PATENT ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME

CONVEYING PARTY DATA

Name	Execution Date
Uniscape, Inc.	05/29/2002

RECEIVING PARTY DATA

Name:	Trados, Inc.
Street Address:	1292 Hammerwood Avenue
City:	Sunnyvale
State/Country:	CALIFORNIA
Postal Code:	94089

PROPERTY NUMBERS Total: 1

Property Type	Number
Application Number:	13019980

CH $40.00 13019980

CORRESPONDENCE DATA

Fax Number: 6508123444
Phone: 6508123400
Email: sbernardo@carrferrell.com, mschelling@carrferrell.com
Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.
Correspondent Name: Myrna M. Schelling
Address Line 1: Carr and Ferrell LLP
Address Line 2: 120 Constitution Drive
Address Line 4: Menlo Park, CALIFORNIA 94025

ATTORNEY DOCKET NUMBER:	PA5531US
NAME OF SUBMITTER:	Myrna M. Schelling

Total Attachments: 106
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A0581702

State of California

OFFICE OF THE SECRETARY OF STATE

SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 12 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

THE GREAT SEAL OF THE STATE OF CALIFORNIA

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAY 2 9 2002

Bill Jones

Secretary of State

Sec/State Form CE-107 (rev. 9/96)

A0581702

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAY 29 2002

BILL JONES, Secretary of State

AGREEMENT OF MERGER

This Agreement of Merger (this "Agreement of Merger") is entered into between Uniscape Incorporated, a California corporation (herein called "Uniscape") and T-U Acquisition Corp., a California corporation (herein called the "Merging Corporation"). The parties hereto, together with TRADOS Incorporated, a Delaware corporation and the sole shareholder of the Merging Corporation (herein called "TRADOS"), and the representative of the holders of the preferred stock of Uniscape, have also entered into that certain Agreement and Plan of Reorganization dated as of May 21, 2002 (herein called the "Plan").

1. The Merging Corporation shall be merged with and into Uniscape (the "Surviving Corporation") at the effective time in accordance with the General Corporation Law of the State of California (the "Merger").

2. The Surviving Corporation shall continue its existence under its present name pursuant to the provisions of the General Corporation Law of the State of California.

3. At the effective time, the Articles of Incorporation of the Surviving Corporation shall be amended and restated in full to read as set forth on Exhibit A attached hereto.

4. The directors and officers of Uniscape holding office immediately prior to the effective time shall cease to be the directors and officers of the Surviving Corporation at the effective time and immediately after the effective time the directors and officers of the Merging Corporation holding office immediately prior to the effective time shall be the directors and officers of the Surviving Corporation.

5. Pursuant to Section 1.6 of the Plan, upon the effective time of the Merger and subject to all of the terms and conditions of the Plan: (i) all of the shares of Uniscape's common stock that are issued and outstanding immediately prior to the effective time of the Merger shall be canceled and extinguished without consideration, (ii) each share of Uniscape Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock that is issued and outstanding immediately prior to the effective time of the Merger shall be cancelled and extinguished and converted into the right to receive 0.583427649, 0.822479102, 0.858804039, and 0.858803987 shares of TRADOS Series E Convertible Preferred Stock, respectively, in each case in accordance with the terms of the Plan, and (iii) each share of common stock of the Merging Corporation that is issued and outstanding immediately prior to the effective time of the Merger shall be converted into one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. A

copy of the Plan will be furnished by the Surviving Corporation, on request and without cost, to any shareholder of any constituent corporation.

6. This Agreement of Merger may be terminated and the proposed merger abandoned at any time prior to the effective time (a) by mutual consent of the parties hereto and (b) upon termination of the Plan as provided therein.

7. This Agreement of Merger may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original, but all of which counterparts together shall constitute one and the same agreement.

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IN WITNESS WHEREOF the parties have executed this Agreement of Merger on this 23rd day of May, 2002.

T-U ACQUISITION CORP.

By _____
Name: Dev Ganesan
Its: President

By _____
Name: Kevin Passarello
Its: Secretary

UNISCAPE INCORPORATED

By _____
Name: Maggie Tam
Its: Chief Financial Officer

By _____
Name: Shang-Che Cheng
Its: Secretary and Vice President

IN WITNESS WHEREOF the parties have executed this Agreement of Merger on this 23rd day of May, 2002.

T-U ACQUISITION CORP.

By _____
Name: Dev Ganesan
Its: President

By Kevin Passarello
Name: Kevin Passarello
Its: Secretary

UNISCAPE INCORPORATED

By _____
Name: Maggie Tam
Its: Chief Financial Officer

By _____
Name: Shang-Che Cheng
Its: Secretary and Vice President

IN WITNESS WHEREOF the parties have executed this Agreement of Merger on this 23rd day of May, 2002.

T-U ACQUISITION CORP.

By _____
Name: Dev Ganesan
Its: President

By _____
Name: Kevin Passarello
Its: Secretary

UNISCAPE INCORPORATED

By _____
Name: Maggie Tam
Its: Chief Financial Officer

By _____
Name: Shang-Che Cheng
Its: Secretary and Vice President

EXHIBIT A

SIXTH AMENDED AND RESTATED

ARTICLES OF INCORPORATION

OF

UNISCAPE INCORPORATED

FIRST: The name of the corporation (hereinafter referred to as the "Corporation") is Uniscape Incorporated.

SECOND: The existence of the Corporation is perpetual.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California, other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the Corporations Code.

FOURTH: The total number of shares which the Corporation is authorized to issue is 1,000, all of which are of one class and of a par value of $0.01 each, and all of which are common shares.

The Board of Directors of the Corporation may issue any or all of the aforesaid authorized shares of the Corporation from time to time for such consideration as it shall determine and may determine from time to time the amount of such consideration, if any, to be credited to paid-in surplus.

FIFTH: In the interim between meetings of shareholders held for the election of directors or for the removal of one or more directors and the election of the replacement or replacements thereof, any vacancy which results by reason of the removal of a director or directors by the shareholders entitled to vote in an election of directors, and which has not been filled by said shareholders, may be filled by a majority of the directors then in office, whether or not less than a quorum, or by the sole remaining director, as the case may be.

SIXTH: The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

SEVENTH: The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the Corporation and its shareholders through bylaw provisions or through written agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.

OFFICERS' CERTIFICATE

OF

UNISCAPE INCORPORATED

Shang-Che Cheng, Secretary and Vice President, and Maggie Tam, Chief Financial Officer, of Uniscape Incorporated, a corporation duly organized and existing under the laws of the State of California ("**Uniscape**"), do hereby certify:

1. That they are the duly elected, acting and qualified Secretary and Vice President, and Chief Financial Officer, respectively, of Uniscape.

2. There are two authorized classes of stock of Uniscape, consisting of 35,000,000 shares of Common Stock and 19,151,581 shares of Preferred Stock, of which (i) 2,086,958 shares have been designated as Series A Preferred Stock; (ii) 2,220,578 shares have been designated as Series B Preferred Stock; (iii) 4,894,045 shares have been designated as Series C Preferred Stock; and (iv) 10,000,000 shares have been designated as Series D Preferred Stock. There were 6,833,639 shares of Common Stock, 2,086,958 shares of Series A Preferred Stock; 2,220,578 shares of Series B Preferred Stock; 4,844,045 shares of Series C Preferred Stock; and 8,792,675 shares of Series D Preferred Stock outstanding and entitled to vote on the Agreement of Merger in the form attached.

3. The principal terms of the Agreement of Merger in the form attached was duly approved by the board of directors of Uniscape in accordance with the California Corporations Code.

4. Approval of the principal terms of the Agreement of Merger by the holders of (i) more than 1/2 of the shares of common stock of Uniscape outstanding and (ii) more than 2/3 of the shares of preferred stock of Uniscape outstanding voting together as a single class was required. Because the principal terms of the Agreement of Merger do not provide that a class or series of Uniscape preferred stock outstanding is to have distributed to it a lesser amount than would be required by the applicable provisions of the Uniscape articles of incorporation, no separate vote of any series of Uniscape preferred stock was required. The percentage of the outstanding shares of Uniscape's shares entitled to vote on the principal terms of the Agreement of Merger that voted to approve the principal terms of the Agreement of Merger equaled or exceeded the vote required.

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Each of the undersigned declares under penalty of perjury that the statements contained in the foregoing certificate are true of their own knowledge. Executed in Sunnyvale, California, on May 23, 2002.

By: _____
Maggie Tam, Chief Financial Officer

By: _____
Shang-Che Cheng, Secretary and Vice President

OFFICERS' CERTIFICATE

OF

T-U ACQUISITION CORP.

The undersigned, Dev Ganesan, President, and Kevin Passarello, Secretary of T-U Acquisition Corp., a corporation duly organized and existing under the laws of the State of California (the "**Merging Corporation**"), do hereby certify:

1. That they are duly elected, acting and qualified President and Secretary, respectively, of the Merging Corporation.

2. There is one authorized class of shares of the Merging Corporation, consisting of 1,000 shares of Common Stock. There were 1,000 shares of Common Stock of Merging Corporation outstanding and entitled to vote on the Agreement of Merger in the form attached.

3. The principal terms of the Agreement of Merger in the form attached was approved by the Board of Directors of the Merging Corporation in accordance with the California Corporations Code. The required vote of the stockholders of TRADOS Incorporated, a Delaware corporation and the sole shareholder of the Merging Corporation, was obtained.

4. Approval of the principal terms of the Agreement of Merger by the holders of more than 1/2 of the shares of common stock of the Merging Corporation outstanding was required. The percentage of the outstanding shares of the Merging Corporation's shares entitled to vote on the principal terms of the Agreement of Merger that voted to approve the principal terms of the Agreement of Merger equaled or exceeded the vote required.

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Each of the undersigned declares under penalty of perjury that the statements contained in the foregoing certificate are true of their own knowledge. Executed in Alexandria, Virginia and Fairfax, Virginia, respectively, on May 23, 2002.

By: _____
Dev Ganesan, President

By: _____
Kevin Passarello, Secretary

Each of the undersigned declares under penalty of perjury that the statements contained in the foregoing certificate are true of their own knowledge. Executed in Alexandria, Virginia and Fairfax, Virginia, respectively, on May 23, 2002.

By: _____
Dev Ganesan, President

By: Kevin Passarello
Kevin Passarello, Secretary

AGREEMENT AND PLAN OF REORGANIZATION

BY AND AMONG

TRADOS INCORPORATED,

T-U ACQUISITION CORP.,

AND

UNISCAPE INCORPORATED,

Dated as of May 21, 2002

INDEX OF EXHIBITS

Exhibit	Description
Exhibit A	[Reserved]
Exhibit B	Shareholder Representation Agreement
Exhibit C	Sixth Amended and Restated Stockholders Agreement
Exhibit D	Second Amended and Restated Registration Rights Agreement
Exhibit E	Sixth Amended and Restated Certificate of Incorporation
Exhibit F	Form of Legal Opinion of Counsel to the Company
Exhibit G	Form of Employment Agreement (Dan Phillips)
Exhibit H	Form of Employment Agreement (Howard Schwartz)
Exhibit I	Form of Employment Agreement (Craig Nichols)
Exhibit J	Form of Legal Opinion of Counsel to Parent

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AGREEMENT AND PLAN OF REORGANIZATION

This AGREEMENT AND PLAN OF REORGANIZATION (this "**Agreement**") is made and entered into as of May 21, 2002 by and among TRADOS Incorporated, a Delaware corporation ("**Parent**"), T-U Acquisition Corp., a California corporation and a wholly-owned subsidiary of Parent ("**Merger Sub**"), Uniscape Incorporated, a California corporation (the "**Company**"), and Sameer Gandhi, individually in his capacity as the representative of the holders of the "Company Preferred Stock" (as defined in Section 2.2(a)) (the "**Shareholders' Representative**").

RECITALS

A. Parent, Merger Sub and the Company intend to effect a merger of Merger Sub with and into the Company (the "**Merger**"), in accordance with the terms and conditions set forth herein and the California General Corporation Law (the "**CGCL**").

B. For United States federal income tax purposes, Parent, Merger Sub and the Company intend that the Merger qualify as a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "**Code**").

C. Concurrent with the execution and delivery of this Agreement, as a material inducement to Parent and Merger Sub to enter into this Agreement, each of Sequoia Capital X, Sequoia Technology Partners X, Sequoia Capital X Principals Fund, Shang-Che Cheng and Alexander Pressman are executing and delivering to Parent a Voting Agreement (each, a "**Voting Agreement**") and an Irrevocable Proxy (each, an "**Irrevocable Proxy**").

D. Prior to Closing, the holders of issued and outstanding shares of Company Preferred Stock representing, in the aggregate, greater than eighty-five percent (85%) of all of the issued and outstanding Company Preferred Stock are each executing and delivering to Parent a "Shareholder Representation Agreement" (as defined in Section 1.8(a)).

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. At the "Effective Time" (as defined in Section 1.2) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the CGCL, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation and as a wholly-owned subsidiary of Parent. The Company as the surviving corporation after the Merger is hereinafter sometimes referred to 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 Venable, Baetjer and Howard, LLP, 8010 Towers Crescent Drive, Suite 300, Vienna, Virginia, unless another place, time or manner is agreed to 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 executing and filing an agreement of merger, in form and substance reasonably satisfactory to Parent and the Company and consistent with the terms of this Agreement (the "**Agreement of Merger**"), with the Secretary of State of the State of California, in accordance with the applicable provisions of the CGCL (the time of confirmation by the Secretary of State of California of such filing or such later time as may be provided in the Agreement of Merger being referred to herein as the "**Effective Time**"). At the Closing, the Company shall deliver, or cause to be delivered, to Parent the various agreements, certificates, instruments, and documents referred to in Section 6.3 below, duly executed by the parties thereto, and (ii) Parent shall deliver to the Company the various certificates, instruments, and documents referred to in Sections 6.2 below.

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the CGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all of 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 Articles of Incorporation; Bylaws.

(a) Unless otherwise determined by Parent, at the Effective Time, the Articles of Incorporation of the Surviving Corporation shall be automatically amended to be in the form of articles of incorporation attached to the Agreement of Merger as Exhibit A.

(b) Unless otherwise determined by Parent, the Bylaws of the Surviving Corporation shall be automatically amended such that the provisions of the Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the provisions of the Bylaws of the Surviving Corporation until thereafter amended in accordance with the CGCL and as provided in the Articles of Incorporation of the Surviving Corporation and such Bylaws.

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1.5 Directors and Officers. The director(s) of Merger Sub immediately prior to the Effective Time shall be the initial director(s) of the Surviving Corporation, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation. The officers of Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, each to hold office in accordance with the Bylaws of the Surviving Corporation.

1.6 Shares to Be Issued; Effect on Capital Stock.

(a) Conversion of Company Capital Stock. Subject to the terms and conditions of this Agreement (including without limitation Sections 1.6(d) and 1.6(g)), at the Effective Time, the issued and outstanding securities of Company (including without limitation the "Company Common Stock" (as defined in Section 1.6(c)) and the Company Preferred Stock, which securities are collectively referred to herein as "**Company Capital Stock**" (other than any shares of Company Capital Stock to be canceled pursuant to Section 1.6(b)) shall, by virtue of the Merger, be canceled and extinguished and converted automatically, without any other action on the part of the holder(s) thereof or any other party, into the right to receive, upon surrender of the certificate representing such shares of Company Capital Stock in the manner provided in Section 1.8, an aggregate of 14,806,097 shares of Parent's Series E Convertible Preferred Stock, par value $0.01 per share (the "**Parent Series E Stock**"), and Parent shall thereafter issue to the eligible record holders of the Company Capital Stock and, subject to the terms and conditions of this Agreement (including without limitation Sections 1.6(d) and 1.6(g)), to the eligible record holders of "Unexercised Warrants" (as defined in Section 1.6(d)) set forth on Schedule 1.6 (each such eligible record holder of the Company Capital Stock and each such record holder of Unexercised Warrants, a "**Share Recipient**" and collectively, the "**Share Recipients**") such Parent Series E Stock in those certain amounts and proportions set forth in Schedule 1.6. Schedule 1.6 sets forth as of the date hereof: (i) the Company Capital Stock and all other rights to purchase any securities convertible into Company Capital Stock, (ii) the number of shares of Parent Series E Stock, if any, to be issued, subject to the terms and conditions of this Agreement, as of or after the Closing to the Share Recipients, which shares are being allocated among the shareholders of the Company and the holders of Unexercised Warrants, and issued, pursuant to and in accordance with the provisions of Article V, Section 2 of the Company's Articles of Incorporation as in effect immediately prior to the Effective Time, (iii) the number of shares of Parent Series E Stock to be deposited in the "Share Recipient Escrow Fund" (as defined in Section 1.6(g)(i)) pursuant to this Section 1.6 and (iv) the number of shares of Parent Series E Stock to be deposited in the "Parent Escrow Fund" (as defined in Section 1.6(g)(ii)) pursuant to this Section 1.6. No adjustment shall be made in the number of shares of Parent Series E Stock issued in the Merger as a result of any cash proceeds received by the Company after the date hereof and prior to the Effective Time pursuant to the exercise of options, warrants or other rights to acquire Company Capital Stock.

(b) Cancellation of Company-Owned Stock. Each share of Company Capital Stock owned by the Company or any direct or indirect wholly-owned subsidiary of the Company immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof.

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(c) Stock Options. Not later than five (5) days after the date of this Agreement, the Company shall provide written notice, reasonably acceptable to Parent, to each holder (each, an "**Option Holder**" and collectively, the "**Option Holders**") of any unexercised and outstanding option(s) obligating the Company to issue any shares of common stock of the Company (the "**Company Common Stock**"), no par value (each such option, an "**Option**" and collectively, the "**Options**") pursuant to the Uniscape Incorporated 1996 Stock Option Plan (the "**Option Plan**") or otherwise that states (i) that the Company has entered into this Agreement, (ii) that pursuant to this Agreement, all Company Common Stock will be cancelled with no consideration received in exchange therefor, (iii) that a copy of this Agreement is available for review and copying at the headquarters of the Company by such Option Holder during normal business hours, (iv) that none of Parent, Merger Sub, Surviving Corporation or any Parent Subsidiary intends to assume the Option Plan or any of the Options or substitute for such Options any options in Parent, Merger Sub, Surviving Corporation or any Parent Subsidiary, (v) that all Options are accordingly fully vested and exercisable and (vi) that all Options shall terminate and cease to be outstanding effective as of the Effective Time if such Options are not exercised prior to the Effective Time. At the Effective Time, all unexercised Options outstanding immediately prior to the Effective Time shall automatically be terminated and shall cease to be outstanding, and the holders thereof shall have no further rights with respect thereto. On or prior the Closing Date, the Company shall take all action necessary to terminate, effective not later than the Effective Time, the Option Plan as of the Effective Time.

(d) Unexercised Warrants. Each holder of any "Warrant" or "Warrants" (in each case as defined in Section 2.2(b)) or other rights to purchase, prior to the Effective Time, Company Preferred Stock, which Warrants remain outstanding after the date hereof (each, an "**Unexercised Warrant**" and collectively, the "**Unexercised Warrants**"), shall be listed as a "Share Recipient" on Schedule 1.6 hereto and shall, subject to Section 1.8 hereof, upon the exercise or conversion of such Unexercised Warrant, and payment to the Company or the Surviving Corporation of any exercise or conversion price with respect thereto in accordance with the terms of such Unexercised Warrant, be entitled only to receive the number of shares of Parent Series E Stock that such holder would have been entitled to receive had such holder exercised or converted such Unexercised Warrant to acquire shares of Company Preferred Stock immediately prior to the Effective Time. Each holder of an Unexercised Warrant shall be treated for all purposes as a Share Recipient, a "Preferred Shareholder" (as defined in Section 2.7(u)) and a holder of Company Preferred Stock hereunder. The parties hereto acknowledge and agree that the purpose of this Section 1.6(d) is to allocate the Parent Series E Stock to be issued in connection with the Merger among the holders of such Unexercised Warrants and the holders of Company Capital Stock in a manner that has the same result as if such Unexercised Warrants had been exercised prior to the Effective Time. Not later than five (5) days after the date of this Agreement, the Company and the Company's board of directors shall provide written notice reasonably acceptable to Parent to each holder of any Unexercised Warrant of this Agreement and the treatment of Unexercised Warrants provided for herein. The Company shall give Parent prompt notice of any communication(s) by any holder of any Unexercised Warrant with the Company regarding the written notice contemplated by this Section 1.6(d).

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(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. Each stock certificate of Merger Sub evidencing ownership of any such shares of common stock of the Merger Sub shall, as of the Effective Time, evidence ownership of such shares of common stock of the Surviving Corporation.

(f) Fractional Shares. No fraction of a share of Parent Series E Stock will be issued in connection with the Merger, but in lieu thereof, all shares of Parent Series E Stock issued to the Share Recipients in connection with the Merger shall be rounded to the closest whole share of Parent Series E Stock.

(g) Escrow.

(i) Share Recipient Escrow. The "Share Recipient Escrow Shares" (as defined below) shall serve as security for the payment of any and all indemnification obligations of the Share Recipients pursuant to this Agreement. At the Closing, Parent shall deposit the Share Recipient Escrow Shares in an escrow fund (the "**Share Recipient Escrow Fund**") to be held and distributed by a reputable bank or trust company that shall act as escrow agent, which escrow agent shall be selected by Parent prior to the Effective Time and shall be reasonably acceptable to the Company (the "**Escrow Agent**"), pursuant to the terms of an Escrow Agreement, in form and substance reasonably satisfactory to Parent and the Company (the "**Escrow Agreement**"), dated as of the Effective Time, among Parent, the Shareholders' Representative and the Escrow Agent. For purposes of this Agreement, the term "**Share Recipient Escrow Shares**" shall mean (A) that number of shares of Parent Series E Stock equal to fifteen percent (15%) of the total number of shares of Parent Series E Stock otherwise issuable to the Share Recipients pursuant to this Agreement in connection with the Merger, (B) any securities issued with respect to such shares of Parent Series E Stock in the event of any stock split, stock dividend, merger, reorganization, recapitalization or other change in the capital structure of Parent, and (C) the certificate(s), document(s) or instrument(s) representing or evidencing such shares of Parent Series E Stock and securities.

(ii) Parent Escrow. The "Parent Escrow Shares" (as defined below) shall serve as security for the payment of any and all indemnification obligations of Parent pursuant to this Agreement. At the Closing, Parent shall deposit the Parent Escrow Shares in an escrow fund (the "**Parent Escrow Fund**") to be held and distributed by the Escrow Agent pursuant to the terms of the Escrow Agreement. For purposes of this Agreement, the term "**Parent Escrow Shares**" shall mean (A) an additional number of newly issued shares of Parent Series E Stock equal to fifteen percent (15%) of the total number of shares of Parent Series E Stock to be issued to the Share Recipients pursuant to this Agreement in connection with the Merger, (B) any securities issued with respect to such shares of Parent Series E Stock in the event of any stock split, stock dividend, merger, reorganization, recapitalization or other change in the capital structure of Parent, and (C) the certificate(s), document(s) or instrument(s) representing or evidencing such shares. One certificate representing all of the Share Recipient Escrow Shares,

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issued in the name of the Escrow Agent and for the benefit of Parent (subject to the terms of this Agreement and the Escrow Agreement) shall, at the Closing, be delivered to the Escrow Agent, and one certificate representing all of the Parent Escrow Shares, issued in the name of the Escrow Agent and for the benefit of the Share Recipients (subject to the terms of this Agreement and the Escrow Agreement) shall, at the Closing, be delivered to the Escrow Agent

(iii) Voting of Escrow Shares. The Share Recipient who has beneficial ownership of each portion of the Share Recipient Escrow Shares shall be entitled to exercise any lawful voting powers incident to such ownership percentage of such Share Recipient Escrow Shares during such time as such Shares are held in the Share Recipient Escrow Fund. The Parent Escrow Shares shall have no voting rights until they are distributed to the Shareholders' Representative pursuant to the terms of the Escrow Agreement, if ever.

1.7 Dissenting Shares.

(a) Promptly after the date hereof and prior to the Closing, the Company shall timely give all holders of any outstanding shares of Company Capital Stock (or any other party entitled thereto), in accordance with the CGCL, any and all notice of appraisal or dissenters' rights required under the CGCL with respect to such shares.

(b) Notwithstanding any provision of this Agreement to the contrary, the holder of any shares of Company Capital Stock who, as of the Effective Time, has not effectively withdrawn or lost (through failure to perfect or otherwise) appraisal or dissenters' rights pursuant to the CGCL with respect to such shares ("**Dissenting Shares**") shall only be entitled to such appraisal and dissenters' rights as are granted by the CGCL.

(c) Notwithstanding the provisions of Section 1.7(b), if after the Effective Time any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) appraisal or dissenters' rights, then, as of the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration set forth in Section 1.6, if any, with respect to such shares upon surrender of the certificate(s) representing such shares.

(d) The Company shall give Parent (i) prompt notice of any written demands for appraisal of any shares of Company Capital Stock, withdrawals of such demands, and any other instruments served pursuant to the CGCL (including without limitation instruments concerning appraisal or dissenters' rights) and received by the Company and (ii) the opportunity to participate in all negotiations and proceedings with respect to demands for appraisal under the CGCL. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any demands for appraisal of any shares of Company Capital Stock or offer to settle or settle any such demands.

1.8 Surrender of Certificates and Unexercised Warrants.

(a) Exchange Procedures. At or after the Closing, each holder of record of a certificate or certificates which immediately prior to the Effective Time represented outstanding

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shares of Company Capital Stock (each, a "**Certificate**" and collectively, the "**Certificates**") and which shares were converted into the right to receive shares of Parent Series E Stock pursuant to Section 1.6, or which shares were otherwise cancelled, shall surrender such Certificates to Parent or an exchange agent designated by Parent, together with such duly executed documentation as may be reasonably required by Parent or the exchange agent to comply with applicable laws to effect a transfer of such shares. At or after the Closing, each holder of record of an Unexercised Warrant, which Unexercised Warrant was deemed to be converted into the right to receive shares of Parent Series E Stock pursuant to Section 1.6, shall surrender such original Unexercised Warrant to Parent or an exchange agent designated by Parent, together with such duly executed documentation as may be reasonably required by Parent or the exchange agent to comply with applicable laws to effect a transfer of such Unexercised Warrant. Upon such surrender of a Certificate or an original Unexercised Warrant, the Certificate or Unexercised Warrant (as the case may be) so surrendered shall forthwith be canceled and thereafter, upon the delivery by the record holder thereof to Parent of an executed counterpart signature page to the Shareholder Representation Agreement in the form attached hereto as Exhibit B (each, a "**Shareholder Representation Agreement**"), an executed counterpart signature page to the Sixth Amended and Restated Stockholders Agreement in the form attached hereto as Exhibit C (each, a "**Sixth Amended and Restated Stockholders Agreement**") and an executed counterpart signature page to the Second Amended and Restated Registration Rights Agreement in the form attached hereto as Exhibit D (the "**Second Amended and Restated Registration Rights Agreement**"), the record holder thereof shall be entitled to receive the consideration set forth in Section 1.6, if any, with respect to the shares represented by such Certificate or Unexercised Warrant, and a stock certificate or other documentation representing such consideration.

(b) Distributions With Respect to Unexchanged Shares. No dividends or other distributions with respect to Parent Series E Stock declared or made after the Effective Time and with a record date after the Effective Time will be paid to the holder of any unsurrendered Certificate or Unexercised Warrant with respect to the shares of Parent Series E Stock represented thereby until the holder of record of such Certificate or Unexercised Warrant shall surrender such Certificate or original Unexercised Warrant as required by Section 1.6 and shall deliver to Parent an executed counterpart signature page to the Shareholder Representation Agreement, an executed counterpart signature page to the Sixth Amended and Restated Stockholders Agreement and an executed counterpart signature page to the Second Amended and Restated Registration Rights Agreement. Subject to applicable law, following surrender of any such Certificate or original Unexercised Warrant and the delivery to Parent of an executed Shareholder Representation Agreement, an executed Sixth Amended and Restated Stockholders Agreement and an executed Second Amended and Restated Registration Rights, there shall be paid to the record holder of the certificates representing whole shares of Parent Series E Stock issued in exchange therefor, without interest, at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Series E Stock.

1.9 No Further Ownership Rights in Company Capital Stock. All shares of Parent Series E Stock issued upon the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all

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rights pertaining to the 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 that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article I.

1.10 Tax and Accounting Consequences. It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368 of the Code. Each party has consulted with its own tax advisors with regard to the tax consequences of the Merger, and, except as provided in Section 5.13 of this Agreement, no party makes any representation or warranty with regard to the tax treatment of the Merger or the receipt of Parent Series E Stock pursuant to the Merger.

1.11 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, the officers and directors of the Company and Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in a document dated as of the date hereof referring specifically (referencing the appropriate section number) to the representations, warranties or covenants in this Agreement that identifies the basis for an exception to such a representation, warranty or covenant in this Agreement and that is delivered by the Company to Parent prior to the execution of this Agreement (the "**Company Schedules**"), the Company represents and warrants to Parent and Merger Sub as set forth below.

2.1 Organization of the Company and the Company Subsidiaries. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and each "Company Subsidiary" (as defined in Section 2.3) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each of the Company and the "Company Subsidiaries" (as defined in Section 2.3) has the corporate power to own its respective properties and to carry on its respective business as now being conducted. Each of the Company and the Company Subsidiaries is duly qualified to do business and in good standing as a foreign corporation in each jurisdiction in which the failure to be so qualified would have, or would reasonably be expected to have, a material adverse effect on the business, financial condition, results of operations, assets (including without limitation intangible assets), liabilities or prospects of the Company and the Company Subsidiaries taken as a whole (hereinafter referred to as a "**Company Material Adverse Effect**"). The Company has delivered a true and correct copy of its Articles of Incorporation and Bylaws, each as amended to date, and the equivalent organizational documents of each Company Subsidiary, each as amended to date, to Parent.

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2.2 Company Capital Structure.

(a) The authorized capital stock of the Company consists of (i) 19,151,581 shares of preferred stock of the Company, no par value (the "**Company Preferred Stock**"), of which (A) 2,086,958 shares have been designated Series A Preferred Stock (the "**Company Series A Preferred**"), all of which are issued and outstanding, (B) 2,220,578 shares have been designated Series B Preferred Stock (the "**Company Series B Preferred**"), all of which are issued and outstanding, (C) 4,894,045 shares have been designated Series C Preferred Stock (the "**Company Series C Preferred**"), of which 4,844,045 shares are issued and outstanding and 47,221 shares are reserved for issuance upon exercise of issued and outstanding Warrants, and (D) 10,000,000 shares have been designated Series D Preferred Stock (the "**Company Series D Preferred**"), of which 8,792,675 shares are issued and outstanding and 12,000 shares are reserved for issuance upon exercise of issued and outstanding Warrants, and (ii) 35,000,000 shares of Company Common Stock, of which (A) 6,859,222 shares are issued and outstanding, (B) 19,151,581 shares are reserved for issuance upon conversion of the Company Preferred Stock, (C) 5,044,246 shares (not including 255,754 shares that have already been issued upon exercise of options under the Option Plan) are reserved for issuance to employees, officers, directors and consultants pursuant to the Option Plan, and (D) 130,419 shares are reserved for issuance upon exercise of issued and outstanding Warrants for Company Common Stock. The total number of shares of Company Common Stock and Company Preferred Stock outstanding as of the time immediately prior to the Effective Time is set forth in Schedule 2.2(a). The Company Capital Stock is held of record by the persons, with the addresses of record, and in the amounts set forth on Schedule 2.2(a). All outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and not subject to, and were not issued in violation of, preemptive rights created by statute, the Articles of Incorporation or Bylaws of the Company or any agreement to which the Company is a party or by which it or any of the shareholders of the Company (collectively, the "**Shareholders**") is bound. The distribution of the shares of Parent Series E Stock in connection with the Merger, and as set forth on Schedule 1.6 to this Agreement, is in accordance with the provisions of Article V, Section 2 of the Company's articles of incorporation, as in effect as of the date hereof and immediately prior to the Effective Time. Each Share Recipient (x) is an "accredited investor" as that term is defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended (the "**Securities Act**") or (ii) is not a resident of the United States and is not otherwise deemed to be a "US Person" within the meaning of Regulation S under the Securities Act.

(b) The Company has reserved 5,300,000 shares of Company Common Stock for issuance to employees, officers, directors and consultants pursuant to the Option Plan, of which 4,166,020 shares are subject to outstanding, unexercised Options, 878,226 shares remain available for future grant and 255,754 shares are issued and outstanding pursuant to the exercise of Options issued under the Option Plan. No option or options obligating the Company to issue any shares of Company Common Stock or any other security have been granted outside the Option Plan. The Company has reserved 130,419 shares of Company Common Stock and an aggregate of 59,221 shares of Company Series C Preferred and Company Series D Preferred, respectively, for issuance upon exercise of all issued and outstanding warrants obligating the Company to issue any shares of capital stock of the Company (each, a "**Warrant**" and

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collectively, the "**Warrants**"). Schedule 2.2(b) sets forth for each outstanding Option or Warrant the name of the holder of such Option or Warrant, the domicile address of such holder, the number, class and series of shares of Company Capital Stock subject to such Option or Warrant, the exercise price of such Option or Warrant and the vesting schedule for such Option or Warrant, including the extent vested to date and whether the exercisability of any such Warrants will be accelerated by reason of the transactions contemplated by this Agreement. Except for the Options and Warrants described in Schedule 2.2(b), 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 or, to the Company's knowledge, any other party, 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 with respect to each Voting Agreement, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of the Company. Neither the voting stock structure of the Company nor the relative ownership of the Company Common Stock has been altered or changed in contemplation of this Agreement.

(c) The holders of Company Capital Stock, Options and Warrants have been or will be given, or shall have properly waived, any required notice prior to the Merger, and all such rights of notice will be terminated at or prior to the Effective Time. Immediately after the Closing, as a result of the Merger, Parent will own free and clear of any liens, and be the record and sole beneficial owner of, all issued and outstanding shares of capital stock of the Surviving Corporation and no rights to acquire capital stock of the Company or the Surviving Corporation and no Option or Warrant shall be outstanding, other than the Unexercised Warrants, which Unexercised Warrants after the Closing Date shall have no rights other than the rights expressly set forth in Section 1.6 hereof.

(d) As of the Effective Time, each unexercised Option shall have been either (i) exercised by the holder thereof in accordance with such Option's terms (including without limitation the payment to the Company by such holder of the exercise price with respect to such Option) or (ii) cancelled and terminated in accordance with such Option's terms and in accordance with the terms of Section 1.6(c) hereof. No holder or former holder of any Option shall have any claim or cause of action against the Company, the Surviving Corporation or Parent as a result of, arising from, or relating to (x) such Option or (y) the exercise, cancellation or termination of such Option. Any outstanding warrants or other rights to purchase any securities of the Company, other than the Unexercised Warrants, which Unexercised Warrants after the Closing Date shall have no rights other than the rights expressly set forth in Section 1.6 hereof, shall be cancelled and terminated on or prior to the Closing, and the holder of any such warrants or other rights shall cease to have any rights as a holder thereof.

(e) Promptly after the date hereof and prior to the Closing, the Company shall have timely given all holders of any outstanding shares of Company Capital Stock (or any other party entitled thereto), in accordance with the CGCL, any and all notice of appraisal or dissenters' rights required under the CGCL with respect to such shares.

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2.3 Company Subsidiaries. Except as set forth on Schedule 2.3, the Company does not have and has never had any Company Subsidiaries or affiliated companies and does not otherwise own and has never 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. The Company is the owner of all outstanding shares of capital stock, limited company interests or other ownership interests of each of the Company Subsidiaries and all such shares and interests are duly authorized, validly issued, fully paid and nonassessable. All of the outstanding shares of capital stock and interests of each such Company Subsidiary are owned by the Company free and clear of all liens of any kind or rights of others. "**Company Subsidiary**" and "**Company Subsidiaries**" shall mean, with respect to the Company, any corporation, partnership, association, joint venture or other business entity (a) whose board of directors or similar governing body, or a voting majority thereof, may presently be directly or indirectly elected or appointed by the Company, (b) whose management decisions and corporate, partnership or company actions are directly or indirectly subject to the present control of the Company, or (c) whose voting securities are more than fifty percent (50%) owned, directly or indirectly, by the Company.

2.4 Authority; No Conflicts; Consents.

(a) The Company has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The only vote required of the Company's shareholders to duly approve the Merger and this Agreement is the affirmative vote of a majority of the outstanding shares of Company Common Stock, voting as a single class, and two-thirds (2/3) of the outstanding shares of the Company Preferred Stock, voting as a single class. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject only to the approval of the Merger and this Agreement by the Company's shareholders. The Company's Board of Directors has unanimously approved the Merger and this Agreement and, as of the Effective Time, such approval shall not have been withdrawn, rescinded or otherwise revoked. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) The execution and delivery of this Agreement by the Company does not, and, as of the Effective Time, the consummation of the transactions contemplated hereby 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 or acceleration of any obligation or loss of any benefit under, or result in the creation or imposition of any lien, charge or encumbrance on any of the assets or properties of the Company and/or any Company Subsidiary pursuant to (i) any provision of the Articles of Incorporation or Bylaws of the Company, (ii) any mortgage, indenture, lease, contract or other agreement or instrument to which the Company and/or any Company Subsidiary is a party or by which the Company and/or any Company Subsidiary or any of their respective properties or assets may be bound, or which is

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otherwise applicable to the Company and/or any Company Subsidiary or their respective properties or assets, or (iii) any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation (whether foreign or domestic) to which the Company and/or any Company Subsidiary is a party or by which the Company and/or any Company Subsidiary or any of their respective properties or assets may be bound, or that is otherwise applicable to the Company and/or any Company Subsidiary or their respective properties or assets.

(c) No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other federal, state, county, local or foreign governmental authority, instrumentality, agency or commission ("**Governmental Authority**") or any third party is required by or with respect to the Company and/or any Company Subsidiary in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) the filing of the Agreement of Merger with the California Secretary of State, (ii) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws and (iii) the "Company Third-Party Consents" (as defined in Section 6.3(f)), which Company Third-Party Consents shall be obtained by the Closing.

2.5 Company Financial Statements. Schedule 2.5 sets forth (i) true, correct and complete copies of the consolidated audited balance sheet of the Company and the Company Subsidiaries as of December 31, 2001 and the related audited statements of operations, shareholders' equity and cash flows for the twelve-month period then ended and the footnotes thereto and (ii) true, correct and complete copies of the consolidated unaudited balance sheet of the Company and the Company Subsidiaries as of March 31, 2002 (the "**Company Balance Sheet**") and the related unaudited statements of operations, shareholders' equity and cash flows for the 3-month period then ended and the footnotes thereto (collectively, the "**Company Financials**"). The Company Financials are true, correct and complete in all material respects and have been prepared in accordance with generally accepted accounting principles ("**GAAP**") applied on a basis consistent with the Company's past practices, consistent throughout the periods indicated and consistent with each other. The Company Financials present fairly the financial condition, operating results and cash flows of the Company and the Company Subsidiaries as of the dates and during the periods indicated therein, subject to normal year-end adjustments in the case of unaudited financial statements, which such adjustments will not be material in amount or significance.

2.6 No Undisclosed Liabilities. Except as set forth in Schedule 2.6, neither the Company nor any Company Subsidiary has any liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or otherwise (whether or not required to be reflected in financial statements in accordance with GAAP), which individually or in the aggregate, has not been reflected in the Company Balance Sheet.

2.7 No Changes. Except as set forth in Schedule 2.7, since the date of the Company Balance Sheet, there has not been, occurred or arisen any:

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(a) transaction by the Company and/or any Company Subsidiary except in the ordinary course of business as conducted on the date of the Company Balance Sheet and consistent with past practices;

(b) amendments or changes to the Articles of Incorporation or Bylaws of the Company or the equivalent organizational documents of any Company Subsidiary;

(c) capital expenditure or commitment by the Company and/or any Company Subsidiary, either individually or in the aggregate, exceeding $25,000;

(d) destruction of, damage to or loss of any material assets, business or customer of the Company and/or any Company Subsidiary (whether or not covered by insurance);

(e) any work interruptions or labor trouble or claim of wrongful discharge or other unlawful labor practice or action with respect to the Company and/or any Company Subsidiary;

(f) change in accounting methods or practices (including without limitation any change in depreciation or amortization policies or rates) by the Company and/or any Company Subsidiary;

(g) revaluation by the Company and/or any Company Subsidiary of any of its respective 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 and/or any Company Subsidiary of any Company Capital Stock or any security of such Company Subsidiary, or any split, combination or reclassification in respect of any shares of Company Capital Stock or any such security, or any issuance or authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock or such security;

(i) increase in the salary or other compensation payable or to become payable by the Company and/or any Company Subsidiary to any of its respective officers, directors, employees or advisors, or the declaration, payment or commitment or obligation of any kind for the payment of a bonus, severance, sales commission or other additional salary or compensation to any such person except as otherwise contemplated by this Agreement;

(j) sale, lease, license or other disposition of any of the assets or properties of the Company and/or any Company Subsidiary, except in the ordinary course of business as conducted on that date and consistent with past practices;

(k) breach, amendment or termination of any material contract, agreement, permit, lease or license to which the Company and/or any Company Subsidiary is a party or by which the Company and/or such Company Subsidiary is bound;

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(l) loan by the Company and/or any Company Subsidiary to any person or entity, incurrence by the Company of any indebtedness, guaranteeing by the Company and/or any Company Subsidiary of any indebtedness, issuance or sale of any debt securities of the Company or any Company Subsidiary or guaranteeing of any debt securities of others, or creation of any security interest in any of the Company's and/or any Company Subsidiary's assets or properties, except for advances to employees for travel and business expenses in the ordinary course of business, consistent with past practices;

(m) waiver or release of any right or claim of the Company and/or any Company Subsidiary, including any write-off or other compromise of any account receivable of the Company and/or such Company Subsidiary and any cancellation of any indebtedness or other obligation owing to the Company and/or such Company Subsidiary;

(n) commencement or notice or threat of commencement of any lawsuit or proceeding against or investigation of the Company and/or any Company Subsidiary or the affairs of the Company and/or any Company Subsidiary, or any reasonable basis for any of the foregoing;

(o) any creation or assumption by the Company and/or any Company Subsidiary of any mortgage, pledge, security interest or lien or other encumbrance on any asset (other than liens arising under existing lease financing arrangements that are not material and liens for taxes not yet due and payable);

(p) any agreement or arrangement made by the Company and/or any Company Subsidiary to take any action that, if taken prior to the date hereof, would have made any representation or warranty set forth in this Agreement untrue or incorrect as of the date when made;

(q) notice of any claim or potential claim of ownership by a third party of any "Intellectual Property" (as defined in Section 2.11 below) owned or used by the Company and/or any Company Subsidiary or of infringement by the Company and/or any Company Subsidiary of any third party's intellectual property rights;

(r) change in pricing or royalties set or charged by the Company and/or any Company Subsidiary to the customers or licensees of the Company and/or such Company Subsidiary or in pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company and/or any Company Subsidiary;

(s) any change in the authorized capital of the Company or any Company Subsidiary or in the outstanding securities or any change in their respective ownership interests or any grant of any options, warrants, calls, conversion rights or commitments;

(t) event or condition of any character that has or could be reasonably expected to have a Company Material Adverse Effect; or

(u) negotiation or agreement by the Company and/or any Company Subsidiary, or any officer or employees thereof, or, to the knowledge of the Company, any of the

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holders of Company Preferred Stock (each, a "**Preferred Shareholder**" and collectively, the "**Preferred Shareholders**"), to do any of the things described in the preceding clauses (a) through (t) (other than negotiations with Parent and its representatives regarding the transactions contemplated by this Agreement).

2.8 Taxes.

(a) The Company and Company Subsidiaries have filed all "Tax Returns" (as defined below) required to be filed. All such Tax Returns were true, correct and complete in all material respects. All "Taxes" (as defined below) owed by the Company and/or any of the Company Subsidiaries (whether or not shown on any Tax Return) have been paid except for Taxes not yet due. Neither the Company nor any of the Company Subsidiaries are currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made in writing by an authority in a jurisdiction where neither the Company nor any Company Subsidiary files Tax Returns that the Company and/or any Company Subsidiary is or may be subject to taxation by that jurisdiction. There are no security interests on any of the assets of the Company and/or any of the Company Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax, other than any security interest for Taxes not yet due.

(b) Each of the Company and the Company Subsidiaries has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(c) Neither the Company or any Company Subsidiary, nor any director or officer or employee responsible for Tax matters thereof, expects any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax liability of the Company and/or any Company Subsidiary either (i) claimed or raised by any authority in writing or (ii) as to which the Company and/or any Company Subsidiary has knowledge based upon contact with any agent of such authority. The Company has delivered or made available to Parent true, correct and complete copies of all federal income Tax Returns filed, formal Tax opinions and examination reports received, and statements of deficiencies assessed against or agreed to, by or on behalf of the Company and/or any Company Subsidiary since inception.

(d) Neither the Company nor any Company Subsidiary has ever waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) Neither the Company nor any Company Subsidiary has ever filed a consent under Code Section 341(f) concerning collapsible corporations. Neither the Company nor any Company Subsidiary is a party to or bound by (or will prior to the Closing Date become a party to or bound by) any Tax indemnity, Tax allocation, Tax sharing or gain recognition agreement (whether written, unwritten or arising under operation of federal law as a result of being a member of a group filing consolidated Tax Returns (other than a group the common parent of which was the Company), under operation of certain state laws as a result of being a member of a unitary group, or under comparable laws of other states or foreign jurisdictions). Neither the Company or any Company Subsidiary, nor the Surviving Corporation, has ever been required to include any material

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adjustment in taxable income for any Tax period (or portion thereof) ending on or after the Closing Date pursuant to Code Sections 481 or 263A or any comparable provisions under any state or foreign Tax laws.

(f) Neither the Company nor any Company Subsidiary has any liability for the Taxes of any person other than the Company or the Company Subsidiaries (A) under Reg. §1.1502-6 (or any similar provision of state, local, or foreign law), (B) as a transferee or successor, (C) by contract, or (D) otherwise.

(g) For purposes hereof, the term "**Tax**" or "**Taxes**" means (i) any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group for any taxable period, and (iii) any liability for the payment of any amounts of the type described in clause (i) or (ii) as a result of any express or implied obligation to indemnify any other person. The term "**Tax Return**" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

2.9 Restrictions on Business Activities. There is no agreement (non-compete or otherwise), commitment, judgment, injunction, order or decree to which the Company and/or any Company Subsidiary is a party or otherwise binding upon the Company and/or any Company Subsidiary that has or reasonably could be expected to have the effect of prohibiting or impairing any business practice of the Company and/or any Company Subsidiary, any acquisition of property (tangible or intangible) by the Company and/or any Company Subsidiary or the conduct of business by the Company and/or any Company Subsidiary. Without limiting the foregoing, neither the Company nor any Company Subsidiary has not entered into any agreement under which the Company and/or any Company Subsidiary is restricted from selling, licensing, marketing or otherwise distributing any of the products or services of the Company and/or any Company Subsidiary to any class of customers, in any geographic area, during any period of time or in any segment of the market.

2.10 Title to Properties; Absence of Liens and Encumbrances.

(a) Neither the Company nor any Company Subsidiary currently owns or has ever owned any real property.

(b) Schedule 2.10(b) sets forth a list of all real property leases, subleases, licenses or similar agreements or other arrangements ("**Leases**"), together with a brief description of the principal terms thereof, to which the Company and/or any Company Subsidiary is a party (true, correct and complete copies of which have previously been furnished to Parent), in each case setting forth (A) the landlord and tenant or sublessor and sublessee, as applicable, thereof

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and the date and term of each of the Leases, (B) the legal description or street address of each property covered thereby, and (C) a brief description (including size and function) of the principal improvements and buildings thereon (the "**Company Leased Premises**"). The Leases are in full force and effect and have not been amended and neither the Company or any Company Subsidiary nor, to the knowledge of the Company, any other party thereto is in default or breach under any such Lease. No event has occurred that, with the passage of time or the giving of notice or both, would cause a material breach of or default under any of such Leases, except as set forth on Schedule 2.10(b). There is no breach or anticipated breach by any other party to such Leases. With respect to each of the Company Leased Premises:

(i) Each of the Company and/or the Company Subsidiaries (as the case may be) has valid leasehold interests in the Company Leased Premises, which leasehold interests are free and clear of any liens, covenants and easements or title defects of any nature whatsoever;

(ii) To the knowledge of the Company, the portions of the buildings located on the Company Leased Premises that are used in the business of the Company and/or any Company Subsidiary are each in commercially reasonable repair and condition (including without limitation the electrical, mechanical, HVAC, plumbing, elevator, other building systems and structural components serving such premises, and the roofs are water-tight), and are in the aggregate sufficient to satisfy the current and reasonably anticipated normal business activities of the Company and/or such Company Subsidiary (as the case may be) as conducted thereat;

(iii) Each of the Company Leased Premises (A) has direct access to public roads or access to public roads by means of a perpetual access easement, such access being sufficient to satisfy the current and reasonably anticipated normal transportation requirements of the business of the Company and/or any Company Subsidiary (as the case may be) as presently conducted at such premises; and (B) is served by all utilities in such quantity and quality as are sufficient to satisfy the current normal business activities as conducted at such premises;

(iv) Neither the Company nor any Company Subsidiary has received notice of (A) any condemnation proceeding with respect to any portion of the Company Leased Premises or any access thereto, and, to the knowledge of the Company, no such proceeding is contemplated by any Governmental Authority; or (B) any special assessment that may affect any of the Company Leased Premises, and, to the knowledge of the Company, no such special assessment is contemplated by any Governmental Authority;

(v) To the knowledge of the Company, each of the Company Leased Premises, including without limitation all buildings located thereon, conform to all requirements of any underlying covenants, conditions, restrictions and encumbrances, all insurance underwriter's requirements, and all applicable rules, regulations, statutes, ordinances, laws and building codes (whether foreign or domestic) ("**Laws**");

(vi) To the knowledge of the Company, there are no Laws under active consideration by any Governmental Authority that could require the Company and/or any

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Company Subsidiary to make any expenditure in excess of $5,000 to modify or improve the Company Leased Premises to bring them into compliance therewith; and

(vii) Neither the Company nor any Company Subsidiary has received any notice from any insurance company of any defects or inadequacies in the Company Leased Premises or any part thereof which could adversely affect the insurability of the Company Leased Premises or the premiums for the insurance thereof.

(c) Each of the Company and the Company Subsidiaries owns or leases all buildings, machinery, equipment, and other tangible assets necessary for the conduct of its respective businesses as presently conducted and as presently proposed to be conducted. Each such tangible asset is free from material defects, has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used and presently is proposed to be used by the Company and/or the Company Subsidiaries (as the case may be).

(d) Except as set forth on Schedule 2.10(d), each of the Company and/or the Company Subsidiaries has good and marketable title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its respective properties and assets, real, person and mixed, used or held for use in its respective business, free and clear from all liens, charges, pledges, security interests, claims and encumbrances of every kind, 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.

2.11 Intellectual Property.

(a) The Company and/or each Company Subsidiary owns or has the right to use pursuant to license, sublicense, agreement, or permission all Intellectual Property necessary for the operation of its respective businesses as presently conducted and as presently proposed to be conducted by the Company and/or such Company Subsidiary. Except as set forth on Schedule 2.11(a), each item of Intellectual Property owned or used by the Company and/or any Company Subsidiary immediately prior to the Effective Time will be owned or available for use by the Surviving Corporation and/or such Company Subsidiary on identical terms and conditions immediately subsequent to the Effective Time. Each of the Company and the Company Subsidiaries has taken all commercially reasonable action to maintain and protect each item of Intellectual Property that it owns or uses. Without limiting the foregoing, each of the Company and the Company Subsidiaries has and enforces a policy requiring each officer, employee, consultant and contractor who or which has contributed to or participated in the conception and/or development of any Intellectual Property on behalf of the Company and/or any such Company Subsidiary (including without limitation Intellectual Property owned or used by the Company or any such Company Subsidiary) (i) to execute a proprietary information, confidentiality and assignment agreement that is reasonably sufficient to maintain and protect each item of Intellectual Property that the Company and/or such Company Subsidiary owns or uses, and all current and former officers, employees, consultants and contractors of the Company and/or such Company Subsidiary have executed such an agreement, or (ii) to become a party to a

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"work-for-hire" arrangement or agreement with the Company and/or such Company Subsidiary, in accordance with applicable federal, state or foreign law, that has accorded the Company and/or such Company Subsidiary full, effective, exclusive and original ownership of all Intellectual Property arising in connection therewith.

(b) Neither the Company nor any Company Subsidiary has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and neither the Company or any Company Subsidiary, nor any of the directors or officers (and employees with responsibility for Intellectual Property matters) of the Company or any such Company Subsidiary, has ever received any charge, complaint, claim, demand or notice alleging any such interference, infringement, misappropriation or violation and no such charge, complaint, claim, demand or notice has been asserted (including without limitation any claim that the Company and/or any such Company Subsidiary must license or refrain from using any Intellectual Property rights of any third party), and the Company does not know of any basis for any such charge, complaint, claim, demand or notice. The use of the Intellectual Property owned or used by the Company and/or any Company Subsidiary, or licensed or sublicensed to any person by the Company and/or any Company Subsidiary, does not infringe upon the rights of any other person. To the knowledge of the Company, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of the Company.

(c) Schedule 2.11(c) identifies each patent, copyright, trademark or registration that has been issued to the Company and/or any Company Subsidiary with respect to any of the Intellectual Property of the Company and/or such Company Subsidiary, identifies each pending patent application or application for copyright, trademark or registration that the Company and/or any Company Subsidiary has made with respect to any of the Intellectual Property of the Company and/or any Company Subsidiary, and identifies each license, agreement or other permission that the Company and/or any Company Subsidiary has granted to any third party with respect to any of the Intellectual Property of the Company and/or any Company Subsidiary (together with any exceptions). The Company has delivered to Parent true, correct and complete copies of all such patents, copyrights, trademarks, registrations, applications, licenses, agreements and permissions (as amended to date) and have made available to Parent true, correct and complete copies of all other written documentation evidencing ownership and prosecution (if applicable) of each such item. Schedule 2.11(c) also identifies each trade name and unregistered trademark used by the Company and/or any Company Subsidiary in connection with any of the businesses of the Company and/or any Company Subsidiary. In no instance has the eligibility of any Intellectual Property owned by the Company and/or any Company Subsidiary for protection under applicable copyright law (whether foreign or domestic) been forfeited to the public domain by omission of any required notice or any other action. With respect to each item of Intellectual Property required to be identified in Schedule 2.11(c):

(i) except as set forth on Schedule 2.11(c), the Company and/or a Company Subsidiary possesses all right, title, and interest in and to the item, free and clear of any security interest, license, lien, or other restriction;

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(ii) the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge;

(iii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the knowledge of the Company, is threatened that challenges the legality, validity, enforceability, use, or ownership of the item; and

(iv) except as set forth on Schedule 2.11(c), neither the Company nor any Company Subsidiary has ever agreed to indemnify any person for or against any interference, infringement, misappropriation or other conflict with respect to the item.

(d) Schedule 2.11(d) identifies each item of Intellectual Property that any third party owns and that the Company and/or any Company Subsidiary uses pursuant to license, sublicense, agreement or permission. With respect to each item required to be identified in Schedule 2.11(d):

(i) the license, sublicense, agreement or permission covering the item is legal, valid, binding, enforceable and in full force and effect;

(ii) to the knowledge of the Company, the license, sublicense, agreement or permission will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;

(iii) neither the Company or any Company Subsidiary is, nor, to the knowledge of the Company, is any other party to the license, sublicense, agreement or permission, in breach or default, and no event has occurred that with notice or lapse of time would constitute a breach or default or permit termination, modification or acceleration thereunder;

(iv) neither the Company nor any Company Subsidiary has, and, to the knowledge of the Company, no other party to the license, sublicense, agreement or permission has, repudiated any provision thereof;

(v) the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling or charge;

(vi) no action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand is pending or, to the knowledge of the Company, is threatened that challenges the legality, validity or enforceability of the underlying item of Intellectual Property;

(vii) the Company has not granted any sublicense or similar right with respect to the license, sublicense, agreement or permission, except as set forth in Schedule 2.11(d); and

(viii) such item does not contain derivative works of any Intellectual Property not owned in its entirety by the Company and/or the Company Subsidiaries.

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(e) Schedule 2.11(e) identifies each license, sublicense, agreement or other permission that the Company and/or any Company Subsidiary has granted to any third party with respect to any Intellectual Property that the Company owns or with respect to which the Company has been granted rights pursuant to license, sublicense, agreement or other permission, and Schedule 2.11(e) identifies each such item of Intellectual Property. With respect to each item required to be identified in Schedule 2.11(e):

(i) each license, sublicense, agreement or other permission covering the item is legal, valid, binding, enforceable and in full force and effect;

(ii) each such license, sublicense, agreement or other permission will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;

(iii) neither the Company or any Company Subsidiary is, nor, to the knowledge of the Company, is any other party to any such license, sublicense, agreement or other permission, in breach or default, and no event has occurred that with notice or lapse of time would constitute a breach or default or permit termination, modification or acceleration thereunder;

(iv) neither the Company nor any Company Subsidiary has, and, to the knowledge of the Company, no other party to any such license, sublicense, agreement or other permission has, repudiated any provision thereof;

(v) the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling or charge;

(vi) no action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand is pending or, to the knowledge of the Company, is threatened that challenges the legality, validity or enforceability of the underlying item of Intellectual Property;

(vii) the Company and/or a Company Subsidiary has validly and effectively obtained the right and license to use, copy, modify, and distribute any Intellectual Property that a third party owns and that is contained in such item, which Intellectual Property is set forth on Schedule 2.11(e), and such item contains no other Intellectual Property in which any third party may claim superior, joint or common ownership, including any right or license; and

(viii) such item does not contain derivative works of any Intellectual Property not owned in its entirety by the Company and/or the Company Subsidiaries.

(f) The Company does not have any reason to believe that the Surviving Corporation will interfere with, infringe upon, misappropriate or otherwise come into conflict with, any Intellectual Property rights of third parties as a result of the continued operation of the Company's and each Company Subsidiary's respective businesses as presently conducted and as presently proposed to be conducted.

(g) The Company does not have any knowledge of any new products, inventions, procedures or methods of manufacturing or processing that any competitors or other

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third parties have developed that reasonably could be expected to supersede or make obsolete any product, invention, procedure, method of manufacturing or processing, or process of the Company and/or any Company Subsidiary.

(h) Neither this Agreement nor the transactions contemplated hereby, including without limitation any assignment by operation of law or otherwise of any contracts or agreements to which the Company and/or any Company Subsidiary is a party, will result in Parent, the Company, any Company Subsidiary or the Surviving Corporation granting to any third party any right to or with respect to any Intellectual Property owned by, or licensed to, any of them, or will result in either Parent, the Company, any Company Subsidiary or the Surviving Corporation being bound by, or subject to, any non-compete or other restriction on the operation or scope of their respective businesses.

(i) Schedule 2.11(i) lists all contracts, licenses and agreements between the Company and/or any Company Subsidiary and any other person wherein or whereby the Company and/or any such Company Subsidiary has agreed to, or assumed, any material obligation or duty to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any material obligation or liability or provide a right of rescission with respect to the infringement or misappropriation by the Company and/or any such Company Subsidiary or such other person of the Intellectual Property of any person other than the Company.

(j) As used in this Agreement, "**Intellectual Property**" means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof, (b) all trademarks, service marks, trade dress, logos, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including without limitation all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (c) all copyrightable works, all copyrights, and all applications, registrations and renewals in connection therewith, (d) all mask works and all applications, registrations and renewals in connection therewith, (e) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (f) all computer software (including data and related documentation), (g) all other proprietary rights, and (h) all copies and tangible embodiments thereof (in whatever form or medium).

2.12 Agreements, Contracts and Commitments.

(a) Schedule 2.12(a) lists the following contracts and other agreements to which the Company and/or any Company Subsidiary is a party:

(i) any agreement (or group of related agreements) for the lease of personal property to or from any person or entity providing for lease payments in excess of $25,000 per annum;

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(ii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, result in a loss to the Company and/or any Company Subsidiary, or involve consideration in excess of $25,000;

(iii) any agreement concerning a partnership or joint venture;

(iv) any mortgage, loan, indenture or agreement (or group of related agreements) under which the Company and/or any Company Subsidiary has created, incurred, assumed, secured or guaranteed any indebtedness for borrowed money or extended any credit, or any capitalized lease obligation, in excess of an aggregate of $25,000 or under which it has imposed a security interest on any of its assets, tangible or intangible;

(v) any agreement concerning confidentiality or noncompetition;

(vi) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance or other plan or arrangement for the benefit of the current or former directors, officers, consultants or employees of the Company and/or any Company Subsidiary;

(vii) any collective bargaining agreement;

(viii) any agreement for the employment of any individual on a full-time, part-time, consulting or other basis providing annual compensation in excess of $50,000 or providing severance benefits;

(ix) any agreement under which the Company and/or any Company Subsidiary has advanced or loaned any amount to any of the directors, officers, consultants or employees of the Company and/or such Company Subsidiary outside the ordinary course of business;

(x) any agreement under which the consequences of a default or termination could have a Company Material Adverse Effect;

(xi) any contract in excess of $25,000 between the Company and/or any Company Subsidiary and any Governmental Authority, and any bids or proposals for any contract between the Company and/or any Company Subsidiary and any Governmental Authority, or any subcontract between the Company and/or any Company Subsidiary and any third party relating to a prime contract with any Governmental Authority and any bids or proposals for any contract that is a subcontract between the Company and/or any Company Subsidiary and any third party relating to a prime contract with any Governmental Authority;

(xii) any agreements or arrangements that contain any severance pay or post-employment liabilities or obligations;

(xiii) any agreement of indemnification;

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(xiv) any agreement or arrangement that requires any payment by or on behalf of the Company and/or any Company Subsidiary to any director or officer of the Company and/or any Company Subsidiary, or any affiliate thereof, in any capacity;

(xv) any agreement pursuant to which the Company and/or any Company Subsidiary is obligated to pay any commission(s) or similar fee(s);

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

(xvii) 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 business;

(xviii) any agreement pursuant to which any Preferred Shareholder or any other holder of Company Capital Stock is a party;

(xix) any agreement pursuant to which the Company and/or any Company Subsidiary has granted, or may grant in the future, to any party, a source code license or option or other right to use or acquire a source code; and

(xx) any other agreement (or group of related agreements) the performance of which involves consideration in excess of $25,000, whether or not made in the ordinary course of business.

(b) The agreements described at Sections 2.12(a)(i) through (xx) are hereinafter referred to individually as a "**Company Contract**" and collectively as the "**Company Contracts**," of which true, correct and complete copies have been furnished to Parent. Each Company Contract is valid and binding on the Company and/or a Company Subsidiary (as the case may be) and is in full force and effect. Neither the Company nor any Company Subsidiary has breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any of the Company Contracts. Each Company Contract is in full force and effect and, except as otherwise disclosed in Schedule 2.12(b), is not subject to any default thereunder, of which the Company has knowledge, by any party obligated to the Company and/or any Company Subsidiary pursuant thereto. Following the Effective Time, the Surviving Corporation and/or each Company Subsidiary will be permitted to exercise all of the rights of the Company and/or each Company Subsidiary under the Company Contracts without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments that the Company and/or such Company Subsidiary would otherwise be required to pay had the transactions contemplated by this Agreement not occurred. No Company Contract contains any material liquidated damages, penalty or similar provision. Neither the Company nor any Company Subsidiary intends to cancel, withdraw, modify or amend any such Company Contract and, to the knowledge of the Company, no other party to any such contract, agreement or instrument intends to cancel, withdraw, modify or amend any Company Contract.

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2.13 Interested Party Transactions. Except as set forth on Schedule 2.13, no officer, director or shareholder of the Company and/or any Company Subsidiary (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 economic interest in any entity that furnished or sold, or furnishes or sells, services or products that the Company and/or any Company Subsidiary furnishes or sells, or proposes to furnish or sell, (ii) an economic interest in any entity that purchases from or sells or furnishes to, the Company and/or any Company Subsidiary, any goods or services, (iii) any interest in any property, real or personal, tangible or intangible, used in or pertaining to the business of the Company and/or any Company Subsidiary, except for rights as a shareholder and except for rights under a "Company Plan" (as defined in Section 3.20), or (iv) a beneficial interest in any Company Contract; provided, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed an "economic interest in any entity" for purposes of this Section 2.13. Except as set forth in Schedule 2.13, no Preferred Shareholder or employee, officer or director of the Company and/or any Company Subsidiary, and none of their respective spouses or children, is indebted to the Company and/or any Company Subsidiary, nor is the Company or any Company Subsidiary indebted to any of them.

2.14 Compliance with Laws. Each of the Company and the Company Subsidiaries is in compliance and has conducted its respective business so as to comply with all laws, rules and regulations, judgments, decrees or orders of any Governmental Authority applicable to its respective operations or with respect to which compliance is a condition of engaging in the business thereof. There are no judgments or orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency or by arbitration) against the Company and/or any Company Subsidiary or against any of the properties or businesses of the Company and/or any Company Subsidiary. Without limiting the generality of the foregoing, neither the Company nor any Company Subsidiary has violated any United States or foreign import and export control laws and regulations, export licensing laws and regulations or customs regulations (including its obligations under the Foreign Corrupt Practices Act) applicable to the Company and/or any Company Subsidiary. Neither the Company nor any Company Subsidiary has been cited by the United States Department of Commerce, the United States Customs Service or any other relevant Governmental Authority for any violation of United States laws or regulations relating to importing or exporting of products, materials or services. Schedule 2.14 contains a summary of any violation of, or conflict with, any applicable statute, law, rule, regulation, ruling, order, judgment or decree of which such Governmental Authority has notified the Company or any such Company Subsidiary.

2.15 Litigation. Except as set forth in Schedule 2.15, there is no action, suit, claim, arbitration or proceeding of any nature pending, or to the Company's knowledge, threatened against the Company and/or any Company Subsidiary, the assets or properties of the Company or any Company Subsidiary, or any of the officers, directors or employees of the Company and/or any Company Subsidiary, in their respective capacities as such. Except as set forth in Schedule 2.15, there is no investigation pending or, to the Company's knowledge, threatened against the Company and/or any Company Subsidiary, the assets or properties of the Company or any Company Subsidiary, or any of the officers, directors or employees of the Company and/or

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any Company Subsidiary by or before any Governmental Authority. Schedule 2.15 sets forth, with respect to any pending or threatened action, suit, claim, arbitration, proceeding or investigation, the forum, the parties thereto, the subject matter thereof and the amount of damages claimed or other remedy requested. The Company is not aware of any reasonable basis for any other such action, suit, claim, arbitration, proceeding or investigation. No Governmental Authority has at any time challenged or questioned the legal right of the Company and/or any Company Subsidiary to manufacture, offer or sell any of its respective products and/or services in the present manner or style thereof.

2.16 Insurance. Each of the Company and the Company Subsidiaries maintains valid and enforceable insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company, and such insurance policies and fidelity bonds, which are identified in Schedule 2.16, contain provisions that are reasonable and customary in the Company's industry, and there is no claim by the Company and/or any Company Subsidiary 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 each Company Subsidiary is otherwise in full compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage), and any claims for which the Company and/or any Company Subsidiary is seeking insurance coverage have been submitted to the appropriate insurance company in accordance with the terms of the applicable insurance policy. The Company does not have any knowledge of any threatened termination of, or material premium increase with respect to, any of such policies. The insurance coverage provided under such policies includes, without limitation, coverage for any obligations or liabilities arising under or in connection with any software license agreement to which the Company and/or any Company Subsidiary is a party or by which it is bound.

2.17 Minute Books. The minute books of the Company and each Company Subsidiary made available to counsel for Parent are true, correct and complete copies thereof and are the only minute books of the Company and each such Company Subsidiary.

2.18 Environmental Matters.

(a) No substance that is regulated by any Governmental Authority or that has been designated by any Governmental Authority to be radioactive, toxic, hazardous or otherwise a danger to health or the environment (a "**Hazardous Material**") is present in, on, under or adjacent to any property that the Company and/or any Company Subsidiary has at any time owned, operated, occupied, leased or used (including both the land and improvements thereon) and no reasonable likelihood exists that any Hazardous Material will come to be present in, on, or under any properties owned, operated, occupied, leased or used at any time (including both land and improvements thereon) by the Company and/or any Company Subsidiary. Neither the Company nor any Company Subsidiary has operated any underground storage tanks, and the Company does not have any knowledge of the existence, at any time, of any underground storage tank (or related piping or pumps), at any property that the Company and/or any Company Subsidiary has at any time owned, operated, occupied or leased.

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(b) Neither the Company nor any Company Subsidiary has transported, stored, used, manufactured, disposed of, sold, released or exposed its employees or any other person to any Hazardous Material, or arranged for the disposal, discharge, storage or release of any Hazardous Material, or currently engages in any of the foregoing activities, in violation of any applicable statute, rule, regulation, order, treaty or law.

(c) No permits, consents, waivers, exemptions, licenses, approvals or other authorizations are required to be obtained by the Company and/or any Company Subsidiary under the laws of any Governmental Authority relating to land use, public and employee health and safety, pollution or protection of the environment (collectively, "**Environmental Laws**"). Each of the Company and the Company Subsidiaries has been and is in compliance in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any regulation, code, plan, order, decree, judgment, notice or demand letter issued, entered, promulgated or approved thereunder. Neither the Company nor any Company Subsidiary has received any notice or is aware of any past or present condition or practice of the businesses conducted by the Company and/or any Company Subsidiary that forms or could be reasonably expected to form the basis of any material claim, action, suit, proceeding, hearing or investigation (collectively "**Environmental Claims**") against the Company and/or any Company Subsidiary (or against any person or entity whose liability for any Environmental Claims the Company and/or any Company Subsidiary has retained or assumed either contractually or by operation of law), arising out of the manufacture, processing, distribution, use, treatment, storage, spill, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Material by the Company and/or any Company Subsidiary.

(d) No action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending, or to the Company's knowledge, threatened concerning any Environmental Law, Hazardous Material or any Hazardous Materials Activity of the Company and/or any Company Subsidiary. The Company is not aware of any fact or circumstance that could involve the Company and/or any Company Subsidiary in any environmental litigation or impose upon the Company and/or any Company Subsidiary any environmental liability.

2.19 Brokers' and Finders' Fees; Third-Party Expenses. Except as set forth on Schedule 2.19, 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 this Agreement or any transaction contemplated hereby. Schedule 2.19 sets forth the principal terms and conditions of any agreement, written or oral, with respect to such fees. Schedule 2.19 sets forth the Company's current reasonable estimate of all 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.

2.20 Employee Matters and Benefit Plans.

(a) All employee compensation, severance, incentive, fringe, deferred compensation, stock option, stock appreciation right, phantom stock, restricted stock, bonus, profit sharing, retirement or other benefit plans, programs, policies, systems, commitments or

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other arrangements (whether or not set forth in a written document) covering any active, former or retired employee or consultant of the Company and/or any Company Subsidiary, or any trade or business (whether or not incorporated) that is a member of a controlled group or that is under common control with the Company and/or any Company Subsidiary within the meaning of Section 414 of the Code, or with respect to which the Company and/or any Company Subsidiary has or may in the future have liability, are listed on Schedule 2.20 (individually, the "**Company Plan**" and collectively, the "**Company Plans**"). Copies of all such written Company Plans and their funding agreements and summaries of any other Company Plans that are not in writing have been provided to Parent. To the extent applicable, the Company Plans comply in all material respects with the requirements of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and the Code, and any Company Plan intended to be qualified under Section 401(a) of the Code and each trust intended to qualify under Section 501(a) of the Code (i) has either obtained a favorable determination letter as to its qualified status from the Internal Revenue Service or still has a remaining period of time under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination, and (ii) incorporates or has been amended to incorporate all provisions required to comply with the Tax Reform Act of 1986 and subsequent legislation. The Company has furnished or made available to Parent copies of the most recent Internal Revenue Service determination letters for Company Plans qualified under Code Section 401(a) and Forms 5500 for the three most current Company Plan years filed with respect to any and all Company Plans. No Company Plan is covered by Title IV of ERISA or Section 412 of the Code. Neither the Company nor any of the Company Subsidiaries or affiliates thereof has been a contributing employer to any multiemployer plan as defined under Section 4001 of ERISA. Neither the Company or any Company Subsidiary, nor any officer or director of the Company or any Company Subsidiary, has incurred any liability or penalty under Section 4971 through 4980E of the Code or Title 1 of ERISA. None of the Company Plans promises or provides retiree medical or other retiree welfare benefits to any person except as required by applicable law, including without limitation the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. Each Company Plan has been maintained and administered in all material respects in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations (whether foreign or domestic), including but not limited to ERISA and the Code, which are applicable to such Company Plans. No suit, action or other litigation (excluding claims for benefits incurred in the ordinary course of Company Plan activities) has been brought, or to the knowledge of the Company is threatened, against or with respect to any such Company Plan. All contributions, reserves or premium payments required to be made or accrued as of the date hereof to the Company Plans have been made or accrued. Schedule 2.20 includes a listing of the accrued vacation liability of the Company and each Company Subsidiary as of the date of the Company Balance Sheet. All reports, returns, forms and notices required to be filed with any government agency (whether foreign or domestic) or furnished to participants or beneficiaries with respect to the Company Plans, by the Code, ERISA or any other applicable law (whether foreign or domestic), have been so filed and furnished. Neither the Company nor any Company Subsidiary is under any legal or contractual obligation to continue any of the Company Plans and may terminate any or all of the Company Plans at any time without incurring any liability.

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(b) Neither the Company nor any Company Subsidiary is bound by or subject to (and none of their respective assets or properties is bound by or subject to) any arrangement with any labor union. No employee of the Company and/or any Company Subsidiary is represented by any labor union or covered by any collective bargaining agreement and, to the knowledge of the Company, no campaign to establish such representation is in progress. There is no pending or, to the knowledge of the Company, threatened labor dispute involving the Company and/or any Company Subsidiary and any group of its or such Company Subsidiary's employees nor has the Company or any Company Subsidiary experienced any labor interruptions over the past three years, and the Company considers the Company's and each Company Subsidiary's relationship with their respective employees to be good.

(c) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment (including without limitation severance, unemployment compensation, bonus or otherwise) becoming due to any director, officer or employee of the Company and/or Company Subsidiary under any Company Plan or otherwise, (ii) result in a payment or benefit becoming due to any director, officer or employee of the Company and/or any Company Subsidiary under any Company Plan or otherwise that will be characterized as a "parachute payment" within the meaning of Code Section 280G (but without regard to clause (b)(2)(A)(ii) thereof), (iii) materially increase any benefits otherwise payable under any Company Plan, or (iv) result in the acceleration of the time of payment or vesting of any such benefits, except for the acceleration of the Options contemplated by Section 1.6(c) hereof.

(d) The Company and each Company Subsidiary has complied with the continuation health care coverage requirements of Section 4980B of the Code and Sections 601 through 608 of ERISA with respect to "qualifying events," as defined in the Code and ERISA, that occur on or before the Closing with respect to any current or former employees of the Company and/or any Company Subsidiary and their respective "qualified beneficiaries," as defined in the Code and ERISA, and with the requirements of the Health Insurance Portability and Accountability Act and other applicable health insurance requirements in Section 4980D of the Code and Sections 701 through 734 of ERISA.

2.21 Employees. To the Company's knowledge, no employee of the Company or any Company Subsidiary (i) is in violation of any term of any employment contract, patent disclosure agreement, employment agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Company or such Company Subsidiary because of the nature of the business conducted or presently proposed to be conducted by the Company or such Company Subsidiary or to the use of trade secrets or proprietary information of others or (ii) has given notice to the Company or such Company Subsidiary, nor is the Company otherwise aware, that any employee intends to terminate his or her employment with the Company or such Company Subsidiary (as the case may be). Schedule 2.21 sets forth an accurate list, as of the date hereof, of all officers, directors and employees of the Company and/or each Company Subsidiary listing all employment agreements with such officers, directors and employees and the rate of compensation (and the portions thereof attributable to salary, bonus and other compensation, respectively) of each such person as of (a) the date of the Company Balance Sheet and (b) the date hereof. The Company has provided to Parent true, complete and

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correct copies of all employment contracts, commitments and arrangements with persons listed on Schedule 2.21. To the knowledge of the Company, no director, officer, employee, or group of employees of the Company and/or any Company Subsidiary has any plans to terminate employment with the Company, any Company Subsidiary or the Surviving Corporation. Each current and former employee, officer, contractor and consultant of the Company and/or any Company Subsidiary who or which has contributed to or participated in the conception and/or development of any Intellectual Property on behalf of the Company and/or any Company Subsidiary (including without limitation Intellectual Property owned or used by the Company and/or any Company Subsidiary) has either (i) executed a proprietary information, confidentiality and assignment agreement that is reasonably sufficient to maintain and protect each item of Intellectual Property that the Company owns or uses or (ii) become a party to a "work-for-hire" arrangement or agreement with the Company, in accordance with applicable federal and state law, that has accorded the Company full, effective, exclusive and original ownership of all Intellectual Property arising in connection therewith. To the knowledge of the Company, neither the Company nor any Company Subsidiary is subject to any claim for wrongful dismissal, constructive dismissal or any other claim or complaint, actual or threatened, or any audit or investigation by any government agency (whether foreign or domestic), or any litigation, actual or threatened, relating to hiring and/or promotion policies, employment terms and conditions, employment discrimination or termination of employment. The Company and each Company Subsidiary has complied in all material respects with all applicable laws relating to its respective employees, including without limitation provisions thereof relating to wages, hours, vacation, overtime, notice, pay in lieu of notice, termination and severance pay, occupational health and safety, equal opportunity, collective bargaining and the payment of social security and other Taxes, the Worker Adjustment and Retraining Notification Act, and the Immigration Reform and Control Act of 1986, or any similar provisions of foreign, federal, state or local law. To the knowledge of the Company, no employee is in breach of any noncompete, nondisclosure, confidentiality, or similar provision of any contract to which such employee is bound, by virtue of his or her employment with the Company or any Company Subsidiary.

2.22 No Interference or Conflict. To the knowledge of the Company, no shareholder, officer, employee or consultant of the Company and/or any Company Subsidiary is obligated under any contract or agreement subject to any judgment, decree or order of any court or administrative agency that would interfere with such person's efforts to promote the interests of the Company and/or such Company Subsidiary or that would interfere with the Company's and/or such Company Subsidiary's business. Neither the execution nor delivery of this Agreement, nor the carrying on of the business of the Company and/or such Company Subsidiary as presently conducted or proposed to be conducted nor any activity of such officers, directors, employees or consultants in connection with the carrying on of the Company's and/or such Company Subsidiary's business as presently conducted or currently proposed to be conducted, will, to the knowledge of the Company, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract or agreement under which any of such officers, directors, employees or consultants is now bound.

2.23 Governmental Authorizations and Licenses. Each of the Company and the Company Subsidiaries owns or holds all licenses, consents, certificates, franchises, grants, permits and other governmental authorizations required to conduct its respective business as

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currently being conducted or as proposed to be conducted or pursuant to which the Company and/or such Company Subsidiary currently operates or holds any interest in any of its properties (collectively, the "**Company Material Permits**"). The Company Material Permits are valid and in full force and effect, and neither the Company nor any Company Subsidiary has received any notice that any Governmental Authority intends to modify, cancel, terminate or not renew any Company Material Permit. Each of the Company and the Company Subsidiaries has conducted and is conducting its respective business in compliance with the requirements, standards, criteria and conditions set forth in the Company Material Permits and other applicable orders, approvals, variances, rules and regulations (whether foreign or domestic) and is not in violation of any of the foregoing. The transactions contemplated by this Agreement will not result in a default under or a breach or violation of, or adversely affect any of the rights and benefits afforded to the Company and/or any Company Subsidiary by any of the Company Material Permits.

2.24 No Defaults. Neither the Company or any Company Subsidiary is, nor has the Company or any Company Subsidiary received notice that the Company and/or any Company Subsidiary is or would be with the passage of time, in violation of any provision of its Articles of Incorporation or Bylaws or its equivalent organizational documents. Neither the Company nor any Company Subsidiary is, and neither the Company nor any Company Subsidiary has received notice that the Company and/or such Company Subsidiary is or would be with the passage of time, in default or violation of any term, condition or provision of (i) any judgment, decree, order, injunction or stipulation applicable to the Company and/or such Company Subsidiary or any of its respective properties or assets or (ii) any agreement, note, mortgage, indenture, contract, lease, sublease or instrument, permit, concession, franchise or license to which the Company and/or such Company Subsidiary is a party or by which the Company and/or such Company Subsidiary or its respective properties or assets may be bound, or that is otherwise applicable to the Company and/or such Company Subsidiary or its respective properties or assets, except for any such default or violation which has not had, and that would not be reasonably expected to have, (x) a Company Material Adverse Effect or (y) an adverse effect on the ability of the Company to consummate the transactions contemplated by this Agreement.

2.25 Accounts and Notes Receivable. The receivables, including unbilled accounts receivables, shown on Company Balance Sheet arose in the ordinary course of business and have been collected or, to the Company's knowledge, are collectible in the book amounts thereof, less an amount not in excess of the allowance for doubtful accounts provided for in such balance sheet. To the Company's knowledge, allowances for doubtful accounts and warranty returns are adequate and have been prepared in accordance with GAAP consistently applied and in accordance with the past practices of the Company. The receivables of the Company and each Company Subsidiary arising after the date of the Company Balance Sheet arose in the ordinary course of business and have been collected or, to the Company's knowledge, are collectible in the book amounts thereof, less allowances for doubtful accounts and warranty returns determined in accordance with the past practices of the Company. To the Company's knowledge, none of the receivables of the Company or any Company Subsidiary is subject to any claim of offset, recoupment, set off or counterclaim and the Company does not have knowledge of any facts or circumstances (whether asserted or unasserted) that could give rise to any such claim. No amount of receivables is contingent upon the performance by the Company or any Company Subsidiary of any obligation or contract. Except as set forth on Schedule 2.25, no person has any

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lien on any of such receivables and no agreement for deduction or discount has been made with respect to any of such receivables.

2.26 Bank Accounts; Powers of Attorney. Schedule 2.26 sets forth an accurate list, as of the date of this Agreement, of the following: (i) the name of each financial institution in which the Company and/or any Company Subsidiary has any account or safe deposit box; (ii) the names in which the accounts or boxes are held; (iii) the type of account; and (iv) the name of each person authorized to draw thereon or have access thereto. Schedule 2.26 also sets forth the name of each person, corporation, firm or other entity holding a general or special power of attorney from the Company and/or any Company Subsidiary and a description of the terms of such power.

2.27 Customers; Backlog; Returns and Complaints. Schedule 2.27 sets forth the customers of the Company and each Company Subsidiary that represented five percent (5%) or more of the Company's consolidated revenues for the Company's last three (3) fiscal years ("**Company Significant Customers**") and a description of backlog of customer orders. The Company does not have any reason to believe that the Company or any Company Subsidiary is at risk of losing any of the Company Significant Customers. Neither the Company nor any Company Subsidiary has received any customer complaints concerning its products which complaints the Company or such Company Subsidiary has not been able to address to the satisfaction of the complainant within a commercially reasonable length of time after the receipt of notice of such complaint, nor has the Company or any Company Subsidiary had any of its products returned by a purchaser thereof except for normal warranty returns consistent with past history and those returns that would not result in a reversal of any revenue by the Company.

2.28 Representations Complete. No representation or warranty made by the Company in this Agreement, nor any financial statement, other written financial information or schedule, certificate, schedule, exhibit or other materials prepared and furnished or to be prepared and furnished by the Company, any of the Preferred Shareholders or their respective representatives or agents pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading in the light of the circumstances under which they were furnished. There is no event, fact or condition that has caused, or that reasonably could be expected to cause, a Company Material Adverse Effect, that has not been set forth in this Agreement or the schedules attached hereto.

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ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as disclosed in a document dated as of the date hereof referring specifically (referencing the appropriate section number) to the representations, warranties or covenants in this Agreement that identifies the basis for an exception to such a representation, warranty or covenant in this Agreement and that is delivered by the Parent and Merger Sub to the Company prior to the execution of this Agreement (the "**Parent Schedules**"), Parent and Merger Sub represent and warrant to the Company as set forth below.

3.1 Organization, Standing and Power. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and each "Parent Subsidiary" (as defined in Section 3.3 below) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of California. Each of Parent, the "Parent Subsidiaries" (as defined in Section 3.3 below) and Merger Sub has the corporate power to own its respective properties and to carry on its respective business as now being conducted and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the failure to be so qualified would have, or would reasonably be expected to have, a material adverse effect on the business, financial condition, results of operations, assets (including without limitation intangible assets), liabilities or prospects of Parent, Merger Sub and the Parent Subsidiaries taken as a whole (hereinafter referred to as a "**Parent Material Adverse Effect**"). Parent has delivered or made available to the Company a true and correct copy of its Certificate of Incorporation and Bylaws, each as amended to date, and the equivalent organizational documents of each Parent Subsidiary, each as amended to date.

3.2 Capital Structure.

(a) The authorized capital stock of Parent consists of (i) 18,000,000 shares of preferred stock, par value $.01 per share (the "**Parent Preferred Stock**"), of which (A) 3,640,000 shares have been designated Series A Convertible Preferred Stock, of which 3,640,000 shares are issued and outstanding, (B) 4,230,034 shares have been designated Series BB Convertible Preferred Stock, of which 4,169,605 shares are issued and outstanding, (C) 5,333,330 shares have been designated Series C Convertible Preferred Stock, of which 5,333,330 shares are issued and outstanding, (D) 4,314,882 shares have been designated Series D Convertible Preferred Stock, of which 4,314,882 shares are issued and outstanding, (E) 436,478 shares have been designated Series DD Convertible Preferred Stock, of which 436,478 shares are issued and outstanding, and (F) 45,276 shares are unissued and undesignated, and (ii) 56,500,000 shares of common stock, par value $.01 per share ("**Parent Common Stock**"), of which (A) 30,554,752 shares are issued and outstanding, (B) 17,954,724 shares are reserved for issuance upon conversion of the Parent Preferred Stock, and (C) 4,544,214 shares are reserved for issuance to employees, officers, directors and consultants pursuant to the Parent's 2000 Stock Option and Incentive Plan (the "**Parent Option Plan**"). The total number of shares of Parent Common Stock and Parent Preferred Stock outstanding and the conversion rates of and accrued

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but unpaid dividends on the Parent Preferred Stock, in each case calculated as of March 31, 2002, are set forth in Schedule 3.2(a). 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 not subject to, and were not issued in violation of, preemptive rights created by statute, the Certificate of Incorporation or Bylaws of Parent or any agreement to which Parent is a party or by which it is bound, and are free of any liens or encumbrances other than any liens or encumbrances created by or imposed upon the holders thereof. Notwithstanding the foregoing, upon the filing of the Sixth Amended and Restated Certificate of Incorporation, in the form attached hereto as Exhibit E, with the Delaware Secretary of State and the effectiveness of the Merger, the authorized capital stock of Parent shall consist of (x) 34,921,308 shares of Parent Preferred Stock, of which (A) 3,640,000 shares shall have been designated Series A Convertible Preferred Stock, of which 3,640,000 shares shall be issued and outstanding, (B) 4,169,605 shares shall have been designated Series BB Convertible Preferred Stock, of which 4,169,605 shares shall be issued and outstanding, (C) 5,333,330 shares shall have been designated Series C Convertible Preferred Stock, of which 5,333,330 shares shall be issued and outstanding, (D) 4,314,882 shares shall have been designated Series D Convertible Preferred Stock, of which 4,314,882 shares shall be issued and outstanding, (E) 436,478 shares shall have been designated Series DD Convertible Preferred Stock, of which 436,478 shares shall be issued and outstanding, and (F) 17,027,013 shares shall have been designated Parent Series E Stock, and (y) 76,000,000 shares of Parent Common Stock, of which (A) 30,554,752 shares shall be issued and outstanding, (B) 34,921,308 shares shall be reserved for issuance upon conversion of the Parent Preferred Stock and the Parent Series E Stock, and (C) 8,069,475 shares shall be reserved for issuance to employees, officers, directors and consultants pursuant to the Parent Option Plan, as amended.

(b) The authorized capital stock of Merger Sub consists of 1,000 shares of Common Stock, all of which, as of the date hereof, are issued and outstanding and are held by Parent. 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.

(c) Parent has reserved 4,544,214 shares of Parent Common Stock for issuance to employees, officers, directors and consultants pursuant to the Parent Option Plan, of which 3,624,500 shares are subject to outstanding, unexercised options, 919,714 shares remain available for future grant and no shares have been issued pursuant to the exercise of options issued under the Parent Option Plan. No option or options obligating the Parent to issue any shares of Parent Common Stock or any other security have been granted outside the Parent Option Plan. Parent has no issued and outstanding warrants obligating Parent to issue any shares of capital stock of Parent. Except for such options and warrants and except for shares of Parent Common Stock subject to issuance upon conversion of the Parent Preferred Stock and the Parent Series E Stock, there are no options, warrants, calls, rights, commitments or agreements of any character, written or oral, 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, 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 Parent.

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(d) The shares of Parent Series E Stock to be issued pursuant to the Merger have been duly authorized and, when issued and delivered to the Share Recipients against payment therefor in accordance with the terms of this Agreement and, in the case of the Share Recipient Escrow Shares and the Parent Escrow Shares, the Escrow Agreement, will be duly authorized, validly issued, fully paid and non-assessable.

3.3 Parent Subsidiaries. Except as set forth on Schedule 3.3, Parent does not have and has never had any "Parent Subsidiaries" (as defined below) or affiliated companies and does not otherwise own and has never 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. Except as set forth on Schedule 3.3, Parent is the owner of all outstanding shares of capital stock, limited company interests or other ownership interests of each of the Parent Subsidiaries and all such shares and interests are duly authorized, validly issued, fully paid and nonassessable. All of the outstanding shares of capital stock and interests of each such Parent Subsidiary are owned by Parent free and clear of all liens of any kind or rights of others. "**Parent Subsidiary**" and "**Parent Subsidiaries**" shall mean, with respect to Parent, any corporation, partnership, association, joint venture or other business entity (a) whose board of directors or similar governing body, or a voting majority thereof, may presently be directly or indirectly elected or appointed by Parent, (b) whose management decisions and corporate, partnership or company actions are directly or indirectly subject to the present control of Parent, or (c) whose voting securities are more than fifty percent (50%) owned, directly or indirectly, by Parent.

3.4 Authority; No Conflicts; Consents.

(a) Parent and Merger Sub have all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The vote required of Parent's stockholders to duly approve the transactions contemplated this Agreement is the affirmative vote of (i) a majority of the outstanding shares of Parent Common Stock and Parent Preferred Stock voting together as a single class, (ii) a majority of the outstanding shares of Series A Convertible Preferred Stock of Parent and Series BB Convertible Preferred Stock of Parent voting together as a single class, (iii) a majority of the outstanding shares of Series C Convertible Preferred Stock of Parent voting as a single class and (iv) a majority of the outstanding shares of Series D Convertible Preferred Stock of Parent and Series DD Convertible Preferred Stock of Parent voting together as a single class. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub, subject only to the approval of the Merger, this Agreement, and the Sixth Amended and Restated Certificate of Incorporation by Parent's stockholders. Parent's Board of Directors has unanimously approved the Merger and this Agreement and, as of the Effective Time, such approval shall not have been withdrawn, rescinded or otherwise revoked. This Agreement has been duly executed and delivered by Parent and Merger Sub and constitutes the legal, valid and binding obligations of Parent and Merger Sub, enforceable in accordance with its terms except (x) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (y) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

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(b) The execution and delivery of this Agreement by Parent and Merger Sub does not, and, as of the Effective Time, the consummation of the transactions contemplated hereby 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 or acceleration of any obligation or loss of any benefit under, or result in the creation or imposition of any lien, charge or encumbrance on any of the assets or properties of Parent or any Parent Subsidiary (including Merger Sub) pursuant to (i) any provision of the Certificate of Incorporation or Bylaws of Parent or any Parent Subsidiary (including Merger Sub), (ii) any mortgage, indenture, lease, contract or other agreement or instrument to which Parent or any Parent Subsidiary (including Merger Sub) is a party or by which Parent or any Parent Subsidiary (including Merger Sub) or any of their respective properties or assets may be bound, or that is otherwise applicable to Parent or any Parent Subsidiary (including Merger Sub) or their respective properties or assets, or (iii) any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation to which Parent or any Parent Subsidiary (including Merger Sub) is a party or by which Parent or any Parent Subsidiary (including Merger Sub) or any of their respective properties or assets may be bound, or that is otherwise applicable to Parent or any Parent Subsidiary (including Merger Sub) or their respective properties or assets.

(c) No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or any third party is required by or with respect to Parent or any Parent Subsidiary (including Merger Sub) in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) the filing of the Agreement of Merger with the California Secretary of State (ii) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws and (iii) the "Parent Third-Party Consents" (as defined in Section 6.2(d)), which Parent Third-Party Consents shall be obtained by the Closing.

3.5 Parent Financial Statements. Schedule 3.5 sets forth (i) true, correct and complete copies of the consolidated unaudited balance sheet of Parent and the Parent Subsidiaries as of December 31, 2001 and the related unaudited statements of operations, shareholders' equity and cash flows for the twelve-month period then ended and the footnotes thereto and (ii) true, correct and complete copies of the consolidated unaudited balance sheet of Parent and the Parent Subsidiaries as of March 31, 2002 (the "**Parent Balance Sheet**") and the related unaudited statements of operations, shareholders' equity and cash flows for the three-month period then ended and the footnotes thereto (collectively, the "**Parent Financials**"). The Parent Financials are true, correct and complete in all material respects and have been prepared in accordance with GAAP applied on a basis consistent with Parent's past practices, consistent throughout the periods indicated and consistent with each other. The Parent Financials present fairly the financial condition, operating results and cash flows of Parent and the Parent Subsidiaries as of the dates and during the periods indicated therein, subject to normal year-end adjustments in the case of unaudited financial statements, which such adjustments will not be material in amount or significance.

3.6 No Undisclosed Liabilities. Except as set forth in Schedule 3.6, neither Parent nor any Parent Subsidiary has any liability, indebtedness, obligation, expense, claim, deficiency,

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guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or otherwise (whether or not required to be reflected in financial statements in accordance with GAAP), which individually or in the aggregate, has not been reflected in the Parent Balance Sheet. .

3.7 No Changes. Except as set forth in Schedule 3.7, since the date of the Parent Balance Sheet, there has not been, occurred or arisen any:

(a) transaction by Parent and/or any Parent Subsidiary except in the ordinary course of business as conducted on the date of the Parent Balance Sheet and consistent with past practices;

(b) amendments or changes to the Certificate of Incorporation or Bylaws of Parent or the equivalent organizational documents of any Parent Subsidiary;

(c) capital expenditure or commitment by Parent and/or any Parent Subsidiary, either individually or in the aggregate, exceeding $25,000;

(d) destruction of, damage to or loss of any material assets, business or customer of Parent and/or any Parent Subsidiary (whether or not covered by insurance);

(e) any work interruptions or labor trouble or claim of wrongful discharge or other unlawful labor practice or action with respect to Parent and/or any Parent Subsidiary;

(f) change in accounting methods or practices (including without limitation any change in depreciation or amortization policies or rates) by Parent and/or any Parent Subsidiary;

(g) revaluation by Parent and/or any Parent Subsidiary of any of its respective assets;

(h) declaration, setting aside or payment of a dividend or other distribution with respect to the issued and outstanding securities of Parent, including, without limitation, the Parent Preferred Stock or Parent Common Stock ("**Parent Capital Stock**"), or any direct or indirect redemption, purchase or other acquisition by Parent and/or any Parent Subsidiary of any Parent Capital Stock or any security of such Parent Subsidiary, or any split, combination or reclassification in respect of any shares of Parent Capital Stock or any such security, or any issuance or authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Parent Capital Stock or such security;

(i) increase in the salary or other compensation payable or to become payable by Parent and/or any Parent Subsidiary to any of its respective officers, directors, employees or advisors, or the declaration, payment or commitment or obligation of any kind for the payment of a bonus, severance, sales commission or other additional salary or compensation to any such person except as otherwise contemplated by this Agreement;

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(j) sale, lease, license or other disposition of any of the assets or properties of Parent and/or any Parent Subsidiary, except in the ordinary course of business as conducted on that date and consistent with past practices;

(k) breach, amendment or termination of any material contract, agreement, permit, lease or license to which Parent and/or any Parent Subsidiary is a party or by which Parent and/or such Parent Subsidiary is bound;

(l) loan by Parent and/or any Parent Subsidiary to any person or entity, incurrence by Parent of any indebtedness, guaranteeing by Parent and/or any Parent Subsidiary of any indebtedness, issuance or sale of any debt securities of Parent or any Parent Subsidiary or guaranteeing of any debt securities of others, or creation of any security interest in any of Parent's and/or any Parent Subsidiary's assets or properties, except for advances to employees for travel and business expenses in the ordinary course of business, consistent with past practices;

(m) waiver or release of any right or claim of Parent and/or any Parent Subsidiary, including any write-off or other compromise of any account receivable of Parent and/or such Parent Subsidiary and any cancellation of any indebtedness or other obligation owing to Parent and/or such Parent Subsidiary;

(n) commencement or notice or threat of commencement of any lawsuit or proceeding against or investigation of Parent and/or any Parent Subsidiary or the affairs of Parent and/or any Parent Subsidiary, or any reasonable basis for any of the foregoing;

(o) any creation or assumption by Parent and/or any Parent Subsidiary of any mortgage, pledge, security interest or lien or other encumbrance on any asset (other than liens arising under existing lease financing arrangements that are not material and liens for taxes not yet due and payable);

(p) any agreement or arrangement made by Parent and/or any Parent Subsidiary to take any action that, if taken prior to the date hereof, would have made any representation or warranty set forth in this Agreement untrue or incorrect as of the date when made;

(q) notice of any claim or potential claim of ownership by a third party of any Intellectual Property owned or used by Parent and/or any Parent Subsidiary or of infringement by Parent and/or any Parent Subsidiary of any third party's intellectual property rights;

(r) change in pricing or royalties set or charged by Parent and/or any Parent Subsidiary to the customers or licensees of Parent and/or such Parent Subsidiary or in pricing or royalties set or charged by persons who have licensed Intellectual Property to Parent and/or any Parent Subsidiary;

(s) any change in the authorized capital of Parent or any Parent Subsidiary or in the outstanding securities or any change in their respective ownership interests or any grant of any options, warrants, calls, conversion rights or commitments;

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(t) event or condition of any character that has or could be reasonably expected to have a Parent Material Adverse Effect; or

(u) negotiation or agreement by Parent and/or any Parent Subsidiary, or any officer or employees thereof, to do any of the things described in the preceding clauses (a) through (t) (other than negotiations with the Company, the Preferred Shareholders and their representatives regarding the transactions contemplated by this Agreement).

3.8 Taxes.

(a) Parent and Parent Subsidiaries have filed all Tax Returns required to be filed. All such Tax Returns were true, correct and complete in all material respects. All Taxes owed by Parent and/or any of the Parent Subsidiaries (whether or not shown on any Tax Return) have been paid except for Taxes not yet due. Neither Parent nor any of the Parent Subsidiaries are currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made in writing by an authority in a jurisdiction where neither Parent nor any Parent Subsidiary files Tax Returns that Parent and/or any Parent Subsidiary is or may be subject to taxation by that jurisdiction. There are no security interests on any of the assets of Parent and/or any of the Parent Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax, other than any security interest for taxes not yet due.

(b) Each of Parent and the Parent Subsidiaries has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(c) Neither Parent or any Parent Subsidiary, nor any director or officer or employee responsible for Tax matters thereof, expects any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax liability of Parent and/or any Parent Subsidiary either (i) claimed or raised by any authority in writing or (ii) as to which Parent and/or any Parent Subsidiary has knowledge based upon contact with any agent of such authority. Parent has delivered or made available to the Company true, correct and complete copies of all federal income Tax Returns filed, formal Tax opinions and examination reports received, and statements of deficiencies assessed against or agreed to, by or on behalf of Parent and/or any Parent Subsidiary since inception.

(d) Neither Parent nor any Parent Subsidiary has ever waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) Neither Parent nor any Parent Subsidiary has ever filed a consent under Code Section 341(f) concerning collapsible corporations. Neither Parent nor any Parent Subsidiary is a party to or bound by (or will prior to the Closing Date become a party to or bound by) any Tax indemnity, Tax allocation, Tax sharing or gain recognition agreement (whether written, unwritten or arising under operation of federal law as a result of being a member of a group filing consolidated Tax Returns (other than a group the common parent of which was Parent), under operation of certain state laws as a result of being a member of a unitary group, or

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under comparable laws of other states or foreign jurisdictions). Neither Parent or any Parent Subsidiary has ever been required to include any material adjustment in taxable income for any Tax period (or portion thereof) ending on or after the Closing Date pursuant to Code Sections 481 or 263A or any comparable provisions under any state or foreign Tax laws.

(f) Neither Parent nor any Parent Subsidiary has any liability for the Taxes of any person other than Parent and/or the Parent Subsidiaries (A) under Reg. §1.1502-6 (or any similar provision of state, local, or foreign law), (B) as a transferee or successor, (C) by contract, or (D) otherwise.

3.9 Restrictions on Business Activities. There is no agreement (non-compete or otherwise), commitment, judgment, injunction, order or decree to which Parent and/or any Parent Subsidiary is a party or otherwise binding upon Parent and/or any Parent Subsidiary which has or reasonably could be expected to have the effect of prohibiting or impairing any business practice of Parent and/or any Parent Subsidiary, any acquisition of property (tangible or intangible) by Parent and/or any Parent Subsidiary or the conduct of business by Parent and/or any Parent Subsidiary. Without limiting the foregoing, neither Parent nor any Parent Subsidiary has not entered into any agreement under which Parent and/or any Parent Subsidiary is restricted from selling, licensing, marketing or otherwise distributing any of the products or services of Parent and/or any Parent Subsidiary to any class of customers, in any geographic area, during any period of time or in any segment of the market.

3.10 Title to Properties; Absence of Liens and Encumbrances.

(a) Neither Parent nor any Parent Subsidiary currently owns or has ever owned any real property.

(b) Schedule 3.10(b) sets forth a list of all Leases, together with a brief description of the principal terms thereof, to which Parent and/or any Parent Subsidiary is a party (true, correct and complete copies of which have previously been furnished or made available to the Company), in each case setting forth (A) the landlord and tenant or sublessor and sublessee, as applicable, thereof and the date and term of each of the Leases, (B) the legal description or street address of each property covered thereby, and (C) a brief description (including size and function) of the principal improvements and buildings thereon (the "**Parent Leased Premises**"). The Leases are in full force and effect and have not been amended and neither Parent or any Parent Subsidiary nor, to the knowledge of Parent, any other party thereto is in default or breach under any such Lease. No event has occurred that, with the passage of time or the giving of notice or both, would cause a material breach of or default under any of such Leases, except as set forth on Schedule 3.10(b). There is no breach or anticipated breach by any other party to such Leases. With respect to each of the Parent Leased Premises:

(i) Each of Parent and/or the Parent Subsidiaries (as the case may be) has valid leasehold interests in the Parent Leased Premises, which leasehold interests are free and clear of any liens, covenants and easements or title defects of any nature whatsoever;

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(ii) To the knowledge of Parent, the portions of the buildings located on the Parent Leased Premises that are used in the business of Parent and/or any Parent Subsidiary are each in commercially reasonable repair and condition (including without limitation the electrical, mechanical, HVAC, plumbing, elevator, other building systems and structural components serving such premises, and the roofs are water-tight), and are in the aggregate sufficient to satisfy the current and reasonably anticipated normal business activities of Parent and/or such Parent Subsidiary (as the case may be) as conducted thereat;

(iii) Each of the Parent Leased Premises (A) has direct access to public roads or access to public roads by means of a perpetual access easement, such access being sufficient to satisfy the current and reasonably anticipated normal transportation requirements of the business of Parent and/or any Parent Subsidiary (as the case may be) as presently conducted at such premises; and (B) is served by all utilities in such quantity and quality as are sufficient to satisfy the current normal business activities as conducted at such premises;

(iv) Neither Parent nor any Parent Subsidiary has received notice of (A) any condemnation proceeding with respect to any portion of the Parent Leased Premises or any access thereto, and, to the knowledge of Parent, no such proceeding is contemplated by any Governmental Authority; or (B) any special assessment that may affect any of the Parent Leased Premises, and, to the knowledge of Parent, no such special assessment is contemplated by any Governmental Authority;

(v) To the knowledge of Parent, each of the Parent Leased Premises, including without limitation all buildings located thereon, conform to all requirements of any underlying covenants, conditions, restrictions and encumbrances, all insurance underwriter's requirements, and any applicable Laws;

(vi) To the knowledge of Parent, there are no Laws under active consideration by any Governmental Authority that could require Parent and/or any Parent Subsidiary to make any expenditure in excess of $5,000 to modify or improve the Parent Leased Premises to bring them into compliance therewith; and

(vii) Neither Parent nor any Parent Subsidiary has received any notice from any insurance company of any defects or inadequacies in the Parent Leased Premises or any part thereof that could adversely affect the insurability of the Parent Leased Premises or the premiums for the insurance thereof.

(c) Each of Parent and the Parent Subsidiaries owns or leases all buildings, machinery, equipment, and other tangible assets necessary for the conduct of its respective businesses as presently conducted and as presently proposed to be conducted. Each such tangible asset is free from material defects, has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used and presently is proposed to be used by Parent and/or the Parent Subsidiaries (as the case may be).

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(d) Except as set forth on Schedule 3.10(d), each of Parent and/or the Parent Subsidiaries has good and marketable title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its respective properties and assets, real, person and mixed, used or held for use in its respective business, free and clear from all liens, charges, pledges, security interests, claims and encumbrances of every kind, except for liens for taxes not yet due and payable and such imperfections of title and encumbrances, if any, that are not material in character, amount or extent, and that do not materially detract from the value, or materially interfere with the present use, of the property subject thereto or affected thereby.

3.11 Intellectual Property.

(a) Parent and/or each Parent Subsidiary owns or has the right to use pursuant to license, sublicense, agreement, or permission all Intellectual Property necessary for the operation of its respective businesses as presently conducted and as presently proposed to be conducted by Parent and/or such Parent Subsidiary. Except as set forth on Schedule 3.11(a), each item of Intellectual Property owned or used by the Parent and/or any Parent Subsidiary immediately prior to the Effective Time will be owned or available for use by Parent and/or such Parent Subsidiary on identical terms and conditions immediately subsequent to the Effective Time. Each of Parent and the Parent Subsidiaries has taken all commercially reasonable action to maintain and protect each item of Intellectual Property that it owns or uses. Without limiting the foregoing, each of Parent and the Parent Subsidiaries has and enforces a policy requiring each officer, employee, consultant and contractor who or which has contributed to or participated in the conception and/or development of any Intellectual Property on behalf of Parent and/or any such Parent Subsidiary (including without limitation Intellectual Property owned or used by Parent or any such Parent Subsidiary) (i) to execute a proprietary information, confidentiality and assignment agreement that is reasonably sufficient to maintain and protect each item of Intellectual Property that Parent and/or such Parent Subsidiary owns or uses, and all current and former officers, employees, consultants and contractors of Parent and/or such Parent Subsidiary have executed such an agreement, or (ii) to become a party to a "work-for-hire" arrangement or agreement with Parent and/or such Parent Subsidiary, in accordance with applicable federal, state or foreign law, that has accorded Parent and/or such Parent Subsidiary full, effective, exclusive and original ownership of all Intellectual Property arising in connection therewith.

(b) Neither Parent nor any Parent Subsidiary has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and neither Parent or any Parent Subsidiary, nor any of the directors or officers (and employees with responsibility for Intellectual Property matters) of Parent or any such Parent Subsidiary, has ever received any charge, complaint, claim, demand or notice alleging any such interference, infringement, misappropriation or violation and no such charge, complaint, claim, demand or notice has been asserted (including without limitation any claim that Parent and/or any such Parent Subsidiary must license or refrain from using any Intellectual Property rights of any third party), and Parent does not know of any basis for any such charge, complaint, claim, demand or notice. The use of the Intellectual Property owned or used by Parent and/or any Parent Subsidiary, or licensed or sublicensed to any person by Parent and/or any Parent Subsidiary, does not infringe upon the rights of any other person. To the knowledge of Parent, no third party has

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interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of Parent.

(c) Schedule 3.11(c) identifies each patent, copyright, trademark or registration that has been issued to Parent and/or any Parent Subsidiary with respect to any of the Intellectual Property of Parent and/or such Parent Subsidiary, identifies each pending patent application or application for copyright, trademark or registration that Parent and/or any Parent Subsidiary has made with respect to any of the Intellectual Property of Parent and/or any Parent Subsidiary, and identifies each license, agreement or other permission that Parent and/or any Parent Subsidiary has granted to any third party with respect to any of the Intellectual Property of Parent and/or any Parent Subsidiary (together with any exceptions). Parent has delivered or made available to the Company true, correct and complete copies of all such patents, copyrights, trademarks, registrations, applications, licenses, agreements and permissions (as amended to date) and has made available to Company true, correct and complete copies of all other written documentation evidencing ownership and prosecution (if applicable) of each such item. Schedule 3.11(c) also identifies each trade name and unregistered trademark used by Parent and/or any Parent Subsidiary in connection with any of the businesses of Parent and/or any Parent Subsidiary. In no instance has the eligibility of any Intellectual Property owned by Parent and/or any Parent Subsidiary for protection under applicable copyright law (whether foreign or domestic) been forfeited to the public domain by omission of any required notice or any other action. With respect to each item of Intellectual Property required to be identified in Schedule 3.11(c):

(i) except as set forth on Schedule 3.11(c), Parent and/or a Parent Subsidiary possesses all right, title, and interest in and to the item, free and clear of any security interest, license, lien, or other restriction;

(ii) the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge;

(iii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the knowledge of Parent, is threatened that challenges the legality, validity, enforceability, use, or ownership of the item; and

(iv) except as set forth on Schedule 3.11(c), neither Parent nor any Parent Subsidiary has ever agreed to indemnify any person for or against any interference, infringement, misappropriation or other conflict with respect to the item.

(d) Schedule 3.11(d) identifies each item of Intellectual Property that any third party owns and that Parent and/or any Parent Subsidiary uses pursuant to license, sublicense, agreement or permission. With respect to each item required to be identified in Schedule 3.11(d):

(i) the license, sublicense, agreement or permission covering the item is legal, valid, binding, enforceable and in full force and effect;

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(ii) to the knowledge of Parent, the license, sublicense, agreement or permission will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;

(iii) neither Parent or any Parent Subsidiary is, nor, to the knowledge of Parent, is any other party to the license, sublicense, agreement or permission, in breach or default, and no event has occurred that with notice or lapse of time would constitute a breach or default or permit termination, modification or acceleration thereunder;

(iv) neither Parent nor any Parent Subsidiary has, and, to the knowledge of Parent, no other party to the license, sublicense, agreement or permission has, repudiated any provision thereof;

(v) the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling or charge;

(vi) no action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand is pending or, to the knowledge of Parent, is threatened that challenges the legality, validity or enforceability of the underlying item of Intellectual Property;

(vii) Parent has not granted any sublicense or similar right with respect to the license, sublicense, agreement or permission, except as set forth in Schedule 3.11(d); and

(viii) such item does not contain derivative works of any Intellectual Property not owned in its entirety by Parent and/or the Parent Subsidiaries.

(e) Schedule 3.11(e) identifies each license, sublicense, agreement or other permission that Parent and/or any Parent Subsidiary has granted to any third party with respect to any Intellectual Property that Parent owns or with respect to which Parent has been granted rights pursuant to license, sublicense, agreement or other permission, and Schedule 3.11(e) identifies each such item of Intellectual Property. With respect to each item required to be identified in Schedule 3.11(e):

(i) each license, sublicense, agreement or other permission covering the item is legal, valid, binding, enforceable and in full force and effect;

(ii) each such license, sublicense, agreement or other permission will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;

(iii) neither Parent or any Parent Subsidiary is, nor, to the knowledge of Parent, is any other party to any such license, sublicense, agreement or other permission, in breach or default, and no event has occurred that with notice or lapse of time would constitute a breach or default or permit termination, modification or acceleration thereunder;

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(iv) neither Parent nor any Parent Subsidiary has, and, to the knowledge of Parent, no other party to any such license, sublicense, agreement or other permission has, repudiated any provision thereof;

(v) the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling or charge;

(vi) no action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand is pending or, to the knowledge of Parent, is threatened that challenges the legality, validity or enforceability of the underlying item of Intellectual Property;

(vii) Parent and/or a Parent Subsidiary has validly and effectively obtained the right and license to use, copy, modify, and distribute any Intellectual Property that a third party owns and that is contained in such item, which Intellectual Property is set forth on Schedule 3.11(e), and such item contains no other Intellectual Property in which any third party may claim superior, joint or common ownership, including any right or license; and

(viii) such item does not contain derivative works of any Intellectual Property not owned in its entirety by Parent and/or the Parent Subsidiaries.

(f) Parent does not have any reason to believe that the Parent will interfere with, infringe upon, misappropriate or otherwise come into conflict with, any Intellectual Property rights of third parties as a result of the continued operation of (i) Parent's and each Parent Subsidiary's respective businesses as presently conducted and (ii) Parent's and each Parent Subsidiary's (other than Merger Sub's) respective businesses as presently proposed to be conducted.

(g) Parent does not have any knowledge of any new products, inventions, procedures or methods of manufacturing or processing that any competitors or other third parties have developed that reasonably could be expected to supersede or make obsolete any product, invention, procedure, method of manufacturing or processing, or process of Parent and/or any Parent Subsidiary.

(h) Neither this Agreement nor the transactions contemplated hereby, including without limitation any assignment by operation of law or otherwise of any contracts or agreements to which Parent and/or any Parent Subsidiary is a party, will result in Parent or any Parent Subsidiary granting to any third party any right to or with respect to any Intellectual Property owned by, or licensed to, any of them, or will result in either Parent or any Parent Subsidiary being bound by, or subject to, any non-compete or other restriction on the operation or scope of their respective businesses.

(i) Schedule 3.11(i) lists all contracts, licenses and agreements between Parent and/or any Parent Subsidiary and any other person wherein or whereby Parent and/or any such Parent Subsidiary has agreed to, or assumed, any material obligation or duty to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any material obligation or liability or provide a right of rescission with respect to the infringement or

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misappropriation by Parent and/or any such Parent Subsidiary or such other person of the Intellectual Property of any person other than Parent.

3.12 Agreements, Contracts and Commitments.

(a) Schedule 3.12(a) lists the following contracts and other agreements to which Parent and/or any Parent Subsidiary is a party:

(i) any agreement (or group of related agreements) for the lease of personal property to or from any person or entity providing for lease payments in excess of $25,000 per annum;

(ii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, result in a loss to Parent and/or any Parent Subsidiary, or involve consideration in excess of $25,000;

(iii) any agreement concerning a partnership or joint venture;

(iv) any mortgage, loan, indenture or agreement (or group of related agreements) under which Parent and/or any Parent Subsidiary has created, incurred, assumed, secured or guaranteed any indebtedness for borrowed money or extended any credit, or any capitalized lease obligation, in excess of an aggregate of $25,000 or under which it has imposed a security interest on any of its assets, tangible or intangible;

(v) any agreement concerning confidentiality or noncompetition;

(vi) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance or other plan or arrangement for the benefit of the current or former directors, officers, consultants or employees of Parent and/or any Parent Subsidiary;

(vii) any collective bargaining agreement;

(viii) any agreement for the employment of any individual on a full-time, part-time, consulting or other basis providing annual compensation in excess of $50,000 or providing severance benefits;

(ix) any agreement under which Parent and/or any Parent Subsidiary has advanced or loaned any amount to any of the directors, officers, consultants or employees of Parent and/or such Parent Subsidiary outside the ordinary course of business;

(x) any agreement under which the consequences of a default or termination could have a Parent Material Adverse Effect;

(xi) any contract in excess of $25,000 between Parent and/or any Parent Subsidiary and any Governmental Authority, and any bids or proposals for any contract between

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Parent and/or any Parent Subsidiary and any Governmental Authority, or any subcontract between Parent and/or any Parent Subsidiary and any third party relating to a prime contract with any Governmental Authority and any bids or proposals for any contract that is a subcontract between Parent and/or any Parent Subsidiary and any third party relating to a prime contract with any Governmental Authority;

(xii) any agreements or arrangements that contain any severance pay or post-employment liabilities or obligations;

(xiii) any agreement of indemnification;

(xiv) any agreement or arrangement that requires any payment by or on behalf of Parent and/or any Parent Subsidiary to any director or officer of Parent and/or any Parent Subsidiary, or any affiliate thereof, in any capacity;

(xv) any agreement pursuant to which Parent and/or any Parent Subsidiary is obligated to pay any commission(s) or similar fee(s);

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

(xvii) 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 business;

(xviii) any agreement pursuant to which any other holder of Parent Capital Stock is a party;

(xix) any agreement pursuant to which Parent and/or any Parent Subsidiary has granted, or may grant in the future, to any party, a source code license or option or other right to use or acquire a source code; and

(xx) any other agreement (or group of related agreements) the performance of which involves consideration in excess of $25,000, whether or not made in the ordinary course of business.

(b) The agreements described at Sections 3.12(a)(i) through (xx) are hereinafter referred to individually as a "**Parent Contract**" and collectively as the "**Parent Contracts**," of which true, correct and complete copies have been furnished or otherwise made available to the Company. Each Parent Contract is valid and binding on Parent and/or a Parent Subsidiary (as the case may be) and is in full force and effect. Neither Parent nor any Parent Subsidiary has breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any of the Parent Contracts. Each Parent Contract is in full force and effect and, except as otherwise disclosed in Schedule 3.12(b), is not subject to any default thereunder, of which Parent has knowledge, by any party obligated to Parent and/or any Parent Subsidiary pursuant thereto. Following the Effective Time, Parent and/or each Parent Subsidiary will be permitted to exercise all of their respective rights under the Parent Contracts without the payment of any additional amounts or consideration other than

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ongoing fees, royalties or payments that the Parent and/or such Parent Subsidiary would otherwise be required to pay had the transactions contemplated by this Agreement not occurred. No Parent Contract contains any material liquidated damages, penalty or similar provision. Neither Parent nor any Parent Subsidiary intends to cancel, withdraw, modify or amend any such Parent Contract and, to the knowledge of Parent, no other party to any such contract, agreement or instrument intends to cancel, withdraw, modify or amend any Parent Contract.

3.13 Interested Party Transactions. Except as set forth on Schedule 3.13, no officer, director or shareholder of Parent and/or any Parent Subsidiary (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 economic interest in any entity that furnished or sold, or furnishes or sells, services or products that Parent and/or any Parent Subsidiary furnishes or sells, or proposes to furnish or sell, (ii) an economic interest in any entity that purchases from or sells or furnishes to, Parent and/or any Parent Subsidiary, any goods or services, (iii) any interest in any property, real or personal, tangible or intangible, used in or pertaining to the business of Parent and/or any Parent Subsidiary, except for rights as a shareholder and except for rights under a Plan, or (iv) a beneficial interest in any Parent Contract; provided, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed an "economic interest in any entity" for purposes of this Section 3.13. Except as set forth in Schedule 3.13, no stockholder, employee, officer or director of Parent and/or any Parent Subsidiary, and none of their respective spouses or children, is indebted to Parent and/or any Parent Subsidiary, nor is Parent or any Parent Subsidiary indebted to any of them.

3.14 Compliance with Laws. Each of Parent and the Parent Subsidiaries is in compliance and has conducted its respective business so as to comply with all laws, rules and regulations, judgments, decrees or orders of any Governmental Authority applicable to its respective operations or with respect to which compliance is a condition of engaging in the business thereof. There are no judgments or orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency or by arbitration) against Parent and/or any Parent Subsidiary or against any of the properties or businesses of Parent and/or any Parent Subsidiary. Without limiting the generality of the foregoing, neither Parent nor any Parent Subsidiary has violated any United States or foreign import and export control laws and regulations, export licensing laws and regulations or customs regulations (including its obligations under the Foreign Corrupt Practices Act) applicable to Parent and/or any Parent Subsidiary. Neither Parent nor any Parent Subsidiary has been cited by the United States Department of Commerce, the United States Customs Service or any other relevant Governmental Authority for any violation of United States laws or regulations relating to importing or exporting of products, materials or services. Schedule 3.14 contains a summary of any violation of, or conflict with, any applicable statute, law, rule, regulation, ruling, order, judgment or decree of which such Governmental Authority has notified Parent or any such Parent Subsidiary.

3.15 Litigation. Except as set forth in Schedule 3.15, there is no action, suit, claim, arbitration or proceeding of any nature pending, or to Parent's knowledge, threatened against Parent and/or any Parent Subsidiary, the assets or properties of Parent or any Parent Subsidiary,

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or any of the officers, directors or employees of Parent and/or any Parent Subsidiary, in their respective capacities as such. Except as set forth in Schedule 3.15, there is no investigation pending or, to Parent's knowledge, threatened against Parent and/or any Parent Subsidiary, the assets or properties of Parent or any Parent Subsidiary, or any of the officers, directors or employees of Parent and/or any Parent Subsidiary by or before any Governmental Authority. Schedule 3.15 sets forth, with respect to any pending or threatened action, suit, claim, arbitration, proceeding or investigation, the forum, the parties thereto, the subject matter thereof and the amount of damages claimed or other remedy requested. Parent is not aware of any reasonable basis for any other such action, suit, claim, arbitration, proceeding or investigation. No Governmental Authority has at any time challenged or questioned the legal right of Parent and/or any Parent Subsidiary to manufacture, offer or sell any of its respective products and/or services in the present manner or style thereof.

3.16 Insurance. Each of Parent and the Parent Subsidiaries maintains valid and enforceable insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of Parent, and such insurance policies and fidelity bonds, contain provisions that are reasonable and customary in Parent's industry, and there is no claim by Parent and/or any Parent Subsidiary 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 Parent and each Parent Subsidiary is otherwise in full compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage), and any claims for which Parent and/or any Parent Subsidiary is seeking insurance coverage have been submitted to the appropriate insurance company in accordance with the terms of the applicable insurance policy. Parent does not have any knowledge of any threatened termination of, or material premium increase with respect to, any of such policies. The insurance coverage provided under such policies includes, without limitation, coverage for any obligations or liabilities arising under or in connection with any software license agreement to which Parent and/or any Parent Subsidiary is a party or by which it is bound.

3.17 Minute Books. The minute books of Parent made available to counsel for the Company are true, correct and complete copies thereof and are the only minute books of Parent.

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3.18 Environmental Matters.

(a) No Hazardous Material is present in, on, under or adjacent to any property that Parent and/or any Parent Subsidiary has at any time owned, operated, occupied, leased or used (including both the land and improvements thereon) and no reasonable likelihood exists that any Hazardous Material will come to be present in, on, or under any properties owned, operated, occupied, leased or used at any time (including both land and improvements thereon) by Parent and/or any Parent Subsidiary. Neither Parent nor any Parent Subsidiary has operated any underground storage tanks, and Parent does not have any knowledge of the existence, at any time, of any underground storage tank (or related piping or pumps), at any property that Parent and/or any Parent Subsidiary has at any time owned, operated, occupied or leased.

(b) Neither Parent nor any Parent Subsidiary has transported, stored, used, manufactured, disposed of, sold, released or exposed its employees or any other person to any Hazardous Material, or arranged for the disposal, discharge, storage or release of any Hazardous Material, or currently engages in any of the foregoing activities, in violation of any applicable statute, rule, regulation, order, treaty or law.

(c) No permits, consents, waivers, exemptions, licenses, approvals or other authorizations are required to be obtained by Parent and/or any Parent Subsidiary under any Environmental Laws. Each of Parent and the Parent Subsidiaries has been and is in compliance in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any regulation, code, plan, order, decree, judgment, notice or demand letter issued, entered, promulgated or approved thereunder. Neither Parent nor any Parent Subsidiary has received any notice or is aware of any past or present condition or practice of the businesses conducted by Parent and/or any Parent Subsidiary that forms or could be reasonably expected to form the basis of any Environmental Claims against Parent and/or any Parent Subsidiary (or against any person or entity whose liability for any Environmental Claims Parent and/or any Parent Subsidiary has retained or assumed either contractually or by operation of law), arising out of the manufacture, processing, distribution, use, treatment, storage, spill, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Material by Parent and/or any Parent Subsidiary.

(d) No action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending, or to Parent's knowledge, threatened concerning any Environmental Law, Hazardous Material or any Hazardous Materials Activity of Parent and/or any Parent Subsidiary. Parent is not aware of any fact or circumstance that could involve Parent and/or any Parent Subsidiary in any environmental litigation or impose upon Parent and/or any Parent Subsidiary any environmental liability.

3.19 Brokers' and Finders' Fees; Third-Party Expenses. Except as set forth on Schedule 3.19, Parent 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 this

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Agreement or any transaction contemplated hereby. Schedule 3.19 sets forth the principal terms and conditions of any agreement, written or oral, with respect to such fees.

3.20 Employee Matters and Benefit Plans.

(a) All employee compensation, severance, incentive, fringe, deferred compensation, stock option, stock appreciation right, phantom stock, restricted stock, bonus, profit sharing, retirement or other benefit plans, programs, policies, systems, commitments or other arrangements (whether or not set forth in a written document) covering any active, former or retired employee or consultant of the Parent and/or any Parent Subsidiary, or any trade or business (whether or not incorporated) that is a member of a controlled group or that is under common control with the Parent and/or any Parent Subsidiary within the meaning of Section 414 of the Code, or with respect to which the Parent and/or any Parent Subsidiary has or may in the future have liability, are listed on Schedule 3.20 (individually, the "**Parent Plan**" and collectively, the "**Parent Plans**"). All Parent Plans with respect to which Parent and/or any Parent Subsidiary has or may in the future have liability are listed on Schedule 3.20. To the extent applicable, the Parent Plans comply in all material respects with the requirements of ERISA and the Code, and any Parent Plan intended to be qualified under Section 401(a) of the Code and each trust intended to qualify under Section 501(a) of the Code (i) has either obtained a favorable determination letter as to its qualified status from the Internal Revenue Service or still has a remaining period of time under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination, and (ii) incorporates or has been amended to incorporate all provisions required to comply with the Tax Reform Act of 1986 and subsequent legislation. Parent has furnished or made available to the Company copies of the most recent Internal Revenue Service determination letters, if any, for Parent Plans qualified under Code Section 401(a) and Forms 5500, if any, for the three most current Parent Plan years filed with respect to any and all Parent Plans. No Parent Plan is covered by Title IV of ERISA or Section 412 of the Code. Neither Parent nor any of the Parent Subsidiaries or affiliates thereof has been a contributing employer to any multiemployer plan as defined under Section 4001 of ERISA. Neither Parent or any Parent Subsidiary, nor any officer or director of Parent or any Parent Subsidiary, has incurred any liability or penalty under Section 4971 through 4980E of the Code or Title 1 of ERISA. None of the Parent Plans promises or provides retiree medical or other retiree welfare benefits to any person except as required by applicable law, including without limitation the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. Each Parent Plan has been maintained and administered in all material respects in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations (whether foreign or domestic), including but not limited to ERISA and the Code, which are applicable to such Parent Plans. No suit, action or other litigation (excluding claims for benefits incurred in the ordinary course of Parent Plan activities) has been brought, or to the knowledge of Parent is threatened, against or with respect to any such Parent Plan. All contributions, reserves or premium payments required to be made or accrued as of the date hereof to the Parent Plans have been made or accrued. All reports, returns, forms and notices required to be filed with any government agency (whether foreign or domestic) or furnished to participants or beneficiaries with respect to the Parent Plans, by the Code, ERISA or any other applicable law

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(whether foreign or domestic), have been so filed and furnished. Neither Parent nor any Parent Subsidiary is under any legal or contractual obligation to continue any of the Parent Plans and may terminate any or all of the Parent Plans at any time without incurring any liability.

(b) Neither Parent nor any Parent Subsidiary is bound by or subject to (and none of their respective assets or properties is bound by or subject to) any arrangement with any labor union. No employee of Parent and/or any Parent Subsidiary is represented by any labor union or covered by any collective bargaining agreement and, to the knowledge of Parent, no campaign to establish such representation is in progress. There is no pending or, to the knowledge of Parent, threatened labor dispute involving Parent and/or any Parent Subsidiary and any group of its or such Parent Subsidiary's employees nor has Parent or any Parent Subsidiary experienced any labor interruptions over the past three years, and Parent considers Parent's and each Parent Subsidiary's relationship with their respective employees to be good.

(c) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment (including without limitation severance, unemployment compensation, bonus or otherwise) becoming due to any director, officer or employee of Parent and/or Parent Subsidiary under any Parent Plan or otherwise, (ii) result in a payment or benefit becoming due to any director, officer or employee of Parent and/or any Parent Subsidiary under any Parent Plan or otherwise that will be characterized as a "parachute payment" within the meaning of Code Section 280G (but without regard to clause (b)(2)(A)(ii) thereof), (iii) materially increase any benefits otherwise payable under any Parent Plan, or (iv) result in the acceleration of the time of payment or vesting of any such benefits.

(d) Parent and each Parent Subsidiary has complied with the continuation health care coverage requirements of Section 4980B of the Code and Sections 601 through 608 of ERISA with respect to "qualifying events," as defined in the Code and ERISA, that occur on or before the Closing with respect to any current or former employees of Parent and/or any Parent Subsidiary and their respective "qualified beneficiaries," as defined in the Code and ERISA, and with the requirements of the Health Insurance Portability and Accountability Act and other applicable health insurance requirements in Section 4980D of the Code and Sections 701 through 734 of ERISA.

3.21 Employees. To Parent's knowledge, no employee of Parent or any Parent Subsidiary (i) is in violation of any term of any employment contract, patent disclosure agreement, employment agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Parent or such Parent Subsidiary because of the nature of the business conducted or presently proposed to be conducted by Parent or such Parent Subsidiary or to the use of trade secrets or proprietary information of others or (ii) has given notice to Parent or such Parent Subsidiary, nor is Parent otherwise aware, that any employee intends to terminate his or her employment with Parent or such Parent Subsidiary (as the case may be). Schedule 3.21 sets forth an accurate list, as of the date hereof, of all officers, directors and employees of Parent and/or each Parent Subsidiary listing all employment agreements with such officers, directors and employees and the rate of compensation (and the portions thereof attributable to salary, bonus and other compensation, respectively) of each such

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person as of the date hereof. Parent has provided or made available to the Company true, complete and correct copies of all employment contracts, commitments and arrangements with persons listed on Schedule 3.21. To the knowledge of Parent, no director, officer, employee, or group of employees of Parent and/or any Parent Subsidiary has any plans to terminate employment with Parent or any Parent Subsidiary. Each current and former employee, officer, contractor and consultant of Parent and/or any Parent Subsidiary who or which has contributed to or participated in the conception and/or development of any Intellectual Property on behalf of Parent and/or any Parent Subsidiary (including without limitation Intellectual Property owned or used by Parent and/or any Parent Subsidiary) has either (i) executed a proprietary information, confidentiality and assignment agreement that is reasonably sufficient to maintain and protect each item of Intellectual Property that Parent owns or uses or (ii) become a party to a "work-for-hire" arrangement or agreement with Parent, in accordance with applicable federal and state law, that has accorded Parent full, effective, exclusive and original ownership of all Intellectual Property arising in connection therewith. To the knowledge of Parent, neither Parent nor any Parent Subsidiary is subject to any claim for wrongful dismissal, constructive dismissal or any other claim or complaint, actual or threatened, or any audit or investigation by any government agency (whether foreign or domestic), or any litigation, actual or threatened, relating to hiring and/or promotion policies, employment terms and conditions, employment discrimination or termination of employment. Parent and each Parent Subsidiary has complied in all material respects with all applicable laws relating to its respective employees, including without limitation provisions thereof relating to wages, hours, vacation, overtime, notice, pay in lieu of notice, termination and severance pay, occupational health and safety, equal opportunity, collective bargaining and the payment of social security and other Taxes, the Worker Adjustment and Retraining Notification Act, and the Immigration Reform and Control Act of 1986, or any similar provisions of foreign, federal, state or local law. To the knowledge of Parent, no employee is in breach of any noncompete, nondisclosure, confidentiality, or similar provision of any contract to which such employee is bound, by virtue of his or her employment with Parent or any Parent Subsidiary.

3.22 No Interference or Conflict. To the knowledge of Parent, no shareholder, officer, employee or consultant of Parent and/or any Parent Subsidiary is obligated under any contract or agreement subject to any judgment, decree or order of any court or administrative agency that would interfere with such person's efforts to promote the interests of Parent and/or such Parent Subsidiary or that would interfere with Parent's and/or such Parent Subsidiary's business. Neither the execution nor delivery of this Agreement, nor the carrying on of the business of Parent and/or such Parent Subsidiary as presently conducted or proposed to be conducted nor any activity of such officers, directors, employees or consultants in connection with the carrying on of Parent's and/or such Parent Subsidiary's business as presently conducted or currently proposed to be conducted, will, to the knowledge of Parent, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract or agreement under which any of such officers, directors, employees or consultants is now bound.

3.23 Governmental Authorizations and Licenses. Each of Parent and the Parent Subsidiaries owns or holds all licenses, consents, certificates, franchises, grants, permits and other governmental authorizations required to conduct its respective business as currently being conducted or as proposed to be conducted or pursuant to which Parent and/or such Parent

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Subsidiary currently operates or holds any interest in any of its properties (collectively, the "**Parent Material Permits**"). The Parent Material Permits are valid and in full force and effect, and neither Parent nor any Parent Subsidiary has received any notice that any Governmental Authority intends to modify, cancel, terminate or not renew any Parent Material Permit. Each of Parent and the Parent Subsidiaries has conducted and is conducting its respective business in compliance with the requirements, standards, criteria and conditions set forth in the Parent Material Permits and other applicable orders, approvals, variances, rules and regulations (whether foreign or domestic) and is not in violation of any of the foregoing. The transactions contemplated by this Agreement will not result in a default under or a breach or violation of, or adversely affect any of the rights and benefits afforded to Parent and/or any Parent Subsidiary by any of the Parent Material Permits.

3.24 No Defaults. Neither Parent or any Parent Subsidiary is, nor has Parent or any Parent Subsidiary received notice that Parent and/or any Parent Subsidiary is or would be with the passage of time, in violation of any provision of its Articles of Incorporation or Bylaws or its equivalent organizational documents. Neither Parent nor any Parent Subsidiary is, and neither Parent nor any Parent Subsidiary has received notice that Parent and/or such Parent Subsidiary is or would be with the passage of time, in default or violation of any term, condition or provision of (i) any judgment, decree, order, injunction or stipulation applicable to Parent and/or such Parent Subsidiary or any of its respective properties or assets or (ii) any agreement, note, mortgage, indenture, contract, lease, sublease or instrument, permit, concession, franchise or license to which Parent and/or such Parent Subsidiary is a party or by which Parent and/or such Parent Subsidiary or its respective properties or assets may be bound, or that is otherwise applicable to Parent and/or such Parent Subsidiary or its respective properties or assets, except for any such default or violation which has not had, and that would not be reasonably expected to have, (x) a Parent Material Adverse Effect or (y) an adverse effect on the ability of Parent to consummate the transactions contemplated by this Agreement.

3.25 Accounts and Notes Receivable. The receivables, including unbilled accounts receivables, shown on Parent Balance Sheet arose in the ordinary course of business and have been collected or, to Parent's knowledge, are collectible in the book amounts thereof, less an amount not in excess of the allowance for doubtful accounts provided for in such balance sheet. To Parent's knowledge, allowances for doubtful accounts and warranty returns are adequate and have been prepared in accordance with GAAP consistently applied and in accordance with the past practices of Parent. The receivables of Parent and each Parent Subsidiary arising after the date of the Parent Balance Sheet arose in the ordinary course of business and have been collected or, to Parent's knowledge, are collectible in the book amounts thereof, less allowances for doubtful accounts and warranty returns determined in accordance with the past practices of Parent. To Parent's knowledge, none of the receivables of Parent or any Parent Subsidiary is subject to any claim of offset, recoupment, set off or counterclaim and Parent does not have knowledge of any facts or circumstances (whether asserted or unasserted) that could give rise to any such claim. No amount of receivables is contingent upon the performance by Parent or any Parent Subsidiary of any obligation or contract. Except as set forth on Schedule 3.25, no person has any lien on any of such receivables and no agreement for deduction or discount has been made with respect to any of such receivables.

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3.26 [Reserved].

3.27 Customers; Backlog; Returns and Complaints. Schedule 3.27 sets forth the customers of Parent and each Parent Subsidiary that represented five percent (5%) or more of Parent's consolidated revenues for Parent's last three (3) fiscal years ("**Parent Significant Customers**") and a description of backlog of customer orders. Parent does not have any reason to believe that Parent or any Parent Subsidiary is at risk of losing any Parent Significant Customers. Neither Parent nor any Parent Subsidiary has received any customer complaints concerning its products which complaints Parent or such Parent Subsidiary has not been able to address to the satisfaction of the complainant within a commercially reasonable length of time after the receipt of notice of such complaint, nor has Parent or any Parent Subsidiary had any of its products returned by a purchaser thereof except for normal warranty returns consistent with past history and those returns that would not result in a reversal of any revenue by Parent.

3.28 Representations Complete. No representation or warranty made by Parent in this Agreement, nor any financial statement, other written financial information or schedule, certificate, schedule, exhibit or other materials prepared and furnished or to be prepared and furnished by Parent pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading in the light of the circumstances under which they were furnished. There is no event, fact or condition that has caused, or that reasonably could be expected to cause, a Parent Material Adverse Effect, that has not been set forth in this Agreement or the schedules attached hereto.

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 pursuant to the terms of Section 8.1 hereof or the Effective Time, the Company agrees (except to the extent that Parent shall otherwise consent in writing) to carry on its business and the business of the Company Subsidiaries in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay its debts and Taxes when due, to pay or perform other obligations when due, and, to the extent consistent with such business, to use all reasonable efforts consistent with past practice and policies to preserve intact its present business organization, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees and others having business dealings with it, all with the goal of preserving unimpaired its goodwill and ongoing businesses at the Effective Time. The Company shall promptly notify Parent of any event or occurrence or emergency not in the ordinary course of its business, and any material event involving or adversely affecting the Company and/or any Company Subsidiary or the business thereof. Except as expressly contemplated by this Agreement, and without limiting the foregoing, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement

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pursuant to the terms of Section 8.1 hereof or the Effective Time, the Company shall not, and it shall cause each of the Company Subsidiaries not to, without the prior written consent of Parent:

(a) Enter into any commitment, activity or transaction not in the ordinary course of business;

(b) Other than in the ordinary course of business and with prior notice to Parent, (i) sell, license or transfer to any person or entity any rights to any Intellectual Property or enter into any agreement with respect to the Intellectual Property with any person or entity or with respect to the Intellectual Property of any person or entity, (ii) other than Intellectual Property rights acquired under "shrink-wrap" and similar widely available commercial binary code end-user licenses (in each case which is not included in the products or technology of the Company or the Company Subsidiaries including products and technology currently available or under development), buy or license any Intellectual Property or enter into any agreement with respect to the Intellectual Property of any person or entity, (iii) enter into any agreement with respect to the development of any Intellectual Property with a third party, or (iv) change pricing or royalties charged by the Company and/or any Company Subsidiary to its customers or licensees, or the pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company and/or any Company Subsidiary.

(c) Enter into or amend any agreements pursuant to which any other party is granted manufacturing, marketing, distribution or similar rights of any type or scope with respect to any products of the Company and/or any Company Subsidiary;

(d) Amend or otherwise modify (or agree to do so), except in the ordinary course of business, or violate the terms of, any of the agreements set forth or described in the Company Schedules;

(e) Commence or settle any litigation or any dispute resolution process;

(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);

(g) Except for the issuance of shares of Company Capital Stock upon exercise of presently outstanding Options or Warrants, issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, any shares of Company Capital Stock or any other securities of the Company or any Company Subsidiary, or subscriptions, warrants, options or other rights to acquire, or other agreements or commitments of any character obligating it or any Company Subsidiary to issue any such shares or other convertible securities;

(h) Cause or permit any amendments to its Articles of Incorporation or Bylaws;

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(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 business of the Company and/or any Company Subsidiary;

(j) Sell, lease, license or otherwise dispose of any of its properties or assets, except in the ordinary course of business and consistent with past practice;

(k) Incur any indebtedness for borrowed money or guarantee any such indebtedness or issue or sell any debt securities of the Company or any Company Subsidiary or purchase or guarantee any debt securities of others or amend the terms of any outstanding loan agreement;

(l) Grant any severance or termination pay to any director, officer, employee or consultant, except payments made pursuant to standard written agreements outstanding on the date hereof (which such agreements are disclosed on Schedule 4.1(l));

(m) Adopt or amend any employee benefit plan, program, policy or arrangement (including without limitation any amendment which accelerates vesting under any such employee benefit plan, program, policy or arrangement), or enter into any employment contract, extend any employment offer, pay or agree to pay any special bonus or special remuneration to any director, employee or consultant, or increase the salaries or wage rates of its employees;

(n) 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 and consistent with past practice;

(o) Take any action that could jeopardize the treatment of the Merger as a tax-free reorganization hereunder;

(p) Pay, discharge or satisfy, in an amount in excess of $10,000, in any one case, or $25,000, in the aggregate, any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction in the ordinary course of business of liabilities reflected or reserved against in the Company Financials;

(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, joint development or joint marketing arrangement or agreement;

(s) Fail to pay or otherwise satisfy its monetary obligations as they become due, except such as are being contested in good faith;

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(t) Waive or commit to waive any rights with a value in excess of $10,000, in any one case, or $25,000, in the aggregate;

(u) Cancel, materially amend or renew any insurance policy other than in the ordinary course of business;

(v) Alter, or enter into any commitment to alter, its interest in any corporation, association, joint venture, partnership or business entity in which the Company and/or any Company Subsidiary directly or indirectly holds any interest on the date hereof; or

(w) Take, or agree in writing or otherwise to take, any of the actions described in Sections 4.1(a) through (v) above, or any other action that would prevent the Company from performing or cause the Company not to perform its covenants hereunder.

4.2 Conduct of Business of Parent. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to the terms of Section 8.1 hereof or the Effective Time, Parent agrees (except to the extent that Company shall otherwise consent in writing) to carry on its business and the business of Parent Subsidiaries in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay its debts and Taxes when due, to pay or perform other obligations when due, and, to the extent consistent with such business, to use all reasonable efforts consistent with past practice and policies to preserve intact its present business organization, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees and others having business dealings with it, all with the goal of preserving unimpaired its goodwill and ongoing businesses at the Effective Time. Parent shall promptly notify the Company of any event or occurrence or emergency not in the ordinary course of its business, and any material event involving or adversely affecting Parent and/or any Parent Subsidiary or the business thereof. Except as expressly contemplated by this Agreement, and without limiting the foregoing, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to the terms of Section 8.1 hereof or the Effective Time, Parent shall not, and it shall cause each of Parent Subsidiaries not to, without the prior written consent of Company:

(a) Enter into any commitment, activity or transaction not in the ordinary course of business;

(b) Other than in the ordinary course of business, (i) sell, license or transfer to any person or entity any rights to any Intellectual Property or enter into any agreement with respect to the Intellectual Property with any person or entity or with respect to the Intellectual Property of any person or entity, (ii) other than Intellectual Property rights acquired under "shrink-wrap" and similar widely available commercial binary code end-user licenses (in each case which is not included in the products or technology of Parent or Parent Subsidiaries including products and technology currently available or under development), buy or license any Intellectual Property or enter into any agreement with respect to the Intellectual Property of any person or entity, (iii) enter into any agreement with respect to the development of any Intellectual Property with a third party, or (iv) change pricing or royalties charged by Parent and/or any

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Parent Subsidiary to its customers or licensees, or the pricing or royalties set or charged by persons who have licensed Intellectual Property to Parent and/or any Parent Subsidiary;

(c) Enter into or amend any agreements pursuant to which any other party is granted manufacturing, marketing, distribution or similar rights of any type or scope with respect to any products of Parent and/or any Parent Subsidiary;

(d) Amend or otherwise modify (or agree to do so), except in the ordinary course of business, or violate the terms of, any of the agreements set forth or described in Parent Schedules;

(e) Commence or settle any litigation or any dispute resolution process;

(f) Declare, set aside or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Parent Capital Stock, or split, combine or reclassify any Parent Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of Parent Capital Stock, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of Parent Capital Stock (or options, warrants or other rights exercisable therefor);

(g) Except for the issuance of shares of Parent Capital Stock upon exercise of presently outstanding Options or Warrants and except with respect to any of the 4,544,214 shares of Parent Common Stock reserved for issuance to employees, officers, directors and consultants pursuant to the Parent Option Plan, issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, any shares of Parent Capital Stock or any other securities of Parent or any Parent Subsidiary, or subscriptions, warrants, options or other rights to acquire, or other agreements or commitments of any character obligating it or any Parent Subsidiary to issue any such shares or other convertible securities;

(h) Cause or permit any amendments to its Certificate of Incorporation or Bylaws, other than as set forth in the Sixth Amended and Restated Certificate of Incorporation attached as Exhibit E hereto;

(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 business of Parent and/or any Parent Subsidiary;

(j) Sell, lease, license or otherwise dispose of any of its properties or assets, except in the ordinary course of business and consistent with past practice;

(k) Incur any indebtedness for borrowed money or guarantee any such indebtedness or issue or sell any debt securities of Parent or any Parent Subsidiary or purchase or guarantee any debt securities of others or amend the terms of any outstanding loan agreement;

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(l) Grant any severance or termination pay to any director, officer, employee or consultant, except payments made pursuant to standard written agreements outstanding on the date hereof (which such agreements are disclosed on Schedule 4.2(l));

(m) Adopt or amend any employee benefit plan, program, policy or arrangement (including without limitation any amendment which accelerates vesting under any such employee benefit plan, program, policy or arrangement), or enter into any employment contract, extend any employment offer, pay or agree to pay any special bonus or special remuneration to any director, employee or consultant, or increase the salaries or wage rates of its employees, other than as contemplated by this Agreement;

(n) 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 and consistent with past practice;

(o) Take any action that could jeopardize the treatment of the Merger as a tax-free reorganization hereunder;

(p) Pay, discharge or satisfy, in an amount in excess of $10,000, in any one case, or $25,000, in the aggregate, any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction in the ordinary course of business of liabilities reflected or reserved against in the Parent Financials;

(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, joint development or joint marketing arrangement or agreement;

(s) Fail to pay or otherwise satisfy its monetary obligations as they become due, except such as are being contested in good faith;

(t) Waive or commit to waive any rights with a value in excess of $10,000, in any one case, or $25,000, in the aggregate;

(u) Cancel, materially amend or renew any insurance policy other than in the ordinary course of business;

(v) Alter, or enter into any commitment to alter, its interest in any corporation, association, joint venture, partnership or business entity in which Parent and/or any Parent Subsidiary directly or indirectly holds any interest on the date hereof; or

(w) Take, or agree in writing or otherwise to take, any of the actions described in Sections 4.2(a) through (v) above, or any other action that would prevent Parent from performing or cause Parent not to perform its covenants hereunder.

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4.3 No Solicitation. Until the earlier of the Effective Time and the date of termination of this Agreement pursuant to the provisions of Section 8.1 hereof, the Company shall not (nor will the Company permit any of the Company's officers, directors, shareholders, Company Subsidiaries, agents, representatives or affiliates to), directly or indirectly, take any of the following actions with any party other than Parent and its designees: (a) solicit, initiate, entertain, or encourage any proposals or offers from, or conduct discussions with or engage in negotiations with, any person relating to any possible acquisition of the Company and/or any Company Subsidiary (whether by way of merger, purchase of capital stock, purchase of assets or otherwise), or any portion of the capital stock or assets of, or any equity interest in, the Company and/or any Company Subsidiary, (b) provide information with respect to the Company and/or any Company Subsidiary to any person, other than Parent and its affiliates, relating to, or otherwise cooperate with, facilitate or encourage any effort or attempt by any such person with regard to, any possible acquisition of the Company and/or any Company Subsidiary (whether by way of merger, purchase of capital stock, purchase of assets or otherwise), or any portion of the capital stock or assets of, or any equity interest in, the Company and/or any Company Subsidiary, (c) enter into an agreement with any person, other than Parent and its affiliates, providing for the acquisition of the Company and/or any Company Subsidiary (whether by way of merger, purchase of capital stock, purchase of assets or otherwise), or any portion of the capital stock or assets of, or any equity interest in, the Company and/or any Company Subsidiary, or (d) make or authorize any statement, recommendation or solicitation in support of any possible acquisition of the Company and/or any Company Subsidiary (whether by way of merger, purchase of capital stock, purchase of assets or otherwise), or any portion of the capital stock or assets of, or any equity interest, in the Company and/or any Company Subsidiary by any person, other than by Parent and its affiliates. The Company shall immediately cease and cause to be terminated any such contacts or negotiations with third parties relating to any such transaction or proposed transaction. In addition to the foregoing, if the Company receives prior to the Effective Time or the termination of this Agreement any offer or proposal or request, directly or indirectly, relating to any of the 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. Except as contemplated by this Agreement, disclosure by the Company of the terms of this Agreement (other than the prohibition of this section) shall be deemed to be a violation of this Section 4.2.

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ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Shareholder Matters.

(a) Company Shareholder Approval. As promptly as practicable after the execution of this Agreement the Company shall submit this Agreement and the transactions contemplated hereby to its shareholders for approval and adoption as provided by the CGCL and its Articles of Incorporation, Bylaws and other corporate documentation. The Company shall use its best efforts to solicit and obtain the written consent of its shareholders to approve the Merger and this Agreement and to enable the Closing to occur as promptly as practicable.

(b) Additional Assurances. At the request of Parent, the Company shall use its commercially reasonable efforts to cause the Company's shareholders to execute and deliver to Parent such instruments and do and perform such acts and things as may be necessary or desirable for complying with all applicable securities laws and state corporate law.

5.2 Access to Information. Each party shall afford the others and their accountants, counsel and other representatives, reasonable access during normal business hours during the period prior to the Effective Time to (a) all of its properties, books, contracts, commitments and records, and (b) all other information concerning its business, properties and personnel (subject to restrictions imposed by applicable law) as the others may reasonably 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 of the parties to consummate the Merger.

5.3 Confidentiality. The Company and Parent each hereby agrees to continue to be bound by all of the terms and conditions of that certain Reciprocal Nondisclosure Agreement dated October 30, 2001 among the Company and TRADOS Corporation (the "**Nondisclosure Agreement**") after the date hereof.

5.4 Expenses. Subject to Article 9, each party to this Agreement shall bear and pay all fees, costs and expenses (including legal fees and accounting fees) that have been incurred or that are incurred in the future by such party in connection with the transactions contemplated by this Agreement, including all fees, costs and expenses incurred by such party in connection with or by virtue of (a) the negotiation, preparation and review of this Agreement (including any schedules) and all agreements, certificates, opinions and other instruments and documents delivered or to be delivered in connection with the transactions contemplated by this Agreement and (b) the preparation and submission of any filing or notice required to be made or given in connection with any of the transactions contemplated by this Agreement, and the obtaining of any consent required to be obtained in connection with any of such transactions; provided, however, the fees and expenses incurred by or on behalf of the Company shall be reasonable; and provided, further, that the Company shall not bear any such fees, costs and expenses on behalf of any other party to this Agreement, including without limitation the Preferred Shareholders.

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5.5 Public Disclosure. Unless otherwise required by law (including, without limitation, federal and state securities laws), no disclosure (whether or not in response to an inquiry) of the subject matter of this Agreement shall be made by any party hereto (or any representative thereof) unless approved by Parent and the Company prior to release. If a party hereto is required by law to make any such disclosure, it must first provide to the Parent and the Company the content of the proposed disclosure, the reasons that such disclosure is required by law, and the time and place that the disclosure will be made.

5.6 Notices and Consents. The Company shall give any notices that Parent may reasonably request in connection with the Merger or that are otherwise required or contemplated hereunder. The Company shall use commercially reasonable efforts to obtain the Company Third-Party Consents so as to preserve all rights of and benefits to the Company and/or Parent thereunder, and Parent shall use commercially reasonable efforts to obtain the Parent Third-Party Consents so as to preserve all rights of and benefits to Parent thereunder. The Company and Parent will give any notices to, make any filings with, and use commercially reasonable best efforts to obtain any authorizations, consents and approvals of any Governmental Authority as may be required in connection with the Merger or this Agreement.

5.7 Commercially Reasonable Efforts. Subject to the terms and conditions provided in this Agreement, each of the parties hereto shall use its commercially reasonable efforts to ensure that its representations and warranties remain true and correct in all material respects, and 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, 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 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.

5.8 Notification of Certain Matters. The Company shall give prompt notice to Parent, and 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 the Company and Parent, respectively, contained in this Agreement to be untrue or inaccurate in any material respect at or prior to the Effective Time and (ii) any failure of the Company or Parent, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder in any material respect; provided, however, that the delivery of any notice pursuant to this Section 5.8 shall not limit or otherwise affect any remedies available to the party receiving such notice.

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5.9 Certain Benefit Plans.

(a) The Company agrees to amend immediately prior to the Closing Date any Company Plan that is qualified under Code Section 401(a) to exclude employees of Parent and Parent Subsidiaries from participation thereunder as of the Effective Time.

(b) Parent agrees to amend, or to cause to be amended, immediately prior to the Closing Date, the "Simple" IRA Plan maintained by TRADOS Corporation under Code Section 408(p) to exclude employees of the Company and the Company Subsidiaries from participation thereunder as of the Effective Time.

5.10 Parent Board of Directors. Immediately after the Closing, the board of Directors of Parent shall consist of seven (7) directors, of which two (2) members shall be designated by Sequoia Capital. The parties hereto contemplate that Sameer Gandhi and Joe Prang will be such designated members.

5.11 Voting Agreement; Irrevocable Proxy; Shareholder Representation Agreement. The Company shall deliver or cause to be delivered to Parent: (i) concurrently with the execution of this Agreement, from each of Sequoia Capital X, Sequoia Technology Partners X, Sequoia Capital X Principals Fund, Shang-Che Cheng and Alexander Pressman, an executed Voting Agreement and an executed Irrevocable Proxy, pursuant to which, among other things, such parties shall agree to vote in favor of the Merger and to appoint a proxy or proxies to vote in favor of the Merger, and (ii) at or prior to the Closing, from Preferred Shareholders representing holders of not less than eighty-five percent (85%) of the outstanding shares of Company Preferred Stock, in the aggregate, an executed Shareholder Representation Agreement, in the form attached hereto as Exhibit B.

5.12 Additional Documents and Further Assurances. Each party hereto, at the request of the other 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.

5.13 Tax-Free Reorganization. Parent and the Company shall each treat the Merger as a reorganization within the meaning of Section 368(a) of the Code. As of the Closing Date, Parent has no plan or intention to (i) liquidate the Company or transfer or distribute all or a substantial portion of the Company's assets (via merger or otherwise) to Parent or any of its affiliates or (ii) discontinue (or cause the Company to discontinue) the Company's historic business or fail to use (or cause the Company to fail to use) a significant portion of the Company's business assets in a manner that satisfies the continuity of business enterprise requirement set forth in Treasury Regulation Section 1.368-1(d).

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5.14 Certain Tax Matters. The following provisions shall govern the allocation of responsibility as between Parent and the Share Recipients for certain tax matters following the Closing Date:

(a) Cooperation on Tax Matters.

(i) Parent, the Company and the Company Subsidiaries and the Share Recipients shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns for all periods that begin before the Closing Date and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Company and the Company Subsidiaries and the Share Recipients agree (A) to retain all books and records with respect to Tax matters pertinent to the Company and the Company Subsidiaries relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Parent or the Share Recipients, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (B) to give the other party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, the Company and the Company Subsidiaries or the Share Recipients, as the case may be, shall allow the other party to take possession of such books and records.

(ii) Parent and the Share Recipients further agree, upon request, to use their best efforts to obtain any certificate or other document from any Governmental Authority or any other person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including without limitation any Tax with respect to the transactions contemplated hereby).

(iii) Parent and the Share Recipients further agree, upon request, to provide the other party with all information that either party may be required to report pursuant to Section 6043 of the Code, and all Treasury Department Regulations promulgated thereunder.

(b) Certain Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement, shall be paid by the party legally responsible therefor when due, and such party will, at their or its own expense, file all necessary Tax Returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration and other Taxes and fees, and, if required by applicable law, each of Parent and the Company will, and will cause its affiliates to, join in the execution of any such Tax Returns and other documentation.

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5.15 Termination of Arthur Andersen Agreement. Parent covenants and agrees to take the following actions on its own behalf, and to cause its wholly-owned subsidiary, TRADOS Corporation, a Virginia corporation, to take the following actions:

(a) Immediately upon execution of this Agreement, cease any further engagement of Arthur Andersen LLP ("**AA**") under that certain Business Consulting Master Services Agreement (the "**AA Agreement**"), dated December 29, 2000, by and among AA, TRADOS Corporation and Parent or otherwise, and refrain from executing any further Statements of Work or Job Arrangement Letters thereunder.

(b) Within fifteen (15) business days after the Closing Date, provide written notice to AA of Parent's and TRADOS Corporation's intention to terminate the AA Agreement pursuant to Section 10.1 thereof, the date of such termination to be effective as of fifteen (15) days following the receipt of such notice by AA (such date, the "**AA Termination Date**").

(c) On the AA Termination Date, take all necessary actions to effect the forfeiture of all 819,404 Restricted Shares (as such term is defined in the AA Agreement) from AA to Parent, pursuant to Section 10.4 of the AA Agreement.

ARTICLE VI

CONDITIONS TO THE MERGER

6.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) Shareholder Approval. This Agreement, the Merger and the transactions contemplated hereby and thereby shall have been approved and adopted by (i) the shareholders of the Company holding a sufficient number of shares of Company Capital Stock as required under Company's Articles of Incorporation and the CGCL, and (ii) the stockholders of Parent holding a sufficient number of shares of Parent Capital Stock as required under Parent's Certificate of Incorporation and the Delaware General Corporation Law, and in each case such approval and adoption shall not have been withdrawn, rescinded or otherwise revoked.

(b) Government Approvals; No Injunctions or Restraints; Illegality. All approvals of governments and governmental agencies necessary to consummate the transactions hereunder shall have been received. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger shall be in effect, and no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement or (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation.

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(c) Sixth Amended and Restated Certificate of Incorporation. The Sixth Amended and Restated Certificate of Incorporation of Parent, in the form attached hereto as Exhibit E, shall have been filed with the Delaware Secretary of State and shall be in full force and effect as of the Closing Date.

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

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub contained in this Agreement shall be true and correct in all material respects (except for those representations and warranties which are by their terms qualified by a statement of materiality, which representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except for changes contemplated by this Agreement and except for those representations and warranties which address matters only as of a particular date (which shall remain true and correct as of such date), with the same force and effect as if made on and as of the Closing Date.

(b) Agreements and Covenants. Parent and Merger Sub shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Effective Time.

(c) Compliance Certificate. Parent shall have delivered to the Company a certificate, executed by a duly authorized officer of Parent, dated as of the Closing Date to the effect that each of the conditions specified in Sections 6.2(a) and (b) above and Section 6.2(i) below is satisfied in all respects.

(d) Parent Third-Party Consents. The Company shall have been furnished with evidence satisfactory to it that Parent has obtained any necessary third-party consents with respect to the contracts, agreements and instruments set forth on Schedule 6.2(d), which consents shall be in form and substance reasonably satisfactory to the Company (collectively, the "**Parent Third-Party Consents**").

(e) Option Grants by Parent. Parent shall simultaneous with the Closing grant options to purchase an aggregate amount of 3,525,261 shares (or such lesser amount as may result from rounding) of Parent Common Stock (the "**Transitional Team Grants**"), at an exercise price of not more than $0.75 per share, to the employees of the Company or Company Subsidiaries that continue to serve as an employee, consultant or advisor to Parent following the Effective Time (the "**Transitional Team**"), on such terms as are mutually determined by Parent and the Company. The Transitional Team Grants shall include an acknowledgment regarding the termination and cessation as of the Effective Time of any Option not exercised prior to such time.

(f) Option Grants. At or prior to Closing, Jochen Hummel and Iko zu Knyphausen shall grant options to purchase from each of them 705,052 shares of Parent Common Stock, for an aggregate amount of 1,410,104 shares of Parent Common Stock, at an

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exercise price of not more than $0.75 per share, to Shang-Che Cheng, on such terms as are mutually determined by each of Jochen Hummel, Iko zu Knyphausen and Shang-Che Chang. Such option grants shall include an acknowledgment regarding the termination and cessation as of the Effective Time of any Option held by Shang-Che Chang not exercised prior to such time.

(g) Legal Opinion. The Company shall have received a legal opinion from Venable, Baetjer and Howard, LLP, legal counsel to Parent, in substantially the form attached hereto as Exhibit F.

(h) Audited Financials. The Company shall have received the Parent Financials, inclusive of all footnotes and adjustments, audited and certified by Deloitte & Touche through and as of December 31, 2001.

(i) Parent Material Adverse Effect. There shall not have occurred any Parent Material Adverse Effect since the date of this Agreement.

(j) Sixth Amended and Restated Stockholders Agreement. Current parties to Parent's Fifth Amended and Restated Stockholders Agreement (the "**Fifth Stockholders Agreement**") representing a sufficient number to amend the Fifth Stockholders Agreement in accordance with the terms thereof shall have delivered an executed Sixth Amended and Restated Stockholders Agreement in the form attached hereto as Exhibit C.

(j) Second Amended and Restated Registration Rights Agreement. Current parties to Parent's First Amended and Restated Registration Rights Agreement (the "**First Registration Agreement**") representing a sufficient number to amend the First Registration Agreement in accordance with the terms thereof shall have delivered an executed Second Amended and Restated Registration Rights Agreement in the form attached hereto as Exhibit D.

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

(a) Representations and Warranties. The representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (except for those representations and warranties which are by their terms qualified by a standard of materiality, which representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except for changes contemplated by this Agreement and except for those representations and warranties which address matters only as of a particular date (which shall remain true and correct as of such date), with the same force and effect as if made on and as of the Closing Date.

(b) Agreements and Covenants. The Company and the Preferred Shareholders shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Effective Time.

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(c) Dissenters' Rights. Holders of more than fifteen percent (15%) of the outstanding shares of Company Capital Stock shall not have exercised, nor shall they have any continued right to exercise, appraisal, dissenters' or similar rights under applicable law with respect to their shares by virtue of the Merger.

(d) Company Material Adverse Effect. There shall not have occurred any Company Material Adverse Effect since the date of this Agreement.

(e) Compliance Certificate. The Company shall have delivered to Parent a certificate, executed by a duly authorized officer of the Company, dated as of the Closing Date to the effect that each of the conditions specified in Sections 6.3(a), (b), (c) and (d) above is satisfied in all respects.

(f) Company Third-Party Consents. Parent shall have been furnished with evidence satisfactory to it that the Company has obtained any necessary third-party consents with respect to the contracts, agreements and instruments set forth on Schedule 6.3(f), which shall be in form and substance reasonably satisfactory to Parent (collectively, the "**Company Third-Party Consents**").

(g) Employment Agreements. Each of Dan Phillips, Howard Schwartz and Craig Nichols (the "**Required Employees**") shall have executed and delivered to Parent a Employment Agreement (collectively, the **Employment Agreements**"), in substantially the forms attached hereto as Exhibit G, Exhibit H and Exhibit I, respectively. Each of the Required Employees shall be employees of the Company immediately prior to the Effective Time and the Employment Agreements executed by the Required Employees shall have not been terminated or repudiated by the Required Employees, and all of such Employment Agreements shall be in full force and effect.

(h) Legal Opinion. Parent shall have received a legal opinion from Perkins Coie LLP, legal counsel to the Company, in substantially the form attached hereto as Exhibit J.

(i) Preferred Shareholder Approval. This Agreement, the Merger and the transactions contemplated hereby and thereby shall have been approved and adopted by the holders of at least eighty-five percent (85%) of the Company Preferred Stock, in the aggregate, and such approval and adoption shall not have been withdrawn, rescinded or otherwise revoked.

(j) Representations and Warranties in Shareholder Representation Agreement. Holders of at least eighty-five percent (85%) of the Company Preferred Stock, in the aggregate, shall have executed and delivered the Shareholder Representation Agreement, in the form attached hereto as Exhibit B, and shall have not revoked or sought to rescind the same. The representations and warranties of each Preferred Shareholder contained in the Shareholder Representation Agreement, shall be true and correct in all material respects (except for those representations and warranties which are by their terms qualified by a standard of materiality, which representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except for changes contemplated by the Shareholder Representation Agreement and except for those representations and warranties which address matters only as of a particular

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date (which shall remain true and correct as of such date), with the same force and effect as if made on and as of the Closing Date.

(k) Sixth Amended and Restated Stockholders Agreement. Preferred Shareholders representing holders of not less than eighty-five percent (85%) of the issued and outstanding Company Preferred Stock shall have delivered an executed Sixth Amended and Restated Stockholders Agreement in the form attached hereto as Exhibit C.

(l) Second Amended and Restated Registration Rights Agreement. Preferred Shareholders representing holders of not less than eighty-five percent (85%) of the issued and outstanding Company Preferred Stock shall have delivered an executed Second Amended and Restated Registration Rights Agreement in the form attached hereto as Exhibit D.

ARTICLE VII

INDEMNIFICATION; SHAREHOLDERS' REPRESENTATIVE; ACCEPTANCE OF PARENT SERIES E STOCK

7.1 Indemnification.

(a) Survival of Representations and Warranties. All representations, warranties, covenants and agreements of each of the parties contained in this Agreement, including without limitation those contained in the exhibits, schedules and other documents delivered pursuant to this Agreement, shall survive the Closing and any investigation, audit or inspection at any time made by or on behalf of any party to this Agreement and shall continue in full force and effect until the later of (i) twelve (12) months after the Effective Time; and (ii) thirty (30) days after the completion of the consolidated audit of Parent for calendar year 2002, provided that such period shall not exceed eighteen (18) months after the Effective Time (the "**Survival Period**"). Notwithstanding anything herein to the contrary, so long as a claim arising out of a breach of a representation or warranty or nonperformance of any agreement or covenant is made prior to the expiration of the applicable period of survival set forth above in accordance with the terms of this Agreement, such representation, warranty, covenant or agreement shall survive with respect to such claim until final resolution thereof and indemnification may be had (subject to the other provisions of this Article VII) notwithstanding that the scope of loss may not be determined, remedial work completed or the claim otherwise resolved prior to such expiration.

(b) Indemnity.

(i) The Share Recipients, with the Share Recipient Escrow Shares pursuant to the terms of this Article VII and the Escrow Agreement, shall indemnify and hold each of Parent, the Surviving Corporation and Merger Sub (collectively, the "**Parent Indemnitees**") harmless to the extent provided in this Agreement from and against any and all losses, liabilities (including without limitation any direct or indirect liability, indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or

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responsibility, either accrued, absolute, contingent, mature, unmature or otherwise and whether known or unknown, fixed or unfixed, inchoate or not, liquidated or unliquidated, secured or unsecured), claims, disputes, proceedings, demands, cost unallowability determinations, judgments, settlements, liens, costs and expenses of any nature whatsoever (including reasonable fees and disbursements of attorneys, accountants, or other professional advisors relating to investigation, prosecution, negotiation, defense, settlement, or appeal, but excluding any insurance proceeds actually received by an "Indemnified Party" (as defined below) relating to any such claim and any Tax benefits inuring to the Indemnified Party as a result of the state of facts which entitle the Indemnified Party to recovery for such claim) (the foregoing referred to individually as an "**Adverse Consequence**" and collectively as "**Adverse Consequences**") resulting from or arising out of:

(A) any breach of any representation or warranty of the Company contained in this Agreement or in any schedule, exhibit, certificate, document or other item delivered by the Company or the Share Recipients or their respective representative(s) in connection with this Agreement (including without limitation each Voting Agreement and Shareholder Representation Agreement), or the nonperformance, partial or total, of any covenant or agreement of the Company contained in this Agreement;

(B) (1) with respect to holders of Company Preferred Stock, any exercise of, or claim or settlement with respect to, any appraisal or dissenters' rights with respect to any Dissenting Shares to the extent that the amount any such holder actually receives in connection therewith exceeds the per share value (which per share value shall be deemed to be, solely for purposes of this 7.1(b)(i)(B), $0.7248) of the shares such holder would have received pursuant to Section 1.6 of this Agreement if such holder had not exercised such appraisal or dissenters' rights; or

(2) with respect to any and all other shareholders of Company, any exercise of, or claim or settlement with respect to, any appraisal or dissenters' rights with respect to any Dissenting Shares; or

(C) any and all Adverse Consequences incidental to any of the foregoing or to the enforcement of this Article VII in connection therewith (including without limitation any Adverse Consequences incidental to any exercise of, or claim or settlement with respect to, any appraisal or dissenters' rights subject to Section 7.1(b)(i)(B) even if the amount the holder of Company Preferred Stock actually receives in connection therewith does not exceed the per share value of the shares (as calculated as set forth in Section 7.1(b)(i)(B)) such holder would have received pursuant to Section 1.6 of this Agreement if such holder had not exercised such appraisal or dissenters' rights).

Each Share Recipient agrees that such Share Recipient will not make any claim for indemnification against the Company or the Surviving Corporation by reason of the fact that such Share Recipient was a director, officer, shareholder, employee or agent of the Company or was serving at the request of the Company as a partner, trustee, director, officer, employee or agent of another entity, as the case may be (whether such claim is for judgments, damages, penalties, fines, costs, amounts paid in settlement, losses, expenses, or otherwise and whether such claim is

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pursuant to any statute, charter document, bylaw, agreement or otherwise) with respect to any claim or demand brought by Parent against the Share Recipient Escrow Fund pursuant to this Agreement, the Voting Agreement, the Shareholder Representation Agreement or the Escrow Agreement. Each Share Recipient irrevocably waives any and all rights to recourse against the Company or the Surviving Corporation with respect to any misrepresentation or breach of any representation, warranty or indemnity, or noncompliance with any conditions, covenants or agreements, given or made by the Company in this Agreement. No Share Recipient shall be entitled to contribution from, subrogation to or recovery against the Company or the Surviving Corporation with respect to any claim or demand brought by Parent against the Share Recipient Escrow Fund under or pursuant to this Agreement, the Voting Agreement, the Shareholder Representation Agreement or the Escrow Agreement.

(ii) Parent, with the Parent Escrow Shares pursuant to the terms of this Article VII and the Escrow Agreement, shall indemnify and hold the Share Recipients harmless to the extent provided in this Agreement from and against any and all Adverse Consequences resulting from or arising out of:

(A) any breach of any representation or warranty of Parent or Merger Sub contained in this Agreement or in any schedule, exhibit, certificate, document or other item delivered by Parent or Merger Sub or their respective representative(s) in connection with this Agreement, or the nonperformance, partial or total, of any covenant or agreement of Parent or Merger Sub contained in this Agreement; or

(B) any and all Adverse Consequences incidental to any of the foregoing or to the enforcement of this Article VII in connection therewith.

(c) Notice of Claim.

(i) If any party entitled to indemnification pursuant to this Agreement (each such party, the "**Indemnified Party**") makes any claim against any party or parties against whom indemnification may be sought by such Indemnified Party hereunder (each such party against whom indemnification may be sought, the "**Indemnifying Party**") for indemnification, such claim shall be in writing and shall state in general terms the facts upon which the Indemnified Party makes such claim. To the extent that the Share Recipients are the Indemnified Party or the Indemnifying Party, notice hereunder shall be given to the Shareholders' Representative.

(ii) In the event that any claim or demand is asserted against the Indemnified Party by a third party for which the Indemnified Party may claim indemnification by the Indemnifying Party, the Indemnifying Party shall give written notice to the Indemnified Party and the Escrow Agent within fifteen (15) days after receipt of notice from the Indemnified Party of such claim or demand indicating whether the Indemnifying Party intends to assume the defense of such claim or demand. If the Indemnifying Party does assume such defense, it shall indemnify and hold the Indemnified Party harmless from and against any and all losses, damages and liabilities caused by or arising out of any settlement or judgment of such claim and may not

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claim that it does not have an indemnification obligation with respect thereto. Notwithstanding such assumption, the Indemnified Party shall have the right to participate in such defense, by written notice given to the Indemnifying Party within fifteen (15) days from the date of the Indemnifying Party's notice, provided that such participation shall be at the expense of the Indemnified Party unless there is a conflict of interest (as reasonably determined by the Indemnified Party) between the Indemnified Party and the Indemnifying Party, in which case the cost of such participation (including reasonable attorneys' fees for counsel selected by the Indemnified Party) shall be reimbursed by the Indemnifying Party. If the Indemnifying Party assumes the defense and the Indemnified Party elects not to participate, the Indemnifying Party shall have the right fully to control and to settle the proceeding. If the Indemnified Party elects to participate in such defense, the Indemnified Party and the Indemnifying Party shall cooperate in the defense of the proceeding, and shall not settle the same without the consent of each, which consent shall not be unreasonably withheld or delayed. If the Indemnifying Party elects not to assume the defense, the Indemnified Party shall have the right to do so (at the expense of the Indemnifying Party), and may settle the same only with the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything herein to the contrary, (a) an Indemnifying Party will have the right to assume a defense of a claim or demand by a third party hereunder only so long as such claim or demand involves only money damages and does not seek an injunction or other equitable relief and (b) no Indemnified Party or Indemnifying Party hereunder will consent to the entry of any judgment or enter into any settlement with respect to any claim or demand by a third party subject to indemnification hereunder without the prior written consent of the other party, which consent will not be withheld unreasonably, and if the Indemnifying Party desires to consent to the entry of judgment with respect to or to settle such a claim but the Indemnified Party refuses, then the Indemnifying Party will be responsible for all Adverse Consequences with respect to such claim or demand, without giving effect to Sections 7.1(d)(i)(a) and (b) and (d)(ii)(a) and (b).

(iii) Subject to the terms set forth herein, (A) the Parent Escrow Fund shall be available to the Shareholder Agent, acting on behalf of each of the Share Recipients, to satisfy the indemnification obligations of Parent under this Agreement at any time and from time to time in accordance with the terms of this Agreement; and (B) the Share Recipient Escrow Fund shall be available to the Parent Indemnitees to satisfy the indemnification obligations of the Share Recipients under this Agreement at any time and from time to time in accordance with the terms of this Agreement. Prior to satisfying such indemnification obligations from the Parent Escrow Fund or the Share Recipient Escrow Fund, as the case may be, the Indemnified Party shall give written notice to the Indemnifying Party and the Escrow Agent in accordance with the foregoing paragraphs, stating that the Indemnified Party has made payments with respect to, or accrued for, Adverse Consequences subject to the indemnification obligations of Indemnifying Party under this Agreement, specifying in reasonable detail the amount and nature of such Adverse Consequences, stating that the Indemnified Party seeks payment from the Parent Escrow Fund or the Share Recipient Escrow Fund, as the case may be, to satisfy the payment or accrual of such Adverse Consequences and specifying the number of Parent Escrow Shares or Share Recipient Escrow Shares, as the case may be, to be issued to the Indemnified Party in connection with such claim (a "**Claim**"). For purposes of determining the number of Parent Escrow Shares

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or Share Recipient Escrow Shares, as the case may be, to be delivered in connection with any Claim to satisfy the indemnification obligations of each party pursuant to this Agreement, the per share value of the Parent Escrow Shares or Share Recipient Escrow Shares, as the case may be, shall be deemed to be, solely for purposes of this Article VII, $0.7248) (subject to adjustment for any stock split, stock dividend or other change with respect to the Parent Series E Stock). Within fifteen (15) days after receipt of notice from the Indemnified Party of any Claim (a "**Claim Notice**"), the Indemnifying Party shall give written notice to the Indemnified Party and the Escrow Agent indicating whether the Indemnifying Party disputes such Claim. If the Indemnifying Party does not notify the Indemnified Party within such fifteen (15) day period that the Indemnifying Party disputes such Claim, such Claim, the Escrow Agent shall deliver such number of Parent Escrow Shares or Share Recipient Escrow Shares, as the case may be, as set forth in the Claim Notice to the Indemnified Party and such Claim shall thereafter not be subject to challenge by any person. In the event that the Indemnifying Party shall object in writing to such Claim during the period specified in the preceding sentence, the Indemnified Party shall have fifteen (15) days to respond in a written statement to the objection of the Indemnifying Party. If after such fifteen (15) day period there remains a dispute as to such Claim, the parties shall attempt in good faith for fourteen (14) days following the end of fifteen (15) day period to agree upon the rights of the parties with respect to such Claim. It the parties so agree, they shall deliver a joint written direction to the Escrow Agent setting forth such agreement and, upon receipt of such agreement, the Escrow Agent shall deliver to the Indemnified Party the number of Parent Escrow Shares or Share Recipient Escrow Shares, as the case may be, as set forth in such written direction. If the parties cannot agree within such fourteen (14) day period, such parties agree to submit the dispute to arbitration conducted before a panel of three (3) arbitrators, all residents of Delaware and licensed practicing attorneys, one arbitrator chosen by each and the third chosen by the two appointed, all of which shall be chosen within seven (7) days from the expiration of the fourteen (14) day amicable negotiation period. The parties shall submit written claims to the arbital panel within seven (7) days of its appointment and the hearing shall commence fifteen (15) days after the selection of the arbital panel, and the arbital panel shall render its decision within five (5) days after commencement of the hearing. Any arbitration conducted pursuant to the terms of this Agreement shall be governed by Delaware law. The arbitrators shall be compensated at their normal hourly rates, and the costs for the performance of their duties shall be borne by the losing party. The parties agree to accept and be bound as final by the decision of the arbitrators, with no right of appeal. The arbitrators shall be instructed to make a final decision and shall designate the prevailing party, who shall be entitled, in addition to all other relief, to an award of reasonable attorneys' fees, costs and other expenses incurred in connection with the arbitration. Judgment on the arbitrators' award may be entered in any court having jurisdiction. The parties hereby agree to waive any objections based on jurisdiction and, subject to Article VII hereof, agree to submit to the jurisdiction of any properly authorized judicial body required to enforce the judgment of the arbitrators.

(iv) At the expiration of the Survival Period, all Share Recipient Escrow Shares and Parent Escrow Shares remaining in the Share Recipient Escrow Fund and the Parent Escrow Fund at such time shall be released to the Shareholders' Representative, for further distribution to the Share Recipients, and Parent, respectively, less the number of Share Recipient Escrow Shares and Parent Escrow Shares, as the case may be, subject to any

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outstanding Claim Notice theretofore delivered to the Shareholders' Representative or Parent, as the case may be (subject to adjustment for any stock split, stock dividend or other change with respect to the Parent Series E Stock), which number of Share Recipient Escrow Shares and Parent Escrow Shares, as the case may be, subject to such Claim Notice shall remain in the Share Recipient Escrow Fund and the Parent Escrow Fund, as the case may be, until the Claim with respect thereto has been effected or any timely objection with respect to such Claim Notice is otherwise resolved in accordance with the provisions of Article VII hereof. As soon as any such Claim has been effected or such objection has been otherwise resolved (such effectuation or resolution to be evidenced in the manner set forth in Article VII), the Escrow Agent shall release the Share Recipient Escrow Shares that were the subject of such Claim in accordance with the provisions of this Agreement.

(d) Limits.

(i) Indemnification by the Share Recipients. Notwithstanding anything herein to the contrary, (a) the aggregate amount of the Share Recipients' liability to Parent under this Agreement for any and all Adverse Consequences (other than with respect to the Voting Agreement and/or the Shareholder Representation Agreement) shall not exceed the Escrow Fund, which shall serve as Parent's sole and exclusive remedy for claims of indemnity pursuant to this Article VII; (b) none of the Parent Indemnitees shall be entitled to any recovery under Article VII until the total amount which the Parent Indemnitees would recover under Article VII, but for this Article VII, exceeds $50,000, and thereafter such Parent Indemnitees shall be able to recover in accordance with this Article VII only for individual claims the Adverse Consequences of which exceed $1,000; (c) the Parent Indemnitees shall not be entitled to make a claim for indemnification pursuant to Article VII, unless a claim of Adverse Consequences has been asserted by written notice, specifying the details of the alleged breach, and delivered to the Shareholders' Representative on or prior to the expiration of the Survival Period; and (d) the Parent Indemnitees shall not be entitled to recover under Article VII with respect to consequential damages, including consequential damages consisting of business interruption or lost profits, or with respect to punitive damages.

(ii) Indemnification by Parent. Notwithstanding anything herein to the contrary, (a) the aggregate amount of Parent's and Merger Sub's liability to the Company and the Share Recipients under this Agreement for any and all Adverse Consequences set forth in Article VII shall not exceed the Parent Escrow Fund, which shall serve as the Share Recipient's sole and exclusive remedy for claims of indemnity pursuant to Article VII; (b) none of the Share Recipients shall be entitled to any recovery under Article VII until the total amount which the Share Recipients would recover under Article VII, but for this Article VII, exceeds $50,000, and thereafter such Share Recipients shall be able to recover in accordance with this Article VII only for individual claims the Adverse Consequences of which exceed $1,000; (c) the Share Recipients shall not be entitled to make a claim for indemnification pursuant to Article VII, unless a claim of Adverse Consequences has been asserted by written notice, specifying the details of the alleged breach, and delivered to Parent on or prior to the expiration of the Survival Period; and (d) the Share Recipients shall not be entitled to recover under Article VII with respect to consequential damages, including consequential damages consisting of business interruption or lost profits, or with respect to punitive damages.

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(iii) Other Remedies. This Article VII sets forth the sole and exclusive remedy and recourse of the parties for monetary damages arising from any claim, cause of action or right of any nature under this Agreement; provided, however, that nothing contained in this Article VII shall be in lieu of, or constitute a waiver of, any remedies in equity that any party may otherwise have for wrongful action by either of such parties; and provided further, however, that notwithstanding anything herein to the contrary, nothing shall prevent any person from pursuing a claim against any other person for fraud, willful misstatements or willful omissions made by such other person, which such claim shall not be subject to the foregoing limitations.

7.2 Shareholders' Representative.

(a) Approval of the Merger by the Share Recipients shall also constitute the appointment of Sameer Gandhi to act as each of the Share Recipient's and the Company's attorney-in-fact and representative (the "**Shareholders' Representative**"), to do any and all things and to execute any and all documents, in such party's name, place and stead, in any way which such party could do if personally present, in connection with this Agreement and/or the Escrow Agreement, and the transactions contemplated hereby and thereby, including without limitation to amend, cancel or extend, or waive, any of the terms of this Agreement and/or the Escrow Agreement or to receive any notice required hereunder or thereunder. Parent, Merger Sub and the Surviving Corporation shall be entitled to rely, as being binding upon such Share Recipients, upon any document or other paper believed by Parent, the Merger Sub or the Surviving Corporation to be genuine and correct and to have been signed by the Shareholders' Representative, and Parent, Merger Sub and the Surviving Corporation shall not be liable to any Share Recipient for any action taken or omitted to be taken by Parent, Merger Sub or the Surviving Corporation in such reliance. The Shareholders' Representative shall have the sole and exclusive right on behalf of any Share Recipient and the Company to take any action or provide any waiver pursuant to Article VII of this Agreement and the Escrow Agreement and to settle any claim or controversy arising under this Agreement and/or the Escrow Agreement.

(b) The Shareholders' Representative may resign at any time by giving written notice of resignation, at least sixty (60) days prior to such resignation, to Parent, the Surviving Corporation, the Escrow Agent, and the Share Recipients, and the Shareholders' Representative may be removed at any time with or without cause by upon the approval of two-thirds in interest (based on the number of shares of Parent Series E Stock or Parent Common Stock issued upon conversion thereof held by the Share Recipients) of the Share Recipients (collectively, the "**Approving Shareholders**"). Upon any such resignation or removal, such Approving Shareholders shall select a successor Shareholders' Representative, which successor shall be approved by the Approving Shareholders. In the case of a resigning Shareholders' Representative, if no successor Shareholders' Representative shall have been so appointed by the Approving Shareholders and shall have accepted such appointment (effective upon the date of resignation of the resigning Shareholders' Representative), within thirty (30) days after the retiring Shareholders' Representative's giving of notice of resignation, then the retiring Shareholders' Representative may, on behalf of the Approving Shareholders, appoint a successor Shareholders' Representative. Upon the acceptance of any appointment as Shareholders' Representative thereunder by a successor Shareholders' Representative, such successor

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Shareholders' Representative shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Shareholders' Representative, and the retiring Shareholders' Representative shall be discharged from its duties and obligations as Shareholders' Representative under this Agreement. After any retiring Shareholders' Representative's resignation or removal hereunder as Shareholders' Representative, the provisions of this Article VII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Shareholders' Representative.

(c) The grant of authority provided for in this Article VII: (a) is coupled with an interest and shall be irrevocable and survive the death, incompetency, bankruptcy or liquidation of any Share Recipient and shall be binding on any successor thereto and (b) shall survive the delivery of an assignment by any Share Recipient of the whole or any fraction of its interest in any payment due to it under this Agreement.

(d) The duties and responsibilities of the Shareholders' Representative hereunder shall be determined solely by the express provisions of this Agreement, and no other or further duties or responsibilities shall be implied under this Agreement or any other agreement among the parties hereto, whether or not the Shareholders' Representative has knowledge thereof. The Company and the Share Recipients acknowledge that the Shareholders' Representative is acting solely as a stakeholder at the request of, and for the convenience of, the Company and the Share Recipients, that the Shareholders' Representative shall not be deemed to be the agent of the Company or the Share Recipients (except as contemplated hereunder), and that the Shareholders' Representative shall be released and exculpated of all liability whatsoever arising from, related to, in connection with or resulting from its activities as Shareholders' Representative and shall not be liable to the Company or the Share Recipients for any act or omission on its part, unless taken, not taken or suffered in bad faith or in willful disregard of this Agreement or involving gross negligence or willful misconduct on the part of the Shareholders' Representative.

(e) Except as otherwise contemplated hereunder, the Shareholders' Representative shall be entitled to rely, as being binding upon the Company and each Share Recipient, upon any document or other paper believed by the Shareholders' Representative to be genuine and correct and to have been signed by the Company or such Share Recipient, and the Shareholders' Representative shall not be liable to the Company or any Share Recipient for any action taken or omitted to be taken by the Shareholders' Representative in such reliance.

(f) Prior to taking any action, making any payment or instituting or defending any action or legal proceeding involving any matter referred to in this Agreement, the Shareholders' Representative may first require that it receive an indemnity from the Share Recipients in an amount and of such character as the Shareholders' Representative shall reasonably require against any and all claims, losses, liabilities, costs, judgments, attorneys' fees and other expenses of every kind and nature whatsoever in relation thereto.

(g) Except as otherwise contemplated hereunder, the Shareholders' Representative shall not be liable to the Company or the Share Recipients for any action taken or not taken by it in good faith and believed by it to be authorized by, or within the rights or powers

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conferred upon it by, this Agreement and may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken, not taken or suffered by it hereunder in good faith and in accordance with, or in reliance upon, the opinion or advice of such counsel.

(h) The Share Recipients, severally, hereby agree to pay or reimburse the Shareholders' Representative upon request for all expenses, disbursements and advances, including reasonable attorney's fees, incurred or made by the Shareholders' Representative in connection with the carrying out of its duties hereunder.

(i) The parties hereto agree that neither Parent, the Surviving Corporation nor the Merger Sub shall be liable for any action taken or not taken by the Shareholders' Representative hereunder. Each of the Share Recipients and the Shareholders' Representative agree that all disputes, controversies or other matters arising between or among the Share Recipients and the Shareholders' Representative, and any and all liabilities with respect to such disputes, controversies or other matters, shall be limited to such parties solely, and that neither Parent nor any other party shall have any responsibility or liability whatsoever with respect to such disputes, controversies or other matters.

7.3 Acceptance of Parent Series E Stock. Each Share Recipient and each holder of an Unexercised Warrant, by its acceptance of any shares of Parent Series E Stock or its rights to receive any portion thereof in connection with this Agreement and/or the Merger, shall be deemed to have accepted and agreed to each and every term and provision of this Agreement applicable to the Share Recipients and such holders generally under Articles I, VII, VIII and IX.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

8.1 Termination. Subject to the provisions of Section 8.2 below, this Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time:

(a) by mutual written consent of the Company and Parent;

(b) by Parent or the Company if: (i) the Effective Time has not occurred before 5:00 p.m. (Pacific time) on May 31, 2002 (provided that the right to terminate this Agreement under this clause 8.1(b)(i) shall not be available to any party whose willful failure to fulfill any obligation hereunder has been the primary cause of, or resulted in, the failure of the Effective Time to occur on or before such date); (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 Authority 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

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Governmental Authority, which would: (i) prohibit Parent's or the Surviving Corporation's ownership or operation of all or any portion of the business of the Company or (ii) compel Parent or the Surviving Corporation 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 there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of the Company or any Preferred Shareholder in any material respect and (i) such breach has not been cured within ten (10) business days after written notice to the Company (provided that no cure period shall be required for a breach which by its nature cannot be cured), and (ii) as a result of such breach any of the conditions set forth in Section 6.1 or 6.3 would not then be completely satisfied; or

(e) by the Company if there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Parent or Merger Sub in any material respect and (i) such breach has not been cured within ten (10) business days after written notice to Parent (provided that no cure period shall be required for a breach which by its nature cannot be cured), and (ii) as a result of such breach any of the conditions set forth in Section 6.1 or 6.2 would not then be completely satisfied.

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 that, notwithstanding the foregoing, each party shall remain liable for any breaches of this Agreement prior to its termination; and provided further that, the provisions of Sections 5.3 and 5.4 and Articles VIII and IX of this Agreement shall remain in full force and effect and survive any termination of this Agreement.

8.3 Amendment. Except as is otherwise required by applicable law after the shareholders of the Company approve this Agreement, 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 Company and Parent.

8.4 Extension; Waiver. At any time prior to the Effective Time, Parent and Merger Sub, on the one hand, and the Company, on the other, 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 in favor of the other shall be valid only if set forth in an instrument in writing signed on behalf of such party.

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ARTICLE IX

GENERAL PROVISIONS

9.1 Notices. Any notice, request, claim, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be sent as follows:

If to Parent or Merger Sub, to:

TRADOS Incorporated
113 South Columbus Street
Alexandria, VA 22314
Attn: Kevin L. Passarello, Vice President and General Counsel
Fax No.: (703) 683-9457

with a required copy to:

Venable, Baetjer and Howard, LLP
8010 Towers Crescent Drive, Suite 300
Vienna, VA 22182
Attn: Joseph C. Schmelter, Esq.
Fax No.: (703) 821-8949

If to the Company, to:

Uniscape Incorporated
1292 Hammerwood Avenue
Sunnyvale, CA 94089
Attn: Chief Executive Officer
Fax No. (408) 743-3600

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with a required copy to:

Perkins Coie LLP
101 Jefferson Drive
Menlo Park, CA 94025-1114
Attn: Mark Albert, Esq.
Fax No.: (650) 838-4350

or to such other address as the person to whom notice is to be given may have specified in a notice duly given to the sender as provided herein. Such notice, request, claim, demand, waiver, consent, approval or other communication shall be deemed to have been given (i) as of the date so delivered if delivered personally, (ii) when sent by telefax of facsimile (in each case with confirmation of receipt) if sent during normal business hours of the recipient and, if not, on the next day, (iii) three (3) days after having been sent by registered or certified mail, postage prepaid, (iv) one (1) day after deposit with a nationally recognized, overnight courier service, specifying next day delivery, or (v) if given by any other means, only when actually received by the addressee(s).

9.2 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.

9.3 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.

9.4 Entire Agreement; Assignment. This Agreement, the Schedules and Exhibits hereto, and the documents and instruments and other agreements among the parties hereto referenced herein (including without limitation the Nondisclosure Agreement): (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; and (b) shall not be assigned by operation of law or otherwise except as otherwise specifically provided, except that Parent and Merger Sub may assign their respective rights and delegate their respective obligations hereunder to their respective affiliates.

9.5 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.

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9.6 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.

9.7 Governing Law. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Delaware, without regard to conflicts of laws provisions. Subject to Section 7.1(c), each party hereto irrevocably consents and agrees to the exclusive jurisdiction of the courts of the State of Delaware or a United States District Court located in the State of Delaware, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, for resolution of all matters involving this Agreement or the transactions contemplated hereby. Each party hereto expressly waives all rights to bring suit, action or other proceeding in or before any court or tribunal not subject to the jurisdiction of the above courts. Each party hereto expressly waives any and all objections it may have to venue, including, without limitation, the inconvenience of such forum, in any such courts.

9.8 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.

9.9 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement 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 they are entitled at law or in equity.

9.10 Absence of Third-Party Beneficiary Rights. No provision of this Agreement is intended, nor will be interpreted, to provide or to create any third-party beneficiary rights or any other rights of any kind in any client, customer, affiliate, stockholder, member, employee, partner of any party hereto or any other person or entity.

9.11 Pronouns. All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as the identity of the parties hereto may require.

9.12 Waiver of Conflicts. Each party to this Agreement acknowledges that following the Effective Time, Perkins Coie LLP may continue to perform legal services for the Share Recipients, adverse to Parent, Merger Sub and/or Parent Subsidiaries in matters arising under this Agreement and the transactions contemplated hereby. Accordingly, each party to this Agreement hereby (1) acknowledges that it has had an opportunity to ask for information relevant to this disclosure; (2) acknowledges that Perkins Coie LLP represented the Company in the transaction contemplated by this Agreement and has not represented any individual Share Recipient in

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connection with such transaction; and (3) gives its informed consent to future representation by Perkins Coie LLP of any or all of the Share Recipients, adverse to Parent, Merger Sub and/or Parent Subsidiaries, in matters arising under this Agreement and the transactions contemplated hereby.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

TRADOS INCORPORATED

By: _____
Name:
Title:

T-U ACQUISITION CORP.

By: _____
Name:
Title:

UNISCAPE INCORPORATED

By: _____
Name:
Title:

SHAREHOLDERS' REPRESENTATIVE

_____
Sameer Gandhi

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

TRADOS INCORPORATED

By:_____
Name:
Title:

T-U ACQUISITION CORP.

By:_____
Name:
Title:

UNISCAPE INCORPORATED

By: Steve L. Adams
Name: Steve L. Adams
Title: President and CEO

SHAREHOLDERS' REPRESENTATIVE

_____
Sameer Gandhi

[COUNTERPART SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

TRADOS INCORPORATED

By: _____
Name:
Title:

T-U ACQUISITION CORP.

By: _____
Name:
Title:

UNISCAPE INCORPORATED

By: _____
Name:
Title:

SHAREHOLDERS' REPRESENTATIVE

_____
Samer Gandhi

[COUNTERPART SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]

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