning set forth in Section 2.8 of this Agreement.

“Action” shall have the meaning set forth in Section 2.19 of this Agreement.

“Additional Options” shall mean the number of Company Options determined by Parent to be issued by the Company prior to the Closing Date to those service providers of the Company identified by Parent.

“Additional Parent Shares” shall mean the number of shares of Parent Common Stock (if any) issuable in respect of Additional Options and determined by dividing (i) the number determined by subtracting the Initial Merger Consideration from the product of (A) the Total Fully Diluted Outstanding Shares and (B) the Initial Merger Consideration divided by the sum of the Total Outstanding Shares and the aggregate number of shares of Company Common Stock issuable, with or without the passage of time or satisfaction of other conditions, upon exercise or conversion of any unvested Company Options outstanding immediately prior to the Effective Time, by (ii) the Trading Price.

“Aggregate Merger Consideration” shall mean the sum of the Cash Amount, the Merger Shares, the Special Merger Consideration and the Additional Parent Shares; provided, however, that if no Additional Options are issued by the Company prior to the Closing, “Aggregate Merger Consideration” shall mean the sum of the Cash Amount, the Merger Shares and the Special Merger Consideration.

“Agreement” shall mean this Agreement and Plan of Reorganization, dated as of May 12, 2000, among the Company, Parent, Merger Sub, and, with respect to the matters set forth in Articles VII and X only, the Shareholder Representative and the Escrow Agent (including the Exhibits and Schedules hereto) and all amendments hereto made in accordance with the provisions of Section 8.3 hereof.

“Basket Amount” shall have the meaning set forth in Section 7.3 of this Agreement.

“Bonus Cash Pool” shall have the meaning set forth in Section 1.6 of this Agreement.

“Bonus Share Pool” shall have the meaning set forth in Section 1.6 of this Agreement.

“Business Facility” shall mean any property including the land, the improvements thereon, the groundwater thereunder and the surface water thereon, that is or at any time has been owned, operated, occupied, controlled or leased by the Company in connection with the operation of its business.

“CCSL” shall have the meaning set forth in Section 5.9 of this Agreement.

“COBRA” shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“California Law” shall have the meaning set forth in Section 1.1 of this Agreement.

“Cash Amount” shall mean Twenty Million Dollars (USD\$20,000,000).

“Cash Exchange Ratio” shall mean the number determined by dividing (i) the Cash Amount by (ii) the Total Outstanding Shares.

“Certificate” shall have the meaning set forth in Section 1.8 of this Agreement.

“Closing” shall have the meaning set forth in Section 1.2 of this Agreement.

“Closing Date” shall have the meaning set forth in Section 1.2 of this Agreement.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Company” shall have the meaning set forth in the first paragraph of this Agreement.

“Company Capital Stock” shall mean shares of Company Common, Company Preferred and shares of any other capital stock of the Company, including any shares of capital stock of the Company issuable upon exercise or conversion of any Company Convertible Indebtedness outstanding immediately prior to the Effective Time.

“Company Common” shall mean shares of Common Stock of the Company.

“Company Employee Plan” shall mean any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation, each “employee benefit plan”, within the meaning of Section 3(3) of ERISA which is or has been maintained, contributed to, or required to be contributed to, by the Company or any Related Party for the benefit of any Company Group Employee, or with respect to which the Company or any Related Party has or may have any liability or obligation.

“Company Financial Statements” shall have the meaning set forth in Section 5.19 of this Agreement.

“Company Group Employee” shall mean any current or former or retired employee, consultant or director of the Company or any Related Party.

“Company Indemnified Party” shall have the meaning set forth in Section 7.2 of this Agreement.

“Company Material Adverse Effect” shall have the meaning set forth in Section 2.1 of this Agreement.

“Company Option” shall mean each issued and outstanding option granted under the Option Plans to purchase or otherwise acquire Company Capital Stock.

“Company Preferred” shall mean shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock of the Company.

“Company Schedules” shall have the meaning set forth in the introductory paragraph of Article II.

“Company Warrant” shall mean each issued and outstanding right to purchase or otherwise acquire Company Capital Stock, excluding Company Options and Company Preferred Stock.

“Confidentiality Agreement” shall mean the Confidentiality Agreement dated as of December 2, 1999 and entered into by and between the Company and Parent.

“Conflict” shall have the meaning set forth in Section 2.5 of this Agreement.

“Contract” shall have the meaning set forth in Section 2.16 of this Agreement.

“Current Balance Sheet” shall have the meaning set forth in Section 2.7 of this Agreement.

“DOL” shall mean the Department of Labor.

“Delaware Law” shall have the meaning set forth in Section 1.1 of this Agreement.

“Disposal Site” shall mean a landfill, disposal agent, waste hauler or recycler of Hazardous Materials.

“Dissenting Shares” shall have the meaning set forth in Section 1.7 of this Agreement.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Employment Agreement" shall mean each management, employment, severance, consulting, relocation, repatriation, expatriation, visas, work permit or other agreement, contract or understanding between the Company or any Related Party and any Company Group Employee.

"Employment and Non-Competition Agreements" shall have the meaning set forth in the recitals of this Agreement.

"Environmental Laws" shall mean all applicable laws, rules, regulations, orders, treaties, statutes, and codes promulgated by any Governmental Entity which prohibit, regulate or control any Hazardous Material or any Hazardous Material Activity, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Recovery and Conservation Act of 1976, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Clean Water Act, comparable laws, rules, regulations, ordinances, orders, treaties, statutes, and codes of other Governmental Entities, the regulations promulgated pursuant to any of the foregoing, and all amendments and modifications of any of the foregoing, all as amended to date.

"Environmental Permit" shall mean any approval, permit, license, clearance or consent required to be obtained from any private person or any Governmental Entity with respect to a Hazardous Materials Activity which is or was conducted by the Company.

"Escrow Agent" shall have the meaning set forth in Section 7.3 of this Agreement.

"Escrow Amount" shall have the meaning set forth in Section 1.8 of this Agreement.

"Escrow Fund" shall have the meaning set forth in Section 7.3 of this Agreement.

"Escrow Period" shall have the meaning set forth in Section 7.3 of this Agreement.

"Escrow Termination Date" shall have the meaning set forth in Section 7.1 of this Agreement.

"Exchange Agent" shall have the meaning set forth in Section 1.8 of this Agreement.

"FICA" shall mean the Federal Insurance Contribution Act.

"FUTA" shall mean the Federal Unemployment Tax Act.

"FMLA" shall mean the Family Medical Leave Act of 1993, as amended.

"GAAP" shall mean U.S. generally accepted accounting principles.

"Governmental Entity" shall mean any local, state, provincial, federal, or international governmental authority or agency which has had or now has jurisdiction over any portion of the subject matter of this Agreement, any Business Facility or the Company.

“Hazardous Material” shall mean any material or substance that is prohibited or regulated by any Environmental Law or that has been designated by any Governmental Entity to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment.

“Hazardous Materials Activity” shall mean the transportation, transfer, recycling, storage, use, treatment, manufacture, removal, remediation, release, exposure of others to, sale, or distribution of any Hazardous Material or any product containing a Hazardous Material.

“Hearing Notice” shall have the meaning set forth in Section 5.9 of this Agreement.

“Hearing Request” shall have the meaning set forth in Section 5.9 of this Agreement.

“Holder” shall mean (i) a Shareholder, (ii) the Escrow Agent, or (iii) a transferee.

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“IRS” shall mean the Internal Revenue Service.

“Indemnified Party” shall have the meaning set forth in Section 7.2 of this Agreement.

“Information Statement” shall have the meaning set forth in Section 5.9 of this Agreement.

“Information Technology” shall mean and include all software, hardware, firmware, telecommunications systems, network systems, embedded systems and other systems, components and/or services (other than general utility services including gas, electric, telephone and postal) that are owned or used in the conduct of business, or purchased from third party suppliers.

“Initial Merger Consideration” shall mean the sum of (i) the Cash Amount and (ii) the product obtained by multiplying the Merger Shares by the Trading Price.

“Intellectual Property Rights” shall mean any or all of the following and all rights in, arising out of, or associated therewith: (i) all United States and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (ii) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; (iii) all copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; (iv) all industrial designs and any registrations and applications therefor throughout the world; (v) all trade names, logos, common law trademarks and service marks; trademark and service mark registrations and applications therefor throughout the world; (vi) all databases and data collections and all rights therein throughout the world; and (vii) all computer software including all source code, object code, firmware, development tools, files, records and data, all media on which any of the foregoing is recorded, and all documentation related to any of the foregoing throughout the world.

“International Employee Plan” shall mean each Company Employee Plan that has been adopted or maintained by the Company or any Related Party, whether informally or formally, or with respect to which the Company or any Related Party will or may have any liability, for the benefit of Company Group Employees who perform services outside the United States.

“Interim Financials” shall have the meaning set forth in Section 2.7 of this Agreement.

“Key Employees” shall have the meaning set forth in Section 6.3 of this Agreement.

“Lien” means any security interest, pledge, mortgage, lien (including, without limitation, environmental and tax liens), charge, encumbrance, adverse claim, preferential arrangement or restriction of any kind, including, without limitation, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“Loss” shall have the meaning set forth in Section 7.2 of this Agreement.

“Material Adverse Effect” shall have the meaning set forth in Section 2.1 of this Agreement.

“Merger” shall have the meaning set forth in the recitals of this Agreement.

“Merger Shares” shall mean One Million Two Hundred Thousand (1,200,000) shares of Parent Common Stock.

“Merger Sub” shall have the meaning set forth in the first paragraph of this Agreement.

“Multiemployer Plan” shall mean any Pension Plan which is a “multiemployer plan”, as defined in Section 3(37) of ERISA.

“NASD” shall mean the National Association of Securities Dealers, Inc.

“Notice Materials” shall have the meaning set forth in Section 5.9 of this Agreement.

“Officer’s Certificate” shall have the meaning set forth in Section 7.3 of this Agreement.

“Option Exchange Ratio” shall mean the number determined by dividing (i) the quotient obtained by dividing (A) the Initial Merger Consideration by (B) the sum of the Total Outstanding Shares and the aggregate number of shares of Company Common Stock issuable, with or without the passage of time or satisfaction of other conditions, upon exercise or conversion of any unvested Company Options outstanding immediately prior to the Effective Time, by (ii) the Trading Price.

“Option Plans[s]” shall mean the Company’s 1995 Stock Option Plan.

“Organizational Documents” shall mean the Company’s Articles of Incorporation and Bylaws, each as amended to date.

“Parent” shall have the meaning set forth in the first paragraph of this Agreement.

"Parent Common Stock" shall mean shares of common stock of Parent.

"Parent Financial Statements" shall have the meaning set forth in Section 3.6 of this Agreement.

"Parent Material Adverse Effect" shall have the meaning set forth in Section 2.1 of this Agreement.

"Parent SEC Reports" shall have the meaning set forth in Section 3.6 of this Agreement.

"Pension Plan" shall mean each Company Employee Plan which is an "employee pension benefit plan", within the meaning of Section 3(2) of ERISA.

"Permit Application" shall have the meaning set forth in Section 5.9 of this Agreement.

"Registered Intellectual Property" shall have the meaning set forth in Section 2.15 of this Agreement.

"Registrable Securities" shall mean for each Holder the number of shares of Parent Common Stock issued to such Holder pursuant to the terms hereof.

"Related Agreement" shall have the meaning set forth in Section 2.4 of this Agreement.

"Related Party" shall mean any other person or entity under common control with the Company within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

"Returns" shall have the meaning set forth in Section 2.12 of this Agreement.

"S-3 Indemnified Party" shall have the meaning set forth in Section 5.12 of this Agreement.

"S-3 Indemnifying Party" shall have the meaning set forth in Section 5.12 of this Agreement.

"S-3 Registration" shall have the meaning set forth in Section 5.12 of this Agreement.

"S-4" shall have the meaning set forth in Section 5.9 of this Agreement.

"SEC" shall mean the Securities and Exchange Commission.

"Share Exchange Ratio" shall mean the number equal to the Option Exchange Ratio less the quotient obtained by dividing the Cash Exchange Ratio by the Trading Price.

"Shareholder" shall mean each holder of any Company Capital Stock issued and outstanding immediately prior to the Effective Time.

"Shareholder Agreement" shall mean each of the Company's Third Amended and Restated Shareholders Agreement and any other agreement between the Company and any of its Shareholders

pursuant to which any such Shareholder is granted preemptive rights, registration rights or any similar rights.

“Shareholder Representative” shall have the meaning set forth in Section 7.4 of this Agreement.

“Special Merger Consideration” shall mean the number of shares of Parent Common Stock determined by multiplying (i) the Special Merger Exchange Ratio by (ii) the Total Outstanding Shares.

“Special Merger Exchange Ratio” shall mean the number determined by dividing (i) the number obtained by multiplying (A) the Option Exchange Ratio by (B) ten percent (10%) of the number of shares of Company Common subject to unvested Company Options issued and outstanding immediately prior to the Effective Time and held by non-officers of the Company, by (ii) the Total Outstanding Shares.

“Surviving Corporation” shall have the meaning set forth in Section 1.1 of this Agreement.

“Taxes” shall mean (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; (ii) any liability for the payment of any amounts of the type described in clause (i) of this definition as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) of this definition as a result of any express or implied obligation to indemnify any other person or as a result of any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor entity.

“Third Party Expenses” shall have the meaning set forth in Section 5.4 of this Agreement.

“Total Fully Diluted Outstanding Shares” shall mean the sum of (i) the Total Outstanding Shares and (ii) the aggregate number of shares of Company Common Stock issuable, with or without the passage of time or satisfaction of other conditions, upon exercise or conversion of (i) any unvested Company Options outstanding immediately prior to the Effective Time, and (ii) any Additional Options outstanding immediately prior to the Effective Time.

“Total Outstanding Shares” shall mean the aggregate number of shares of Company Common Stock outstanding immediately prior to the Effective Time plus the aggregate number of shares of Company Common Stock issuable, with or without the passage of time or satisfaction of other conditions, upon exercise or conversion of all options, warrants and other rights to acquire or receive shares of Company Common Stock outstanding immediately prior to the Effective Time; provided, however, “Total Outstanding Shares” shall not include the aggregate number of shares of Company Common Stock issuable, with or without the passage of time or satisfaction of other conditions, upon exercise or conversion of (i) any unvested Company Options outstanding immediately prior to

the Effective Time, or (ii) any Additional Options outstanding immediately prior to the Effective Time.

“Trading Price” shall mean the twenty (20) day average closing sales price of the Parent Common Stock as reported on the NASDAQ National Market System for the period ending five (5) days prior to the Closing.

“Warrant Termination Agreement” shall mean the agreement between the Company and each holder of a Company Warrant terminating the Company Warrant prior to the Effective Time if not exercised prior thereto.

“Year 2000 Compliant” shall have the meaning set forth in Section 2.18 of this Agreement.

“Year-End Financials” shall have the meaning set forth in Section 2.7 of this Agreement.

ARTICLE X

GENERAL PROVISIONS

10.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgement of complete transmission), or sent via electronic transmission (with such electronic notice to be effective immediately upon transmission provided that a written notice is mailed contemporaneously, postage prepaid, return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

- (a) if to Parent or Merger Sub, to:

hi/fn, inc.
750 University Avenue
Las Gatos, California 95032
Attention: William R. Walker
Facsimile No.: (408) 399-3501

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: Nevan C. Elam
Facsimile No.: (650) 461-5375

(b) if to the Company, to:

Apptitude, Inc.
6330 San Ignacio Avenue
San Jose, California 95119
Attention: Chris Kenber
Facsimile No.: (408) 629-8300

with a copy to:

Gagen, McCoy, McMahon & Armstrong, P.C.
279 Front Street
P.O. Box 218
Danville, California 94526-0218
Attention: Gregory L. McCoy
Facsimile No.: (925) 838-5985

(c) if to the Shareholder Representative or the Escrow Agent, to such address as such party shall have furnished to all of the parties hereto in writing.

10.2 Interpretation. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

10.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

10.4 Entire Agreement; Assignment. This Agreement (including the recitals), the Exhibits hereto, the Company Schedules and the documents and instruments and other agreements among the parties hereto referenced herein: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; (b) are not intended to confer upon any other person any rights or remedies hereunder; and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided in this Agreement; provided, however, that Parent may assign all, but not less than all of its rights and obligations under this Agreement, either before or after the Effective Time, to its parent or to any subsidiary or affiliate provided that the assignee agrees to be bound by the provisions of this Agreement to the same extent as Parent is bound prior to the assignment.

10.5 Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the

application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

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

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any court within Santa Clara County, State of California, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of California for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process.

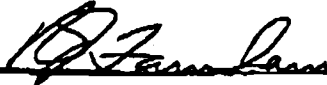
10.8 Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

10.9 No Third Party Beneficiary. This Agreement is for the sole benefit of the parties and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give any third party, other than the parties hereto and such permitted successors and assigns, any legal or equitable rights hereunder.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Parent, Merger Sub, the Company, the Shareholder Representative and the Escrow Agent have caused this Agreement and Plan of Reorganization to be duly signed, all as of the date first written above.

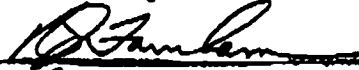
HU/IN, INC.

By: 
Name: R. J. FARNHAM
Title: PRESIDENT + CEO

APPTITUDE, INC.

By: 
Name: CHRIS KEVINT
Title: CEO

APPTITUDE ACQUISITION CORPORATION

Print: 
Name: R. J. FARNHAM
Title: PRESIDENT



FIRST AMENDMENT TO AGREEMENT AND PLAN OF REORGANIZATION

This First Amendment (the "Amendment") to that certain Agreement and Plan of Reorganization by and among hi/fn, inc. ("hi/fn"), Apptitude Acquisition Corporation ("Sub") and Apptitude, Inc. ("Apptitude") dated as of May 12, 2000 (the "Merger Agreement"), is made as of May 31, 2000.

RECITALS

WHEREAS, since the date of the Merger Agreement (and the transactions contemplated thereby, the "Merger"), the parties thereto have agreed to amend the Merger Agreement,

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Modifications to the Merger Agreement:

(a) Section 1.11 of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

"1.11 The parties intend for the Merger to constitute a tax-free forward triangular reorganization within the meaning of Section 368(a)(1)(A) and Section 368(a)(2)(D) of the Code; *provided, however*, that if, as of the Closing, the value of the number of shares of Parent Common Stock issuable in respect of the Merger Shares and the Special Merger Consideration is less than the value of the Cash Amount, as determined by Parent in its sole discretion, the parties agree that the Merger will be structured as a taxable reverse triangular merger whereby Merger Sub will be merged with and into the Company, with the Company as the surviving corporation in the merger. If the Merger is restructured as a taxable reverse triangular merger in accordance with this Section 1.11, then all references in this Agreement to the "Merger" shall be deemed to refer to the merger described in this Section 1.11; all references in this Agreement to the "Agreement of Merger" shall be deemed to refer to an agreement of merger which reflects the merger described in this Section 1.11; and all references in this Agreement to the "Surviving Corporation" shall be deemed to refer to the Company. The Merger will be treated as a purchase for financial accounting purposes."

(b) Section 5.12 of the Merger Agreement is hereby deleted in its entirety and replaced as follows:

"5.12 [Intentionally Omitted]"

(c) The following definitions in Section 9.1 of the Merger Agreement are hereby deleted in their entirety:

"S-3 Indemnified Party" shall have the meaning set forth in Section 5.12 of this Agreement.

"S-3 Indemnifying Party" shall have the meaning set forth in Section 5.12 of this Agreement.

"S-3 Registration" shall have the meaning set forth in Section 5.12 of this Agreement.

(d) The Section 5.12 reference in the Table of Contents is hereby deleted in its entirety and replaced as follows

"5.12 [Intentionally Omitted]"

2. Survival

Except as modified hereby, the Merger Agreement continues in full force and effect, unmodified in any way.

3. Counterparts

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same amendment.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be executed and delivered as of the date first above written.

HI/FN, INC.

By: _____

Name: _____

Title: _____

APPTITUDE, INC.

By: _____

Name: _____

Title: _____

APPTITUDE ACQUISITION CORPORATION

Print: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be executed and delivered as of the date first above written.

HL/FN, INC.

By: _____

Name: _____

Title: _____

APPTITUDE, INC.

By:  _____

Name: CAROL MENSEK

Title: CEO

APPTITUDE ACQUISITION CORPORATION

Print: _____

Name: _____

Title: _____

SECOND AMENDMENT TO AGREEMENT AND PLAN OF REORGANIZATION

This Second Amendment (the "Amendment") to that certain Agreement and Plan of Reorganization by and among hi/fn, inc. ("hi/fn"), Apptitude Acquisition Corporation ("Sub") and Apptitude, Inc. ("Apptitude") dated as of May 12, 2000, as amended May 31, 2000, (the "Merger Agreement"), is made as of July 12, 2000.

RECITALS

WHEREAS, since the date of the Merger Agreement (and the transactions contemplated thereby, the "Merger"), the parties thereto have agreed to amend the Merger Agreement,

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. **Modification to the Merger Agreement:**

(a) Section 8.1(b) of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

"8.1 [Intentionally Omitted]"

(b) by the Company or Parent if: (i) the Closing has not occurred by August 16, 2000; provided, however, that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement; (ii) there shall be a final nonappealable order of a federal or state court in effect preventing consummation of the Merger; or (iii) there shall be any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity that would make consummation of the Merger illegal;

2. **Survival**

Except as modified hereby, the Merger Agreement continues in full force and effect, unmodified in any way.

3. **Counterparts**

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same amendment.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be executed and delivered as of the date first above written.

HI/FN, INC.

By:

W. R. Walker

Name:

William R Walker

Title:

CFO

APPTITUDE, INC.

By: _____

Name: _____

Title: _____

APPTITUDE ACQUISITION CORPORATION

Print:

W. R. Walker

Name:

W. R. Walker

Title:

CFO

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be executed and delivered as of the date first above written.

HL/FN, INC.

By: _____

Name: _____

Title: _____

APPETITUDE, INC.

By:  _____

Name: CAROL MEWIS

Title: CEO

APPETITUDE ACQUISITION CORPORATION

Print: _____

Name: _____

Title: _____

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-2-

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) May 15, 2000

HI/FN, INC.

(Exact name of registrant as specified in charter)

DELAWARE	0-24765	33-0732700
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

750 UNIVERSITY AVENUE, LOS GATOS	95032
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code (408) 399-3500

NOT APPLICABLE
(Former name or former address, if changed since last report.)

Item 2. ACQUISITION OR DISPOSITION OF ASSETS

On August 11, 2000, Hi/fn, Inc. (Hi/fn) completed its acquisition of all of the issued and outstanding common stock and outstanding options of Apptitude, Inc., a provider of embedded Internet traffic analysis solutions for developers of network infrastructure devices, for \$20 million in cash and 1.2 million shares of Hi/fn common stock, or an aggregate purchase price of approximately \$78 million (the "Consideration"). All outstanding options of Apptitude are converted into options to acquire shares of Hi/fn common stock, par value \$0.001 per share. The terms and conditions of the acquisition are set forth in an Agreement and Plan of Reorganization dated May 12, 2000 and the First and Second Amendments thereto, dated May 31, 2000 and July 12, 2000, respectively (the "Agreement"), between Hi/fn and Apptitude, and the description herein is qualified in its entirety by reference to the Agreement, which is attached hereto as Exhibit 2.1 and is incorporated herein by reference. The Consideration was negotiated at arms' length by the parties. Prior to the closing of the acquisition, the holders of common shares of Apptitude were not affiliated with Hi/fn. The acquisition will be accounted for as a purchase.

Item 5. OTHER EVENTS

Also on August 11, 2000, Hi/fn announced the appointment of Chris G. Kenber as President and Chief Executive Officer and as a member of Hi/fn's Board of Directors. Mr. Kenber replaced Raymond J. Farnham who resigned to pursue other interests. Additionally, Hi/fn founder and Director Douglas L. Whiting has replaced Mr. Farnham as Chairman of the Board. Mr. Farnham remains a member of the Board of Directors.

Item 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

(a) FINANCIAL STATEMENTS OF BUSINESS ACQUIRED

The required financial statements of Apptitude are not included in this Current Report on Form 8-K. These financial statements will be provided in an amendment to this Current Report on Form 8-K as soon as practicable, but not later than October 25, 2000.

(b) PRO FORMA FINANCIAL INFORMATION

The required pro forma financial information relative to the acquisition of Apptitude is not included in this Report on Form 8-K. The pro forma financial information will be provided in an amendment to this Current Report on Form 8-K as soon as practicable, but not later than October 25, 2000.

(c) EXHIBITS

Exhibit No.	Description
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<S>	<C>
2.1	Agreement and Plan of Reorganization, dated May 12, 2000 between Hi/fn, Inc. and Apptitude, Inc.
2.2	First Amendment to Agreement and Plan of Reorganization dated May 31, 2000
2.3	Second Amendment to Agreement and Plan of Reorganization dated July 12, 2000
99.1	Press Release dated August 14, 2000 announcing Hi/fn's completion of the acquisition of Apptitude and Appointment of Chris G. Kenber as new Hi/fn President and CEO

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

HI/FN, INC.
(Registrant)

Date: August 25, 2000

/s/ WILLIAM R. WALKER

William R. Walker
Vice President, Chief
Financial Officer and Secretary
(Principal Financial and
Accounting Officer)

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