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Commissioner for Trademarks: Please re...

...copies of an original document.

1. Name of conveying party(ies):  
 EasiRun U.S.A., Inc.

Individual(s)  
 Association  
 General Partnership  
 Limited Partnership  
 Corporation—State Delaware  
 Other \_\_\_\_\_

Additional name(s) attached?  Yes  No

11-29-02

2. Name and address of receiving party(ies):  
 Transoft, Inc.  
 2000 Riveredge Parkway, Suite 450  
 Atlanta, GA 30328

Individual(s) Citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation—State Georgia  
 Other \_\_\_\_\_

3. Nature of conveyance:  
 Assignment  
 Merger  
 Security Agreement  
 Change of Name  
 Other: \_\_\_\_\_

Execution Date: 06/22/99

If the assignee is not domiciled in the United States, a domestic representative designation is attached.  Yes  No

Additional names/addresses attached?  Yes  No

4. Application number(s) or trademark number(s):  
 A. Trademark Application No(s):

B. Trademark No(s):  
1,768,456

Additional numbers attached?  Yes  No

5. Name/address of party to whom correspondence concerning document should be mailed:  
 JOHN A. MIZHIR, JR.  
 Fish & Richardson P.C.  
 4350 La Jolla Village Drive, Suite 500  
 San Diego, California 92122

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR §3.41): \$40  
 Enclosed  
 Authorized to charge Deposit Account.

8. Deposit Account No.: 06-1050  
 Please apply any additionally charges, or any credits, to our Deposit Account No. 06-1050.

DO NOT USE THIS SPACE

9. Statement and Signature: *To the best of my knowledge and belief, the foregoing information is true and correct and the attached is a true copy of the original document.*

John A. Mizhir, Jr.  
 Name of Person Signing

Signature

November 26, 2002  
 Date

Total number of pages including cover sheet, attachments, and document: 58

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MERGER AGREEMENT AND PLAN OF REORGANIZATION

THIS MERGER AGREEMENT AND PLAN OF REORGANIZATION (this "Agreement") made this 22nd day of June, 1999, by and between Transoft Limited (to be renamed Transoft Group Limited), a corporation incorporated under the laws of England ("Parent"), Transoft, Inc., a corporation incorporated under the laws of the State of Georgia ("Buyer"), EasiRun USA, Inc., a corporation incorporated under the laws of the State of Delaware (the "Company"), Compsoft LLC, a limited liability company formed under the laws of the State of California ("Compsoft") and Sinc, Inc., a corporation incorporated under the laws of the State of Ohio ("Sinc") (Compsoft and Sinc are the sole stockholders of the Company and are individually referred to as a "Stockholder" and collectively as the "Stockholders").

WITNESSETH:

WHEREAS, Parent and Buyer desire to acquire the Company from the Stockholders;

WHEREAS, the Stockholders desire to enter into this Agreement with Parent and Buyer;

WHEREAS, Parent, Buyer, the Company and the Stockholders desire to effect a business combination pursuant to which the Company will merge with and into Buyer, and the Stockholders will receive, in exchange for their shares of common stock in the Company (the "Common Stock"), shares of Parent Stock (as hereinafter defined), upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, it is the intention of the parties to this Agreement that the Merger (as hereinafter defined) for federal income tax purposes shall qualify as a "reorganization" within the meaning of Section 367(a) and 368(a) of the Internal Revenue Code of 1986, as amended (the "Code").

NOW, THEREFORE, in consideration of the premises and the mutual promises, representations, warranties and covenants hereinafter set forth, the parties hereto agree as follows:

1. THE MERGER.

1.1 Merger. Subject to the terms and conditions hereinafter set forth, at the Effective Time (as hereinafter defined), the Company will merge with and into Buyer (the "Merger") in accordance with the applicable provisions of the Delaware General Corporation Law (the "DGCL") and the Georgia Business Corporation Code (the "GBCC"), the separate corporate existence of the Company shall thereupon cease and Buyer, as the surviving entity in the Merger (the "Surviving Entity"), shall continue its existence as a corporation organized under the laws of the State of Georgia.

Ref: 01487-002001

## 1.2 Effect of Merger.

1.2.1 Effective Time of Merger and Effect of Merger. As soon as practical following the Closing (as hereinafter defined), the Company and Buyer (collectively called the "Merging Entities") shall cause a Certificate of Merger (or like instrument) to be duly prepared, executed, acknowledged and filed with the Secretary of State of the State of Delaware and the Secretary of State of the State of Georgia in accordance with the provisions of the DGCL and the GBCC. The Merger shall become effective at the time of the filing of the Certificate of Merger with the Secretary of State of the State of Georgia unless a different effective date is agreed to by the parties and specified in the Certificate of Merger (such time of filing or different effective date, as the case may be, is hereinafter referred to as the "Effective Time").

At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL and the GBCC. 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 Merging Entities shall vest in the Surviving Entity, and all debts, liabilities and duties of the Merging Entities shall become the debts, liabilities and duties of the Surviving Entity. If at any time the Surviving Entity or the Stockholders shall consider or be advised that any further assignments, assurances in law, or other acts or instruments are necessary or desirable to vest, perfect, or confirm in the Surviving Entity the title to any property or rights of the Merging Entities or the assumption of liabilities of the Company by the Surviving Entity, the Merging Entities and their proper officers and directors shall and will do all such acts and things as may be necessary or proper to vest, effect, or confirm title to such property or rights in the Surviving Entity and otherwise to carry out the purposes of this Agreement.

1.2.2 Certificate of Incorporation and Bylaws. Unless otherwise determined by Parent prior to the Effective Time, the Certificate of Incorporation and Bylaws of Buyer shall be the Certificate of Incorporation and Bylaws of the Surviving Entity.

1.2.3 Directors and Officers. The directors and officers of the Surviving Entity shall be as set forth on Schedule 1.2.3 hereto, each to hold office until their respective successors are duly elected or appointed and qualified.

1.2.4 Conversion of Shares held by Stockholders. At and as of the Effective Time, the Common Stock shall be converted as described in Section 1.3 below.

1.2.5 Stock Transfer Books. From and after the Effective Time, no transfer of shares of Common Stock outstanding prior to the Effective Time shall be registered on the stock transfer books of the Company or the Surviving Entity.

1.3 Common Stock; Merger Consideration. At the Effective Time, by virtue of the Merger and without any action by the holders of the Common Stock, all Common Stock issued and outstanding immediately prior to the Effective Time shall be canceled and retired and converted into and become the right to receive the Merger Consideration. The aggregate Merger Consideration (the "Merger Consideration") shall be equal to four thousand one hundred ninety

four (4,194) Ordinary Shares of Parent ("Parent Stock"). The Merger Consideration shall be payable by delivery to each Stockholder at the Closing of that number of shares of Parent Stock set forth opposite each such Stockholder's name on Schedule 1.3 hereto.

1.4 Exchange Procedure for the Stockholders. After the Effective Time, each holder of a certificate or certificates that immediately prior to the Effective Time represented outstanding shares of Common Stock shall surrender such certificate or certificates, duly endorsed and executed as the Surviving Entity may require, to the Surviving Entity for cancellation, at which time the Merger Consideration applicable to such shares of Common Stock shall be delivered to such Stockholder. At the Effective Time, the holders of certificates evidencing the Common Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such stock, and their sole right shall be to receive their respective portions of the Merger Consideration set forth above. All rights of the Stockholders to receive shares of Parent Stock shall be deemed, when paid or issued hereunder, to have been issued in full satisfaction of all rights pertaining to the Common Stock.

## 2. COVENANTS AND UNDERTAKINGS

2.1 Additional Agreements. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable, or to remove any injunctions or other impediments or delays, legal or otherwise, to consummate and make effective the Merger and the other transactions contemplated by this Agreement, including without limitation, the execution and delivery of all certificates, documents, agreements, resolutions, schedules and opinions required by, and in accordance with, the provisions of Section 6.4 hereof. In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement and the transactions contemplated hereby, the proper officers and directors of Parent, Buyer and the Surviving Entity and the Stockholders shall use all reasonable efforts to take, or cause to be taken, all such necessary actions.

2.2 Public Announcements. No party hereto shall make any press release or other public announcement concerning the transactions contemplated by this Agreement without first obtaining the prior written consent of the other parties hereto, such approval not to be unreasonably withheld or delayed. The parties hereto and their affiliates will hold confidential and not disclose the terms and conditions of this Agreement, the Exhibits and Schedules hereto, the provisions hereof and thereof, and all information furnished or made available pursuant to Section 2.7 hereof. Notwithstanding the foregoing, this Section 2.2 shall not be deemed to prohibit any disclosure which such party is advised by outside counsel to be required by applicable law, provided that such party uses its reasonable efforts (in light of the circumstances) to give notice to the other parties hereto and cooperate with such parties in seeking confidential treatment of the information disclosed.

2.3 Covenants of the Stockholders. Each Stockholder hereby irrevocably waives any rights that such Stockholder may have under the DGCL or the GBCC to dissent to the Merger. In addition, each Stockholder hereby irrevocably waives any and all rights of first refusal, and any

preemptive or other similar rights that such Stockholder may have under the DGCL, the GBCC or any agreements or other arrangements between such Stockholder and the Company and/or the other Stockholder with regard to the Merger and the other transactions contemplated by this Agreement.

2.4 Agreement with Easirun Europa GMBH. Each of the parties hereto shall use their best efforts to, no later than three (3) months after the Closing, cause Parent (or an affiliate of Parent) and Easirun Europa GMBH ("EE") to enter into a formal, written agreement (the "EE Agreement") with respect to reselling certain licenses in Germany, Austria and Switzerland containing terms and conditions agreeable to Parent in its sole discretion including, without limitation, the following:

2.4.1 The term of the EE Agreement shall be for a period of one year, renewable for a second year, depending on EE achieving agreed to performance goals in year one;

2.4.2 Subject to Parent (or an affiliate of Parent) retaining the right to sell directly to specific customers in Germany & Austria in its sole discretion, Parent (or an affiliate of Parent) will appoint EE as its sole distributor in Germany to resell the FlexGen product ("FlexGen") in Germany and Austria on agreed commercial terms;

2.4.3 Parent (or an affiliate of Parent) shall also grant EE a non-exclusive license to resell FlexGen in Switzerland on commercial terms and will generally recommend to German-speaking prospects in Switzerland that they purchase FlexGen licenses and support from EE; and

2.4.4 The agreements set forth in this Section 2 shall only apply to FlexGen in its current stand-alone form and will not include any Parent (or an affiliate of Parent) derivatives of FlexGen that are included within its forthcoming new Omnea framework.

Parent hereby agrees that the EE Agreement shall (i) until June 30, 2000, contain financial terms and conditions as currently in effect between the Company and EE, and (ii) from July 1, 2000 until July 1, 2001, provide for a distributor discount on list license fees and list support charges of no less than (a) thirty percent (30%) for sales to end users, and (b) fifty percent (50%) for sales to resellers. The parties hereto acknowledge that if the EE Agreement is not entered into, for any reason other than Parent's failure to offer EE an agreement on the terms set forth in this Section 2.4, EE will not have the right to resell FlexGen whether as distributor, licensee or otherwise, without the prior written consent of Parent.

2.5 Operations Prior to Closing Date. Except with the prior consent in writing of the Company (in the case of Parent or Buyer) or Parent (in the case of the Company), and except as may be required to effect the transactions contemplated by this Agreement, each of Parent, Buyer and the Company covenant and agree (and the Stockholders shall cause the Company), between the date of this Agreement to and including the Closing Date, to:

(a) conduct its business only in the usual, regular and ordinary manner, on a basis consistent with past practice, maintain its books, accounts and records in the usual, regular and ordinary manner, on a basis consistent with past practices, maintain and

comply in all material respects with the terms of all applicable laws, and otherwise conduct its business only in the ordinary course of business;

(b) use its reasonable efforts to preserve intact its current organization, keep available the services of the current officers, employees, and agents of its current organization, and maintain the relations and good will with all suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with it;

(c) maintain all of its assets in good repair, order and condition (ordinary wear and tear excepted), and perform all of its contractual obligations in all material respects;

(d) pay all expenses and accounts payable incurred in connection with its operations in the ordinary course of business on a basis consistent with past practice;

(e) not permit any of its assets to be subjected to any lien;

(f) not sell, transfer or otherwise dispose of any of its assets except in the ordinary course of business;

(g) not write off as uncollectible any of its notes or accounts receivable, except write-offs in the ordinary course of business charged to applicable reserves, which individually or in the aggregate are not material;

(h) not accelerate the collection of its accounts receivable or other amounts payable to it other than in the ordinary course of business;

(i) not cancel or waive any of its claims or rights of substantial value;

(j) not make any material change in its method of accounting or auditing practice and not make or permit any change in its governing documents or in its authorized, issued or outstanding securities;

(k) keep in force, at no less than their present limits, all of its existing bonds and policies of insurance;

(l) not enter into any contract, commitment, arrangement or transaction of the type described in Section 3.16 (in the case of the Company) or Section 5.16 (in the case of Parent or Buyer) or suffer, permit or incur any of the transactions or events described in Section 3.12 (in the case of the Company) or Section 5.12 (in the case of Parent or Buyer) to the extent such events or transactions are within the control of the Company and the Stockholders (in the case of the Company) or Parent and Buyer (in the case of Parent and Buyer);

(m) not grant any stock option or right to purchase any security, issue any security convertible into such securities, purchase, redeem, retire or otherwise acquire any

of such securities, or agree to do any of the foregoing, or grant any bonuses, or declare, set aside or pay any dividend in respect of its securities; provided, however, that Parent shall have the right to declare, set aside and pay a dividend in respect of its securities in an amount not to exceed £77,777.

(n) promptly advise the Company (in the case of Parent or Buyer) or Parent (in the case of the Company) in writing of any matters arising or discovered after the date of this Agreement which, if existing or known at the date hereof, would be disclosed pursuant to a representation or covenant; or

(o) not take any action or permit any action to be taken that would materially and adversely affect any of the its assets or business as a going concern, or that would impair the ability of the parties hereto to consummate the transactions contemplated by this Agreement.

Notwithstanding the foregoing provisions of this Section 2.5 or anything in this Agreement to the contrary, (i) Parent and Buyer shall have the right to take all actions they deem necessary or desirable to effect the transfer of its business and assets as a going concern to Pitcomp 186 Limited (to be renamed Transoft Limited), (ii) Parent shall have the right to declare, set aside and pay a dividend in respect of its securities in an amount not to exceed £77,777, and (iii) the Company shall have the right to pay up to £200,000 in the aggregate in consulting fees to the Stockholders.

2.6 Filing of Tax Returns. Each of Parent, Buyer and the Company covenant to (and the Stockholders shall cause the Company to) cause all of its tax returns required to be timely filed before the Closing to be timely filed with the appropriate taxing authorities. For purposes of this Section 2.6, such returns shall be deemed timely filed if such party has obtained an extension from the appropriate taxing authority as to the time in which it may file such tax returns and such extended due date is after the Effective Time.

2.7 Examination of Records and Confidentiality. Between the date of this Agreement and the Closing Date, Parent and Buyer will allow the Company, and the Company will allow (and the Stockholders shall cause the Company to allow) Parent and Buyer, full access to all of its books, records, files, documents, assets, contracts and agreements which may be reasonably requested, and Parent and Buyer shall furnish the Company, and the Company shall furnish (and the Stockholders shall cause the Company to furnish) Parent and Buyer, during such period with all information concerning its affairs which may be reasonably requested. Each party will conduct any investigation during normal business hours.

2.8 Consents and Approvals. Each of Parent, Buyer, the Company and the Stockholders agree to apply for and obtain the waiver, consent and approval of all persons or entities whose waiver, consent and approval is required in order to consummate the Merger or any of the other transactions contemplated by this Agreement, or is required by any agreement, lease, instrument, arrangement, judgment, decree, order or license to which Parent, Buyer, the Company or either Stockholder is a party or subject to as of the Closing Date, and which would

prohibit, or require the waiver, consent or approval of any person or entity to such transaction or under which, without such waiver, consent or approval, such transaction would constitute an occurrence of default under the provisions thereof, result in the acceleration of any obligation thereunder, or give rise to a right of any party thereto to terminate its obligations thereunder.

2.9 Standstill. During the period commencing on the date of this Agreement and terminating at the Effective Time, neither Parent, Buyer, the Company, any Stockholder nor any of their affiliates shall, directly or indirectly, solicit, encourage or initiate any discussions with, or negotiate or otherwise deal with, or provide information to, any person or entity other than the parties hereto concerning any merger, sale of substantially all of the assets or business or any similar transaction involving or respecting Parent, Buyer or the Company.

#### Section 2.10 Gain Recognition.

(a) Parent shall not take (or cause to be taken), any action, which under Treas. Reg. Section 367(a)-3T(g) or its successor would result in the acceleration of the recognition of gain for United States federal income tax purposes to a Stockholder with respect to any Ordinary Shares of Parent issued pursuant to Section 1.3 above, without the written consent of all stockholders which consent shall not be unreasonably withheld. For purposes of determining whether consent is reasonable for purposes of the preceding sentence, factors relating to whether the Stockholders shall have received distributions from Parent sufficient to satisfy any tax liability arising from such gain shall be taken into account. The failure to distribute sufficient funds to the Stockholders to cover all tax liabilities arising from such gain shall be reasonable grounds for withholding consent. However, in no event shall any obligation under this Section extend later than the end of the fifth (5<sup>th</sup>) taxable year following the taxable year in which the Merger occurs. In addition, Parent shall be released from the foregoing obligations in connection with (i) a public offering of the Securities of Parent or Buyer; or (ii) a sale to an unaffiliated third party of all of the shares or assets of Parent in either (a) an all cash transaction; or (b) a transaction that qualifies for non-recognition treatment for the Stockholders under United States income tax laws. (b)

Parent shall provide the Stockholders such information, as and when requested by the Stockholders, that is required to inform the Parent of any disposition of any property that would require the Parent to recognize gain under Section 367 of the Code and the Treasury Regulations issued hereunder.

### 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE STOCKHOLDERS.

The Company and the Stockholders, jointly and severally, represent and warrant to Parent and Buyer as of the Closing as follows:

3.1 Organization, Standing and Foreign Qualification. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has the full power and authority (corporate and otherwise) to carry on its business in the places as it is now being conducted and to own and lease the properties and assets which it now owns or leases. The Company is duly qualified and/or licensed to transact business and in good



standing as a foreign corporation in each jurisdiction in which the failure to be so qualified or licensed would have a material adverse effect on the Company. The character of the property owned or leased by the Company and the nature of the business conducted by it do not require such qualification and/or licensing in any other jurisdiction. Attached hereto as Schedule 3.1 are true, correct and complete copies of the Certificate of Incorporation and Bylaws of the Company, as amended through the date hereof

3.2 Subsidiaries. The Company does not, directly or indirectly, own, of record or beneficially, any shares or other equity or ownership or proprietary interests in any corporation, limited liability company, partnership, limited partnership, joint venture, trust or other business entity.

3.3 Authority and Status. The Company has the power and authority to execute and deliver this Agreement, to perform hereunder, and to consummate the Merger and the other transactions contemplated hereby without the necessity of any act or consent of any other person or entity whomsoever. The execution, delivery and performance by the Company of this Agreement and each and every agreement, document and instrument provided for herein have been duly authorized and approved by the Board of Directors and the stockholders of the Company. This Agreement and each and every agreement, document and instrument to be executed, delivered and performed by the Company in connection herewith constitutes or will, when executed and delivered, constitute the legal, valid and binding obligations of the Company enforceable against it in accordance with their respective terms, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws from time to time in effect affecting the enforcement of creditors' rights generally.

3.4 Capitalization. The authorized capital stock of the Company consists of one thousand five hundred (1,500) shares of Common Stock, of which one thousand (1,000) shares are issued and outstanding. All of the issued and outstanding shares of the Company are validly authorized and issued, fully paid, and nonassessable and are owned (beneficially and of record) by the Stockholders in the amounts set forth on Schedule 3.4. All of such shares of capital stock were offered and sold in compliance with all applicable federal and state securities laws and regulations. There are no outstanding options, warrants, calls, commitments, or plans by the Company to issue any additional shares of its capital stock, or to pay any dividends on such shares, or to purchase, redeem, or retire any outstanding shares of its capital stock, nor are there outstanding any securities or obligations which are convertible into or exchangeable for any shares of capital stock of the Company. There are no stock appreciation rights, phantom stock or similar rights in existence with respect to the Company.

3.5 Absence of Equity Investments. Except as set forth on Schedule 3.5 hereto, neither the Company nor any Stockholder owns, beneficially or of record, directly or indirectly, any capital stock or other ownership or proprietary interest in any corporation, limited liability company, partnership, association, trust, joint venture or other entity that is in competition with the Company or is a customer of the Company.

### 3.6 Liabilities and Obligations of the Company.

3.6.1 Schedule 3.6.1 sets forth true, correct and complete copies of the Company's balance sheet and income statement as of March 31, 1999 (collectively, the "Financial Statements"). The Financial Statements have been prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a basis consistent throughout the periods indicated and consistent with each other except that unaudited financial statements do not include footnotes. The Financial Statements present fairly the financial condition and operating results of the Company as of the dates and during the periods indicated therein, subject to normal year-end adjustments, which will not be material in amount or significance.

3.6.2 The Company does not have any liability or obligation (whether accrued, absolute, contingent or otherwise), except for:

(a) the liabilities and obligations of the Company which are disclosed or reserved against in the Financial Statements contained in Schedule 3.6.1 or are separately disclosed in Schedule 3.6.2 hereto, to the extent and in the amounts so disclosed or reserved against; and

(b) liabilities incurred or accrued in the ordinary course of business since March 31, 1999 and which do not (and will not), either individually or in the aggregate, have a materially adverse effect on the business, assets, prospects, condition (financial or otherwise) or operations of the Company.

3.6.3 The Company is not in default with respect to any liabilities or obligations, and all such liabilities or obligations shown or reflected in the Financial Statements contained in Schedule 3.6.1 or set forth in Schedule 3.6.2, and such liabilities incurred or accrued subsequent to the date of the Financial Statements have been, and are being, paid and discharged as they become due, and all such liabilities and obligations were incurred in the ordinary course of business, except as indicated in Schedule 3.6.2.

### 3.7 Taxes.

3.7.1 The Company has timely filed all federal, state, foreign and local tax returns and reports ("Returns") which are required to be filed on or before the Closing. To the knowledge of the Company and the Stockholders, all such Returns are true, accurate and complete in all material respects. All taxes shown to be payable on such Returns have been paid in full on a timely basis, and no other taxes are owed by the Company with respect to items or tax periods covered by such Returns. The Company has provided Parent and Buyer with complete and accurate copies of all Returns filed by the Company for periods for which the statute of limitations is still open. The Company will have no liability for taxes other than taxes (i) which are disclosed or reserved against in the Financial Statements contained in Schedule 3.6.1 or are separately disclosed in Schedule 3.6.2 hereto, to the extent and in the amounts so disclosed or reserved against, and (ii) incurred in the ordinary course of business since March 31, 1999 and which do not (and will not), individually or in the aggregate, have a material adverse effect on the

business, assets, prospects, condition (financial or otherwise) or operations of the Company. Except as disclosed on Schedule 3.7, the Company has not been included in any consolidated, combined or unitary Returns. Except as disclosed on Schedule 3.7, the Company does not have in effect, and as not been requested to make, any waiver or extension of any statute of limitations with respect to taxes.

3.7.2 Except as set forth on Schedule 3.7, there are no requests for filings in respect of any tax pending by the Company with any taxing authority.

3.7.3 There has been withheld or collected from each payment made to each employee of the Company the amount of all taxes (including without limitation federal income taxes, Federal Insurance Contributions Act taxes and state and local income, payroll and wage taxes) required to be withheld or collected therefrom and the same have been paid to the proper tax depositories or collecting authorities.

3.7.4 There are no tax allocation agreements or tax sharing agreements, arrangements or understandings in effect between the Company and any other person or entity.

3.7.5 Schedule 3.7 sets forth all federal tax elections that are in effect with respect to the Company for the current and immediately preceding three fiscal years.

3.7.6 The Company is not a party to any joint venture, partnership, limited liability company or other arrangement or contract that could be treated as a partnership for federal income tax purposes.

3.7.7 Schedule 3.7 contains a list of the states, territories and jurisdictions (whether foreign or domestic) in which the Company is currently filing Returns. There is no pending, proposed, or, to the knowledge of the Company and the Stockholders, threatened, claim by any taxing authority in any jurisdiction in which the Company does not pay taxes or file Returns that the Company is required to pay taxes or file Returns.

3.8 Tax Audits. There are no pending, proposed, or, to the knowledge of the Company and the Stockholders, threatened, audits, proceedings, assessments or deficiencies, asserted with respect to taxes of the Company.

3.9 Ownership of Assets and Leases. The Company does not own any real property. The Company has good and marketable title to all of its property and assets, other than leased property, free and clear of all liens, claims, charges, options, rights of seizure, rights of tenants or other encumbrances, except as specifically disclosed or reserved against in the Financial Statements contained in Schedule 3.6.1 or Schedule 3.6.2 (to the extent and in the amounts so disclosed or reserved against) and except for liens arising from current taxes not yet due and payable. Schedule 3.9 contains a list of all bank accounts, safe deposit boxes (and the contents thereof) and powers of attorney of the Company and of all persons or entities authorized to act with respect thereto.

All buildings, machinery and equipment owned or leased or held for use by the Company are in good operating condition and state of repair, subject only to ordinary wear and tear which is not such as to affect adversely the operations of the Company as presently conducted and as proposed to be conducted. The assets owned or held for use by the Company constitute all properties that are necessary for the continued conduct by the Company of the business presently being conducted. To the knowledge of the Company and the Stockholders, the Company has not received any notice of violation of any applicable zoning regulation, ordinance or other law, or regulation or requirement relating to the Company or its operations and properties, whether owned or leased, and there is no such violation or grounds therefor which could adversely affect the operations of the Company as presently conducted and as proposed to be conducted. Except pursuant to this Agreement, neither the Company nor any Stockholder is a party to any contract or obligation whereby there has been granted to anyone an absolute or contingent right to purchase, obtain or acquire any rights in any of the assets, capital stock or operations of the Company.

3.10 Accounts Receivable. All of the accounts receivable of the Company shown on the Financial Statements or thereafter acquired represent, and the accounts receivable of the Company outstanding as of the Closing will represent, sales actually made or services actually performed in the ordinary course of business in bona fide transactions completed in accordance with the terms and provisions contained in any documents relating thereto. The reserves for uncollectible accounts receivable reflected on the Financial Statements were established in accordance with GAAP and when established were adequate in light of all the facts then known and the Company's historical methods and practices in establishing such reserves. To the knowledge of the Company and the Stockholders, the accounts receivable outstanding as of the Closing will be subject to no defenses, counterclaims, or rights of setoff other than those arising in the ordinary course of business and for which adequate reserves have been established.

3.11 Agreement Does Not Violate Other Instruments. Except as disclosed in Schedule 3.11, the execution and delivery of this Agreement by the Company and the Stockholders does not, and the consummation of the transactions contemplated hereby will not, violate any provision of the Certificate of Incorporation, as amended, or Bylaws, as amended (or other governing documents), of the Company or violate or constitute an occurrence of default under any provision of, or conflict with, or result in the acceleration of any obligation under, or give rise to a right by any party to terminate its obligations under, any mortgage, deed of trust, conveyance to secure debt, note, loan, lien, lease, agreement, instrument, license or permit, or any order, judgment, decree or other arrangement to which the Company is a party or is bound or by which any assets of the Company are affected. Other than as specifically described in Schedule 3.11, no consent of any other party to any of such leases, instruments, agreements, licenses or permits to the consummation of the Merger and the other transactions contemplated by this Agreement is required for any of such leases, instruments, agreements, licenses or permits to remain in full force and effect following the Merger and the consummation of the other transactions contemplated by this Agreement.

3.12 Absence of Changes. Since March 31, 1999, the Company has not, except as disclosed in Schedule 3.12 attached hereto, suffered, incurred or permitted to occur any of the following events or transactions:

3.12.1 transferred, assigned, conveyed or liquidated into current assets any of its assets or business or entered into any transaction or incurred any liability or obligation, other than in the ordinary course of business and consistent with past practice;

3.12.2 suffered any material adverse change in its assets, business, operations, prospects or condition (financial or otherwise) or become aware of any event or state of facts which may result in any such material adverse change;

3.12.3 suffered any destruction, damage or loss, whether or not covered by insurance;

3.12.4 suffered, permitted or incurred the imposition of any lien, charge, encumbrance or claim upon any of its assets, except for any current year lien with respect to taxes not yet due and payable;

3.12.5 committed, suffered, permitted or incurred any default in any liability or obligation;

3.12.6 made or agreed to any material adverse change in the terms of any contract or instrument to which it is a party;

3.12.7 waived, canceled, sold or otherwise disposed of, for less than the face amount thereof, any claim or right which it has against others;

3.12.8 made any change in any method of accounting or accounting practice;

3.12.9 declared, promised or made any distribution or other payment to its stockholders (other than reasonable compensation for services actually rendered) or issued any additional stock or rights, options or calls with respect to its stock, or redeemed, purchased or otherwise acquired any such stock, or made any change whatsoever in its capital structure,

3.12.10 paid, agreed to pay or incurred any obligation for any payment for, any contribution or other amount to, or with respect to, any employee benefit plan, or paid, or agreed to pay, any bonus to, or granted, or agreed to grant, any increase in the compensation of, its directors, officers, agents or employees, or made any increase in the pension, retirement or other benefits of its directors, officers, agents or employees;

3.12.11 (a) disposed of or permitted to lapse, or otherwise failed to preserve then existing exclusive rights, if any, to use any (i) patent, trademark, trademark registration, logo, assumed name, trade name, copyright or copyright registration, or (ii) any patent, trademark, trade name or copyright application, (b) disposed of or permitted to lapse any license, permit or

other form of authorization, or any trade name, or (c) disposed of or disclosed to any person or entity any trade secret, formula or process;

3.12.12 paid, loaned or advanced any amount to or in respect of, or sold, transferred or leased any properties or assets (whether real, personal, mixed, tangible or intangible) to, or entered into any agreement, arrangement or transaction with, any Stockholder, any of the officers or directors of the Company, or any affiliate or associate of any of them, or any business or entity in which any Stockholder, the Company or any affiliate or associate or any of them has any direct or material indirect interest, except for compensation to its officers and employees at rates not exceeding the rates of compensation in effect as of March 31, 1999;

3.12.13 entered into any lease of real property or material lease of personal property;

3.12.14 incurred any other liability or obligation or entered into any transaction other than in the ordinary course of business;

3.12.15 terminated or amended, or suffered the termination or amendment of, or failed to perform in all material respects, all of its obligations or suffered or permitted any default to exist under any contract, lease, agreement or license;

3.12.16 received any notice that any supplier or customer has taken or contemplates any steps which could disrupt the business relationship of the Company with said supplier or customer;

3.12.17 committed, suffered, permitted or incurred any transaction or event which would increase its tax liability for any prior taxable year; or

3.12.18 agreed, whether in writing or otherwise, to take any action described in this Section 3.12.

3.13 Litigation. Except as otherwise set forth in Schedule 3.13 hereto, there is no suit, action, proceeding, claim or investigation pending or, to the knowledge of the Company and the Stockholders, threatened against or affecting the Company and, to the knowledge of the Company and the Stockholders, there exists no basis or grounds for any such suit, action, proceeding, claim or investigation. None of the items described in Schedule 3.13, individually or in the aggregate, if pursued and/or resulting in a judgment or decision against the Company would have a material adverse affect on the assets, business, prospects, condition (financial or otherwise) or operations of the Company or the right of the Company to consummate the transactions contemplated hereby.

3.14 Licenses and Permits, Compliance With Law. The Company holds and is in compliance with all material licenses, certificates, permits, franchises and rights from all appropriate federal, state or other public authorities necessary for the conduct of its business and the use of the assets owned or held for use by it. None of such licenses, certificates, permits,

franchises or rights has been or, to the knowledge of the Company and the Stockholders, is threatened to be revoked, canceled, suspended or modified. The Company has conducted and is presently conducting its business so as to comply in all material respects with all applicable statutes, ordinances, rules, regulations and orders of any governmental authority. Further, the Company (i) is not either presently charged with, or is under governmental investigation with respect to, any actual or alleged violation of any statute, ordinance, rule or regulation, or any license, certificate, permit or franchise, (ii) is not presently the subject of any pending or threatened adverse proceeding by any regulatory authority, or (iii) does not have any knowledge of any grounds or basis for any of the foregoing. Neither the execution nor delivery of this Agreement, nor the consummation of the Merger and the other transactions contemplated hereby, will result in the termination of any license, certificate, permit, franchise or right held by the Company, and all such licenses, certificates, permits, franchises and rights will inure to the benefit of the Surviving Entity after the consummation of the transactions contemplated by this Agreement.

### 3.15 Environmental Compliance.

3.15.1 Except as set forth on Schedule 3.15 hereto, the Company has in all material respects complied with and is in material compliance with all federal, state and local laws, statutes, rules, regulations, ordinances, permits and licenses relating to the protection of the environment and human health ("Environmental Laws"), including, but not limited to, those laws, statutes, rules, regulations, ordinances, permits and licenses promulgated, administered and/or enforced by the United States Environmental Protection Agency and any state agency with similar state jurisdiction, with respect to both their past and present business operations, any real property owned or leased by the Company and the transactions contemplated by this Agreement.

3.15.2 Except as set forth on Schedule 3.15 hereto, the Company has not received any notice from any governmental body, person or entity, of any emission, discharge, spill, leak, release, threatened release, event, condition, circumstance, activity, practice or incident concerning the Company that (i) may interfere with or prevent material compliance or continued compliance by the Company with any Environmental Law, (ii) may give rise to or result in any material common law or other material liability of the Company to any person, entity or governmental body for damage or injury to natural resources, wildlife, human health or the environment, or (iii) could reasonably be expected to result in the Company incurring a material expense, cost, loss or liability.

3.15.3 The Company is not now, as a result of the operation or condition of its business or assets prior to or as of the Closing, subject to any (i) contingent liability in connection with any release or threatened release of Hazardous Materials (as defined below) into the environment whether on or off the real property owned or leased by the Company, or (ii) reclamation or remediation requirements under Environmental Law, or any reporting requirements related thereto.

3.15.4 The Company has not been notified that it is potentially liable or has received any requests for information or other correspondence concerning any site or facility, and

3.16.1 any contracts, commitments or agreements, the consummation or performance of which would, either individually or in the aggregate, have a material adverse impact upon the assets, business, operations, prospects or condition (financial or otherwise) of the Company;

3.16.2 any lease, rental agreement or other contract or commitment affecting the ownership or leasing of, title to or use of any interest in, real or personal property;

3.16.3 any note payable or receivable;

3.16.4 any contract or commitment which is outside of the normal, ordinary and usual course of business;

3.16.5 any employment contract or arrangement which is not terminable within thirty (30) days without payment of any amount for any reason whatsoever, or any employment contract or arrangement that provides for any continuing payment of any type or nature, including, without limitation, any bonuses;

3.16.6 any plan or other arrangement providing for life insurance, disability insurance, medical insurance, dental insurance, pensions, stock rights, distributions, options, deferred compensation, retirement payments, profit sharing, medical reimbursements or other employee benefit plans or arrangements;

3.16.7 any contract, agreement, understanding or arrangement restricting the Company from carrying on its business or operations anywhere in the world;

3.16.8 any instrument or arrangement evidencing or related to indebtedness for money borrowed or to be borrowed, whether directly or indirectly, by way of purchase money obligation, guaranty, subordination, conditional sale, lease-purchase, or otherwise;

3.16.9 any contract with any labor organization or any collective bargaining agreement;

3.16.10 any policy of life, fire, liability, medical or other form of insurance;

3.16.11 any order or written approval of any federal, state or local regulatory agency;

3.16.12 any agreement or plan, including, without limitation, any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

3.16.13 any agreement of indemnification or guaranty;



3.16.14 any agreement relating to capital expenditures and involving future payments in excess of \$25,000 individually or \$50,000 in the aggregate;

3.16.15 any agreement relating to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of the Company's business;

3.16.16 any purchase order or contract for the purchase of materials involving \$25,000 or more;

3.16.17 any agreement pursuant to which the Company has granted or may grant in the future, to any party a source-code license or option or other right to use or acquire source-code; or

3.16.18 any contract or agreement, not of the type covered by any of the other items of this Section 3.16, which is not in the ordinary course of business or which could have a material adverse impact on the business, assets, prospects, condition (financial or otherwise) or operations of the Company.

Schedule 3.16(b) sets forth a list of the top fifty (50) customers of the Company according to revenue for the fiscal year ended March 31, 1999, and, to the knowledge of the Company and the Stockholders, there is no reason why any such customer would cease purchasing from the Company as a result of the consummation of the transactions contemplated by this Agreement.

All of the material contracts, agreements or instruments of the Company are in full force and effect and constitute the legal, valid and binding obligations of the respective parties thereto, enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, applicable equitable principles or similar laws from time to time in effect affecting the enforcement of creditors' rights generally, and the Company has not, and to the best of the Company's and the Stockholders' knowledge, no other party to any such contract, agreement or instrument has, breached any provision of, or is in default in any respect (including any event or condition which, with notice or lapse of time, or both, would constitute a default) under, the terms thereof, and there are no existing facts or circumstances known to the Company or any Stockholder which would prevent the work in process of the Company or its contracts and agreements from maturing in due course into collectible accounts receivable. Except as set forth in Schedule 3.11, no consent of any party to any contracts, agreements or instruments of the Company to the consummation of the transactions contemplated hereby is required for any of such contracts, agreements or instruments to remain in full force and effect following the Closing.

### 3.17 Intellectual Property.

3.17.1 The Company owns, or is licensed or otherwise possesses legally enforceable rights to use, all patents, registered and unregistered trademarks, trade names, service marks, trade secrets, copyrights, and any applications therefor, maskworks, net lists, schematics,

technology, know-how, computer software programs or applications (in both source code and object code form), and tangible or intangible proprietary information or material that are required for the conduct of business of the Company as currently conducted by the Company or as such rights relate to products currently under development (the "Intellectual Property Rights").

3.17.2 Schedule 3.17 sets forth a complete list of all patents, registered and unregistered trademarks, registered copyrights, trade names and service marks, and any applications therefor, included in the Intellectual Property Rights, and specifies, where applicable, the jurisdictions in which each such Intellectual Property Right has been issued or registered or in which an application for such issuance and registration has been filed, including the respective registration or application numbers and the names of all registered owners. Schedule 3.17 sets forth a complete list of all material licenses, sublicenses and other agreements to which the Company is a party and pursuant to which the Company or any other person is authorized to use any Intellectual Property Right (excluding object code end-user licenses granted to end-users in the ordinary course of business that permit use of software products without a right to modify, distribute or sublicense the same) or trade secret of the Company, and includes the identity of all parties thereto, a description of the nature and subject matter thereof, the applicable royalty or other fees and the term thereof. The execution and delivery of this Agreement by the Company, and the consummation of the transactions contemplated hereby, will neither cause the Company to be in violation or default under any such license, sublicense or agreement, nor entitle any other party to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement. Except as set forth in Schedule 3.17, the Company is the sole and exclusive owner or licensee of, with all right, title and interest in and to (free and clear of any liens or encumbrances but subject to the license rights of customers under customer agreements, which customer agreements have been disclosed to the extent required elsewhere herein), the Intellectual Property Rights, and has sole and exclusive rights (and is not contractually obligated to pay any compensation to any third party in respect thereof) to the use thereof or the material covered thereby in connection with the services or products in respect of which the Intellectual Property Rights are being used.

3.17.3 No claims with respect to the Intellectual Property Rights have been asserted or, to the knowledge of the Company and the Stockholders, threatened by any person or entity, nor, to the knowledge of the Company and the Stockholders, has any other person made an assertion (i) to the effect that the manufacture, sale, licensing or use of any of the products of the Company infringes on any copyright, patent, trademark, service mark, trade secret or other proprietary right of a third party, (ii) against the use by the Company of any trademarks, service marks, trade names, trade secrets, copyrights, maskworks, patents, technology, know-how or computer software programs and applications used in the Company's business, or (iii) challenging the ownership by the Company, validity or effectiveness of any of the Intellectual Property Rights. To the knowledge of the Company and the Stockholders, all registered trademarks, service marks and copyrights held by the Company are valid and subsisting. To the knowledge of the Company and the Stockholders, the Company has not infringed, and the business of the Company as currently conducted or as currently proposed to be conducted does not infringe, any copyright, patent, trademark, service mark, trade secret or other proprietary right of any third party. To the knowledge of the Company and the Stockholders, there is no material unauthorized use,

infringement or misappropriation of any of the Intellectual Property Rights by any third party, including any employee or former employee of the Company. No Intellectual Property Right or product of the Company is subject to any outstanding decree, order, judgment, or stipulation restricting in any material manner the licensing thereof by the Company. Each employee, consultant or contractor of the Company has executed a proprietary information and confidentiality agreement substantially in the Company's standard forms. Except as set forth on Schedule 3.17, all software included in the Intellectual Property Rights is original with the Company and has been either created by employees of the Company on a work-for-hire basis or by consultants or contractors who have created such software themselves and have assigned or are under an obligation to assign all rights they may have had in such software to the Company.

3.17.4 The Company is taking commercially reasonable measures to ensure that its internal computer systems will be, as far as reasonably practicable, Y2K Compliant. "Y2K Compliant" shall mean that neither performance nor functionality is affected by dates prior to, during and after the year 2000 and in particular (i) no value for current date will cause any interruption in operation, (ii) date-based functionality must behave consistently for dates prior to, during and after the year 2000, (iii) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules, and (iv) the year 2000 must be recognized as a leap year. Attached hereto as Schedule 3.17.4 is a copy of the Company's Year 2000 Compliance Plan as currently in effect.

3.18 Labor Matters. Except as set forth on Schedule 3.18, within the last three (3) years the Company has not been the subject of any union activity or labor dispute, nor has there been any strike of any kind called or threatened to be called against the Company; and, except as set forth on Schedule 3.18, the Company has not violated any applicable federal or state law or regulation relating to labor or labor practices.

3.19 Insurance. Schedule 3.19 sets forth a complete and accurate list of all policies (including their respective expiration dates) of fire, liability, workmen's compensation, errors and omissions, casualty, business interruption, health, title and other forms of insurance presently in effect with respect to the Company (true copies of which have heretofore been made available to Parent and Buyer). All such policies are valid, outstanding and enforceable policies; provide adequate insurance coverage for the assets and operations of the Company; will remain in full force and effect at least through the respective dates set forth in Schedule 3.19 without the payment of additional premiums; and will not in any way be affected by, or terminate or lapse by reason of, the Merger or the other transactions contemplated by this Agreement. Schedule 3.19 identifies all risks which the Company has been designated as being self-insured and the amount of reserve set aside by the Company to cover such risk. The Company has not been refused any insurance, nor has its coverage been limited, by any insurance carrier to which it has applied for insurance or with which it has carried insurance during the last five years. Schedule 3.19 contains an accurate and complete description of any provision contained in the policies identified in this Schedule 3.19 which provides for retrospective premium adjustment.

3.20 Employee Benefits.

3.20.1 For the Company, set forth on Schedule 3.20 is a complete and correct list of (i) any "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (ii) any other employee benefit plan, arrangement or policy, including without limitation, any stock option, stock purchase, stock award, stock appreciation, deferred compensation, pension, retirement, savings, profit sharing, incentive, bonus, health, life insurance, cafeteria, flexible spending, dependent care, fringe benefit, vacation pay, holiday pay, disability, sick pay, workers compensation, unemployment, severance, employee loan, educational assistance plan, arrangement or policy, and (iii) any employment, indemnification, consulting or severance agreement which is sponsored or maintained by the Company, or to which the Company contributes or is required to contribute, on behalf of current or former employees, consultants or directors or their beneficiaries or dependents, whether or not written (the "Benefit Plans"). Except as contemplated by this Agreement and further except as disclosed on Schedule 3.20, the Company has not formally adopted or authorized any additional Benefit Plan or any change in or termination of any existing Benefit Plan. Except as contemplated by this Agreement, or except as disclosed on Schedule 3.20, the Company has not made any commitment to create any additional Benefit Plan or to terminate or modify or change in any respect any existing Benefit Plan. Except as disclosed on Schedule 3.20, each Benefit Plan covers only current or former employees of the Company and their beneficiaries or dependents. Except as set forth on Schedule 3.20, each Benefit Plan is and has been operated and administered in all material respects in accordance with its terms and all applicable laws.

3.20.2 Copies of all Benefit Plans and related documents, including those setting out the Company's personnel policies and procedures, and including any insurance contracts under which benefits are provided, as currently in effect, and descriptions of any such Benefit Plans which are not written, have been provided to Parent and Buyer.

3.20.3 Each Benefit Plan intended to be tax-qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service as to its tax-qualified status under the Code and nothing has occurred since the date of such favorable determination letter which would adversely affect the qualified status of such Benefit Plan. Except as set forth on Schedule 3.20, no Benefit Plan provides benefits to retirees or other terminated employees of the Company other than (i) retirement or death benefits under a retirement plan intended to be tax-qualified under Section 401(a) of the Code or intended to provide life insurance benefits, or (ii) continuation coverage required by Section 4980B of the Code or other applicable law.

3.20.4 All contributions and premium payments required to have been paid under or with respect to any Benefit Plan prior to the Effective Time have been timely paid when due. The Company does not maintain and has never contributed to or had an obligation to contribute to any "single-employer plan" within the meaning of Section 4001(a)(15) of ERISA or a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA with respect to any Benefit Plan.

3.20.5 There are no actions, suits or claims (other than routine claims for benefits in the ordinary course) with respect to any Benefit Plan pending which could give rise to a

material liability, or to the knowledge of the Company and the Stockholders, threatened, and the Company and the Stockholders have no knowledge of any facts which could give rise to any such actions, suits or claims (other than routine claims for benefits in the ordinary course). No Benefit Plan is currently under governmental investigation or audit and, to the knowledge of the Company and the Stockholders, no such investigation or audit is contemplated or under consideration.

3.20.6 Except as set forth on Schedule 3.20, no "prohibited transaction" as defined in Section 406 of ERISA and Section 4975 of the Code, has occurred in respect of any Benefit Plan, and no civil or criminal action brought pursuant to Part 5 of Title I of ERISA is pending or is threatened in writing or orally against any fiduciary of any such Benefit Plan.

3.20.7 Except as set forth on Schedule 3.20, neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will (i) increase the amount of benefits otherwise payable under any Benefit Plan, (ii) result in the acceleration of the time of payment, exercisability, funding or vesting of any such benefits, or (iii) result in any payment (whether severance pay or otherwise) becoming due to, or with respect to, any employee or director of the Company. No payment or series of payments that would constitute a "parachute payment" (within the meaning of Section 280G of the Code) has been made or will be made by the Company directly or indirectly to any employee of the Company in connection with the execution of this Agreement or as a result of the consummation of the transactions contemplated hereby.

3.21 Certain Payments. To the knowledge of the Company and the Stockholders, neither the Company nor any officer, employee, agent or affiliate of the Company, including, without limitation, any Stockholder, has, directly or indirectly, given or agreed to give or solicited or received any gift, rebate or similar benefit to any customer, supplier, governmental employee or other person or entity which (i) might subject the Company to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (ii) if not given in the past might have had an adverse effect on the business, assets, operations, prospects or condition (financial or otherwise) of the Company, or (iii) if not continued in the future might adversely affect the Company's business, assets, operations, prospects or condition (financial or otherwise).

3.22 Approvals. Except as set forth on Schedule 3.22 and the filing and recordation of the Certificate of Merger as required by the DGCL and the GBCC, no filing or registration with, and no consent, approval, permit, authorization, license, certificate or order of any governmental authority is required by any applicable law or by any applicable judgment, order or decree or any applicable rule or regulation of any governmental authority, to permit any Stockholder or the Company to execute, deliver or perform this Agreement or any instrument or agreement required hereby to be executed by such party at or prior to the Closing.

3.23 Transactions With Affiliates. Except as set forth on Schedule 3.23 hereto, since March 31, 1999, the Company has not purchased, leased, or otherwise acquired any material property or assets or obtained any material property or assets or obtained any material services from, or sold, leased or otherwise disposed of any material property or assets or provided any material services to (except with respect to remuneration for services rendered as a director,

officer or employee of the Company in the ordinary course), (i) any employee of the Company, (ii) any Stockholder, (iii) any person that is, directly or indirectly, controlled by any Stockholder, or (iv) any member of the immediate family of any Stockholder or any other of the foregoing persons or entities (collectively, an "Affiliate"). Except as set forth in Schedule 3.23 hereto, (a) the contracts, instruments and agreements of the Company do not include any obligation or commitment between the Company and any Affiliate, (b) the assets of the Company do not include any receivable or other obligation or commitment from an Affiliate to the Company, and (c) the liabilities reflected on the Financial Statements, and those on the books and records of the Company as of the Closing, do not include any obligation or commitment of any Affiliate.

3.24 Termination of Stockholders Agreement. That certain Shareholders' and Stock Restriction Agreement by and among Easirun USA, Inc. and each and every one of its shareholders, effective as of January 1, 1997 (the "Easirun Shareholders Agreement"), has been terminated and is of no further force or effect. To the Company's knowledge, except for the Easirun Shareholders Agreement, no stockholder of the Company has entered into any agreement with respect to the voting of the Company's securities. The Company is not under any obligation and has not granted any rights to register under the Securities Act of 1933, as amended (the "Securities Act") any of its securities.

3.25 Schedules and Exhibits. All Schedules and Exhibits attached hereto will be true, correct and complete as of the Closing. Matters disclosed on each Schedule and Exhibit shall be deemed disclosed only for purposes of the matters to be disclosed in such Schedule or Exhibit and shall not be deemed to be disclosed for any other purpose, unless expressly provided therein. No statement contained herein or in any certificate, Schedule, Exhibit, document or other instrument furnished to Parent or Buyer pursuant to the provisions hereof contains or will contain any untrue statement of any material fact or omits or will omit to state a material fact necessary in order to make the statement contained herein or therein not misleading in light of the circumstances under which they were made.

#### 4. COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS.

4.1 Covenants, Representations and Warranties Made Severally. The covenants, representations and warranties made and given in this Section 4 are made by each Stockholder as of the Closing and are made independent of the other Stockholder and any claim or liability for the breach of any such covenant, representation or warranty shall be several against only the breaching Stockholder.

4.2 Consents and Approvals. Each Stockholder has obtained the waiver, consent or approval of all persons or entities whose waiver, consent or approval is required in order to consummate the Merger and the other transactions contemplated by this Agreement, or is required by any agreement, lease, instrument, arrangement, judgment, decree, order or license to which such Stockholder is a party or subject as of the Closing, and which would prohibit, or require the waiver, consent or approval of any person or entity to such transaction or under which, without such waiver, consent or approval, such transaction would constitute an occurrence

of default under the provisions thereof, result in the acceleration of any obligation thereunder, or give rise to a right of any party thereto to terminate its obligations thereunder.

4.3 Authority and Status. Each Stockholder has the full capacity, power and authority to execute and deliver this Agreement, to perform hereunder, and to consummate the Merger and the other transactions contemplated hereby without the necessity of any act or consent of any other person whomsoever. The execution, delivery and performance by each Stockholder of this Agreement and each and every agreement, document and instrument provided for herein to be executed and delivered by such Stockholder has been duly authorized and approved by such Stockholder. This Agreement and each and every agreement, document and instrument to be executed, delivered and performed by such Stockholder in connection herewith constitutes or will, when executed and delivered, constitute the legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with their respective terms, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws from time to time in effect affecting the enforcement of creditors' rights generally.

4.4 Ownership of Stock. Such Stockholder is the record and beneficial owner of five hundred (500) shares of Common Stock, and such shares of Common Stock are free and clear of all liens, claims, charges and encumbrances of any kind or nature whatsoever. Such Stockholder has not issued, granted or entered into any security, option, warrant, right, call, subscription, agreement, commitment or understanding of any nature whatsoever, fixed or contingent, that (i) calls for the issuance, sale, pledge or other disposition of any shares of capital stock of the Company or any securities convertible into, or other rights to acquire, any shares of capital stock of the Company, or (ii) relates to the voting or control of such capital stock of the Company or such securities or which governs or restricts the transfer of the Common Stock.

4.5 Agreement Does Not Violate Other Instruments. The execution and delivery of this Agreement by such Stockholder and the other documents and instruments to be entered into by such Stockholder pursuant hereto does not, and the consummation of the transactions contemplated hereby will not, violate any provision of the Certificate of Incorporation, as amended, By Laws, as amended, or other governing documents of such Stockholder or violate or constitute an occurrence of default under any provision of, or conflict with, or result in the acceleration of any obligation under, or give rise to a right by any party to terminate its obligations under, any mortgage, deed of trust, conveyance to secure debt, note, loan, lien, lease, agreement, instrument, or any order, judgment, decree or other arrangement to which such Stockholder is a party or is bound or by which any assets or operations are affected.

4.6 Certain Payments. Such Stockholder has not, and its officers, employees, agents and affiliates have not, directly or indirectly, given or agreed to give or solicited or received any gift, rebate or similar benefit to any customer, supplier, governmental employee or other person which might subject the Company to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (i) if not given in the past might have had an adverse effect on the business, assets, prospects, condition (financial or otherwise) or operations of the Company, or

(ii) if not continued in the future might adversely affect the business, assets, prospects, condition (financial or otherwise) or operations of the Company.

4.7 Litigation. There is no suit, action, proceeding, claim or investigation pending or, to the best knowledge of such Stockholder, threatened against or affecting such Stockholder that if pursued and/or resulting in a judgment or decision against such Stockholder would have a material and adverse affect on the business, assets, prospects, condition (financial or otherwise) or operations of the Company or the right of such Stockholder to consummate the transactions contemplated hereby.

4.8 Absence of Certain Arrangements. Except as set forth on Schedule 4.8, such Stockholder does not own, beneficially or of record, directly or indirectly, any capital stock or other ownership or proprietary interest in any corporation, limited liability company, partnership, association, trust, joint venture or other entity that is in competition with the Company or is a customer of the Company.

4.9 Securities Laws Representations and Covenants of the Stockholders.

4.9.1 This Agreement is entered into by Parent and Buyer in reliance upon each Stockholder's representation to Parent and Buyer, which by each Stockholder's execution of this Agreement each Stockholder hereby confirms, that the Parent Stock to be received by each Stockholder will be acquired for investment for such Stockholder's own account, not as a nominee or agent, and not with a view to the direct or indirect sale or distribution of any part thereof, and that each Stockholder has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, each Stockholder further represents that such Stockholder has no contract, undertaking, agreement or arrangement with any person to sell, transfer, or grant participations to such person or to any third person, with respect to any of the Parent Stock. Each of the Stockholders represents and warrants to Parent and Buyer that each office of such Stockholder in which its investment decision was made, and the principal place of business of such Stockholder, is located at the address or addresses set forth beneath its name on Schedule 4.9 hereto.

4.9.2 Each Stockholder understands and acknowledges that the Parent Stock it is acquiring hereunder is deemed to be "restricted securities" under the Securities Act as the offering of the Parent Stock pursuant to this Agreement will not be registered under the Securities Act or under any state securities or "blue sky" laws on the grounds that the offering and sale of securities contemplated by this Agreement are exempt from registration pursuant to Section 4(2) of the Securities Act and such state securities or "blue sky" laws, and that Parent's reliance upon such exemptions is predicated upon the Stockholders' representations set forth in this Agreement.

4.9.3 Unless the Parent Stock acquired by the Stockholders hereunder is registered under the Securities Act, each Stockholder covenants that in no event will such Stockholder dispose of any of such Parent Stock other than pursuant to Rule 144 ("Rule 144") or Rule 144A promulgated by the Securities and Exchange Commission ("Commission") under the Securities Act (or any similar or analogous rule), if available, unless and until (i) the Stockholder



shall have notified Parent of the proposed disposition and shall have furnished Parent with a statement of the circumstances surrounding the proposed disposition, and (ii) if requested by Parent, the Stockholder shall have furnished Parent with an opinion of counsel satisfactory in form and substance to Parent and Parent's counsel to the effect that (x) such disposition will not require registration under the Securities Act and (y) appropriate action necessary for compliance with the Securities Act and any applicable state, local or foreign law has been taken.

4.9.4 Each Stockholder represents that: (i) such Stockholder is an "Accredited Investor" as that term is defined in Regulation D promulgated by the Commission under the Securities Act and has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of such Stockholder's prospective investment in the Parent Stock; (ii) such Stockholder has received all the information requested by it from Parent and Buyer and considered necessary or appropriate for deciding whether to acquire the Parent Stock and has had an opportunity to ask questions and receive answers from Parent and Buyer regarding the terms and conditions of the offering and sale of the Parent Stock and the other transactions contemplated herein; (iii) such Stockholder has the ability to bear the economic risks of such Stockholder's prospective investment in the Parent Stock; and (iv) such Stockholder is able, without materially impairing its financial condition, to hold the Parent Stock for an indefinite period of time and to suffer complete loss on its investment.

4.9.5 All certificates representing shares of Parent Stock issued hereunder shall bear a legend deemed appropriate by Parent and its counsel and shall also bear any legend required pursuant to any state, local or foreign law governing such Parent Stock.

## 5. REPRESENTATIONS AND WARRANTIES OF PARENT AND BUYER.

Parent and Buyer jointly and severally represent and warrant to the Stockholders as of the Closing as follows:

5.1 Organization, Standing and Foreign Qualification. Parent is a corporation duly incorporated under the laws of England. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Georgia. Each of Parent and Buyer has the full power and authority (corporate and otherwise) to carry on its business in the places as it is now being conducted and to own and lease the properties and assets which it now owns or leases. Each of Parent and Buyer is duly qualified and/or licensed to transact business and in good standing as a foreign corporation in each jurisdiction in which the failure to be so qualified or licensed would have a material adverse effect on Parent and Buyer taken as a whole. The character of the property owned or leased by Parent and Buyer and the nature of the business conducted by Parent and Buyer do not require such qualification and/or licensing in any other jurisdiction. Attached hereto as Schedule 5.1 are true, correct and complete copies of the Articles of Association of Parent and Articles of Incorporation and Bylaws of Buyer, as amended through the date hereof

5.2 Subsidiaries. Except for Buyer and Pitcomp 186 Limited, and except as set forth on Schedule 5.2, Parent does not, directly or indirectly, own, of record or beneficially, any shares

or other equity or ownership or proprietary interests in any corporation, limited liability company, partnership, limited partnership, joint venture, trust or other business entity.

5.3 Authority and Status. Each of Parent and Buyer has the power and authority to execute and deliver this Agreement, to perform hereunder, and to consummate the transactions contemplated hereby without the necessity of any act, approval or consent of any other person or entity whomsoever. The execution, delivery and performance by Parent and Buyer of this Agreement and each and every agreement, document and instrument provided for herein to which Parent or Buyer is a party has been duly authorized and approved by the Board of Directors and shareholders of Parent or Buyer, as applicable. This Agreement and each and every agreement, document and instrument to be executed, delivered and performed by Parent or Buyer in connection herewith constitutes or will, when executed and delivered, constitute the legal, valid and binding obligations of Parent or Buyer, as applicable, enforceable in accordance with their terms, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws from time to time in effect affecting the enforcement of creditors' rights generally.

5.4 Capitalization. The authorized capital stock of Parent is £1,000,000 divided into 1,000,000 Ordinary Shares of £1 each, of which 11,111 shares are issued and outstanding. The authorized capital stock of Buyer consists of 10,000,000 shares of Common Stock, of which 1,288,570 shares are issued and outstanding. All of the issued and outstanding shares of Parent and Buyer are validly authorized and issued, fully paid, and nonassessable and are owned (beneficially and of record) by the persons or entities in the amounts set forth on Schedule 5.4. All of such shares of capital stock were offered and sold in compliance with all applicable securities laws and regulations. Except for options to purchase up to 827 shares of Parent Stock, there are no outstanding options, warrants, calls, commitments, or plans by Parent or Buyer to issue any additional shares of its capital stock, or to pay any dividends on such shares, or to purchase, redeem or retire any outstanding shares, nor are there outstanding any securities or obligations which are convertible into or exchangeable for any shares of capital stock of Parent or Buyer. There are no stock appreciation rights, phantom stock or similar rights in existence with respect to Parent or Buyer.

5.5 Absence of Equity Investments. Except as set forth on Schedule 5.5 hereto, neither Parent nor Buyer owns, beneficially or of record, directly or indirectly, any capital stock or other ownership or proprietary interest in any corporation, limited liability company, partnership, association, trust, joint venture or other entity that is in competition with Parent or Buyer or is a customer of Parent or Buyer.

5.6 Liabilities and Obligations of Parent and Buyer.

5.6.1 Schedule 5.6.1 sets forth true, correct and complete copies of Parent's audited financial statements for the year ended March 31, 1999 (collectively, the "Parent Financial Statements"). The Parent Financial Statements have been prepared in accordance with United Kingdom generally accepted accounting principles ("UKGAAP") applied on a basis consistent throughout the periods indicated and consistent with each other. The Parent Financial Statements

present fairly the consolidated financial condition and operating results of Parent and Buyer as of the dates and during the periods indicated therein, subject to normal year-end adjustments, which will not be material in amount or significance.

5.6.2 Neither Parent nor Buyer has any liability or obligation (whether accrued, absolute, contingent or otherwise), except for:

(a) the liabilities and obligations of Parent and Buyer which are disclosed or reserved against in the Parent Financial Statements contained in Schedule 5.6.1 or are separately disclosed in Schedule 5.6.2 hereto, to the extent and in the amounts so disclosed or reserved against; and

(b) liabilities incurred or accrued in the ordinary course of business since March 31, 1999 and which do not (and will not), either individually or in the aggregate, have a materially adverse effect on the business, assets, prospects, condition (financial or otherwise) or operations of Parent and Buyer taken as a whole.

5.6.3 Neither Parent nor Buyer is in default with respect to any liabilities or obligations, and all such liabilities or obligations shown or reflected in the Parent Financial Statements contained in Schedule 5.6.1 or set forth in Schedule 5.6.2, and such liabilities incurred or accrued subsequent to the date of the Parent Financial Statements have been, and are being, paid and discharged as they become due, and all such liabilities and obligations were incurred in the ordinary course of business, except as indicated in Schedule 5.6.2.

#### 5.7 Taxes.

5.7.1 Each of Parent and Buyer has timely filed all federal, state, foreign and local tax returns and reports ("Parent Returns") which it is required to file on or before the Closing. To the knowledge of Parent, all such Parent Returns are true, accurate and complete in all material respects. All taxes shown to be payable on such Parent Returns have been paid in full on a timely basis, and no other taxes are owed by Parent or Buyer with respect to items or tax periods covered by such Parent Returns. Each of Parent and Buyer has made available to the Company complete and accurate copies of all Parent Returns for periods for which the statute of limitations is still open. Neither Parent nor Buyer will have liability for taxes other than taxes (i) which are disclosed or reserved against in the Parent Financial Statements contained in Schedule 5.6.1 or are separately disclosed in Schedule 5.6.2 hereto, to the extent and in the amounts so disclosed or reserved against, and (ii) incurred in the ordinary course of business since March 31, 1999 and which do not (and will not), individually or in the aggregate, have a material adverse effect on the business, assets, prospects, condition (financial or otherwise) or operations of Parent and Buyer taken as a whole. Except as disclosed on Schedule 5.7, neither Parent nor Buyer has in effect, and has not been requested to make, any waiver or extension of any statute of limitations with respect to taxes.

5.7.2 Except as set forth on Schedule 5.7, there are no requests for filings in respect of any tax pending by Parent and Buyer with any taxing authority.

5.7.3 Except as set forth on Schedule 5.7, there has been withheld or collected from each payment made to each employee of Parent and Buyer the amount of all taxes required to be withheld or collected therefrom and the same have been paid to the proper tax depositories or collecting authorities.

5.7.4 Except as set forth on Schedule 5.7, there are no tax allocation agreements or tax sharing agreements, arrangements or understandings in effect between Parent or Buyer and any other person or entity.

5.7.5 Schedule 5.7 sets forth all tax elections that are in effect with respect to Parent or Buyer for the current and immediately preceding three fiscal years.

5.7.6 Except as set forth on Schedule 5.7, neither Parent nor Buyer is a party to any joint venture, partnership, limited liability company or other arrangement or contract that could be treated as a partnership for federal income tax purposes.

5.7.7 Schedule 5.7 contains a list of the states, territories and jurisdictions (whether foreign or domestic) in which Parent or Buyer is currently filing Parent Returns and, except as set forth on Schedule 5.7, there are no pending, proposed, or, to the knowledge of Parent, threatened, claim by any taxing authority in any jurisdiction in which Parent or Buyer does not pay taxes or file Parent Returns that Parent or Buyer is required to pay taxes or file Parent Returns.

5.8 Tax Audits. Except as set forth on Schedule 5.8, there are no pending, proposed, or, to the knowledge of Parent, threatened, audits, proceedings, assessments or deficiencies, asserted with respect to taxes of Parent or Buyer.

5.9 Ownership of Assets and Leases. Neither Parent nor Buyer owns any real property. Each of Parent and Buyer has good and marketable title to all of its property and assets, other than leased property, free and clear of all liens, claims, charges, options, rights of seizure, rights of tenants or other encumbrances, except as specifically disclosed or reserved against in the Parent Financial Statements contained in Schedule 5.6.1 or Schedule 5.6.2 (to the extent and in the amounts so disclosed or reserved against) and except for liens arising from current taxes not yet due and payable.

All buildings, machinery and equipment owned or leased or held for use by Parent and Buyer are in good operating condition and state of repair, subject only to ordinary wear and tear which is not such as to affect adversely the operations of Parent and Buyer, taken as a whole, as presently conducted and as proposed to be conducted. The assets owned or held for use by Parent and Buyer constitute all properties that are necessary for the continued conduct by Parent and Buyer of the business presently being conducted. To the knowledge of Parent, neither Parent nor Buyer has received any notice of violation of any applicable zoning regulation, ordinance or

other law, or regulation or requirement relating to Parent or Buyer or either of their operations and properties, whether owned or leased, and there is no such violation or grounds therefor which could adversely affect the operations of Parent and Buyer, taken as a whole, as presently conducted and as proposed to be conducted. Except pursuant to this Agreement and the grant of options to employees of Parent and Buyer, neither Parent nor Buyer is a party to any contract or obligation whereby there has been granted to anyone an absolute or contingent right to purchase, obtain or acquire any rights in any of the assets, capital stock or operations of Parent or Buyer.

5.10 Accounts Receivable. All of the accounts receivable shown on the Parent Financial Statements or thereafter acquired represent, and the accounts receivable of Parent and Buyer outstanding as of the Closing will represent, sales actually made or services actually performed in the ordinary course of business in bona fide transactions completed in accordance with the terms and provisions contained in any documents relating thereto. The reserves for uncollectible accounts receivable reflected on the Parent Financial Statements were established in accordance with UKGAAP and when established, were adequate in light of all the facts then known and Parent's historical methods and practices in establishing such reserves. To the knowledge of Parent, the accounts receivable outstanding as of the Closing will be subject to no defenses, counterclaims, or rights of setoff other than those arising in the ordinary course of business and for which adequate reserves have been established.

5.11 Agreement Does Not Violate Other Instruments. Except as disclosed in Schedule 5.11, the execution and delivery of this Agreement by Parent and Buyer does not, and the consummation of the transactions contemplated hereby will not, violate any provision of the Articles of Association of Parent or Articles of Incorporation or Bylaws of Buyer or violate or constitute an occurrence of default under any provision of, or conflict with, or result in the acceleration of any obligation under, or give rise to a right by any party to terminate its obligations under, any mortgage, deed of trust, conveyance to secure debt, note, loan, lien, lease, agreement, instrument, license or permit, or any order, judgment, decree or other arrangement to which Parent or Buyer is a party or is bound or by which any assets of Parent or Buyer are affected. Other than as described in Schedule 5.11, no consent of any other party to any of such leases, instruments, agreements, licenses or permits to the consummation of the Merger and the other transactions contemplated by this Agreement is required for any of such leases, instruments, agreements, licenses or permits to remain in full force and effect following the Merger and the consummation of the other transactions contemplated by this Agreement.

5.12 Absence of Changes. Since March 31, 1999, neither Parent nor Buyer has, except as disclosed in Schedule 5.12 attached hereto, suffered, incurred or permitted to occur any of the following events or transactions:

5.12.1 transferred, assigned, conveyed or liquidated into current assets any of its assets or business or entered into any transaction or incurred any liability or obligation, other than in the ordinary course of business and consistent with past practice;

5.12.2 suffered any material adverse change in its assets, business, operations, prospects or condition (financial or otherwise) or become aware of any event or state of facts which may result in any such material adverse change;

5.12.3 suffered any destruction, damage or loss, whether or not covered by insurance;

5.12.4 suffered, permitted or incurred the imposition of any lien, charge, encumbrance or claim upon any of its assets, except for any current year lien with respect to taxes not yet due and payable;

5.12.5 committed, suffered, permitted or incurred any default in any liability or obligation;

5.12.6 made or agreed to any material adverse change in the terms of any contract or instrument to which it is a party;

5.12.7 waived, canceled, sold or otherwise disposed of, for less than the face amount thereof, any claim or right which it has against others;

5.12.8 made any change in any method of accounting or accounting practice;

5.12.9 declared, promised or made any distribution or other payment to its shareholders (other than reasonable compensation for services actually rendered) or issued any additional shares or rights, options or calls with respect to its stock, or redeemed, purchased or otherwise acquired any such shares, or made any change whatsoever in its capital structure;

5.12.10 paid, agreed to pay or incurred any obligation for any payment for, any contribution or other amount to, or with respect to, any employee benefit plan, or paid, or agreed to pay, any bonus to, or granted, or agreed to grant, any increase in the compensation of, its directors, officers, agents or employees, or made any increase in the pension, retirement or other benefits of its directors, officers, agents or employees;

5.12.11 (a) disposed of or permitted to lapse, or otherwise failed to preserve then existing exclusive rights, if any, to use any (i) patent, trademark, trademark registration, logo, assumed name, trade name, copyright or copyright registration, or (ii) any patent, trademark, trade name or copyright application, (b) disposed of or permitted to lapse any license, permit or other form of authorization, or any trade name, or (c) disposed of or disclosed to any person or entity any trade secret, formula or process;

5.12.12 paid, loaned or advanced any amount to or in respect of, or sold, transferred or leased any properties or assets (whether real, personal, mixed, tangible or intangible) to, or entered into any agreement, arrangement or transaction with, any of the officers, directors or shareholders of Parent or Buyer, or any affiliate or associate of any of them, or any business or entity in which any shareholder of Parent or Buyer, or any affiliate or associate of any

of them has any direct or material indirect interest, except for compensation to its officers and employees at rates not exceeding the rates of compensation in effect as of March 31, 1999;

5.12.13 entered into any lease of real property or material lease of personal property;

5.12.14 incurred any other liability or obligation or entered into any transaction other than in the ordinary course of business;

5.12.15 terminated or amended, or suffered the termination or amendment of, or failed to perform in all material respects, all of its obligations or suffered or permitted any default to exist under any contract, lease, agreement or license;

5.12.16 received any notice that any supplier or customer has taken or contemplates any steps which could disrupt the business relationship of Parent or Buyer with said supplier or customer;

5.12.17 committed, suffered, permitted or incurred any transaction or event which would increase its tax liability for any prior taxable year; or

5.12.18 agreed, whether in writing or otherwise, to take any action described in this Section 5.12.

5.13 Litigation. Except as otherwise set forth in Schedule 5.13 hereto, there is no suit, action, proceeding, claim or investigation pending or, to the knowledge of Parent, threatened against or affecting Parent or Buyer and, to the knowledge of Parent, there exists no basis or grounds for any such suit, action, proceeding, claim or investigation. None of the items described in Schedule 5.13, individually or in the aggregate, if pursued and/or resulting in a judgment or decision against Parent or Buyer would have a material adverse affect on the assets, business, prospects, condition (financial or otherwise) or operations of Parent and Buyer taken as a whole or the right of Parent or Buyer to consummate the transactions contemplated hereby.

5.14 Licenses and Permits, Compliance With Law. Except as set forth on Schedule 5.14 (a) each of Parent and Buyer holds and is in compliance with all material licenses, certificates, permits, franchises and rights from all appropriate federal, state or other public authorities necessary for the conduct of its business and the use of the assets owned or held for use by it, (b) none of such licenses, certificates, permits, franchises or rights has been or, to the knowledge of Parent, is threatened to be, revoked, canceled, suspended or modified, (c) each of Parent and Buyer has conducted and is presently conducting its business so as to comply in all material respects with all applicable statutes, ordinances, rules, regulations and orders of any governmental authority, (d) neither Parent nor Buyer (i) is either presently charged with, or is under governmental investigation with respect to, any actual or alleged violation of any statute, ordinance, rule or regulation, or any license, certificate, permit or franchise, (ii) is presently the subject of any pending or threatened adverse proceeding by any regulatory authority, or (iii) has any knowledge of any grounds or basis for any of the foregoing, and (e) neither the execution nor

delivery of this Agreement, nor the consummation of the Merger and the other transactions contemplated hereby, will result in the termination of any license, certificate, permit, franchise or right held by Parent or Buyer, and all such licenses, certificates, permits, franchises and rights held by Buyer will inure to the benefit of the Surviving Entity after the consummation of the transactions contemplated by this Agreement.

#### 5.15 Environmental Compliance.

5.15.1 Except as set forth on Schedule 5.15 hereto, each of Parent and Buyer has in all material respects complied with and is in material compliance with all Environmental Laws, including, but not limited to, those laws, statutes, rules, regulations, ordinances, permits and licenses promulgated, administered and/or enforced by the United States Environmental Protection Agency and any state agency with similar state jurisdiction, with respect to both their past and present business operations, any real property owned or leased by Parent or Buyer and the transactions contemplated by this Agreement.

5.15.2 Except as set forth on Schedule 5.15 hereto, neither Parent nor Buyer has received any notice from any governmental body, person or entity, of any emission, discharge, spill, leak, release, threatened release, event, condition, circumstance, activity, practice or incident concerning Parent or Buyer that (i) may interfere with or prevent material compliance or continued material compliance by Parent or Buyer with any Environmental Law, (ii) may give rise to or result in any material common law or other material liability of Parent or Buyer to any person, entity or governmental body for damage or injury to natural resources, wildlife, human health or the environment, or (iii) could reasonably be expected to result in Parent or Buyer incurring a material expense, cost, loss or liability.

5.15.3 Except as set forth on Schedule 5.15, neither Parent nor Buyer is now, as a result of the operation or condition of its business or assets prior to or as of the Closing, subject to any (i) contingent liability in connection with any release or threatened release of Hazardous Materials into the environment whether on or off the real property owned or leased by Parent or Buyer, or (ii) reclamation or remediation requirements under Environmental Law, or any reporting requirements related thereto.

5.15.4 Except as set forth on Schedule 5.15, neither Parent nor Buyer has been notified that it is potentially liable or has received any requests for information or other correspondence concerning any site or facility, and is not otherwise aware that it is considered potentially liable under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar state law.

5.15.5 Except as set forth on Schedule 5.15, to the knowledge of Parent, no disposal, release, burial or placement of Hazardous Materials has occurred on, in, at, or about any of Parent's or Buyer's owned or leased real property or facilities or any other facility or site to which Hazardous Materials from Parent or Buyer may have been taken at any time in the past, and Schedule 5.15 contains a list of all the real property and facilities to which Hazardous Materials from Parent or Buyer has been taken in the past.



5.15.6 Except as set forth on Schedule 5.15, to the knowledge of Parent, there has been no disposal, release, burial or placement of Hazardous Materials on any property now owned or operated in the present or the past by Parent or Buyer which may result or has resulted in contamination of or beneath any of Parent's or Buyer's owned or leased real property.

5.15.7 Except as set forth on Schedule 5.15, to the knowledge of Parent, all of the above ground and underground storage tanks on Parent's or Buyer's owned or leased real property have been identified in Schedule 5.15.

5.15.8 Except as set forth on Schedule 5.15, no lien has arisen on Parent's or Buyer's owned or leased real property or facilities under Environmental Laws.

5.15.9 Except as provided in Schedule 5.15, no audit or investigation has been conducted as to environmental matters at any of Parent's or Buyer's owned or leased real property or facilities by any private party (including but not limited to Parent or Buyer) or any governmental agency.

5.15.10 There is no civil, criminal, or administrative action, lawsuit, demand, litigation, claim, hearing, notice of violation, investigation, proceeding, injunction, writ, restraining order or other order of any nature pending or, to the knowledge of Parent, threatened against Parent or Buyer respecting the maintenance of a nuisance, or the violation of any Environmental Law, or any duty arising at common law to any person, entity or governmental body or that could reasonably be expected to result in Parent or Buyer incurring a material expense, cost, loss or liability, nor does Parent have reason to believe that such actions, lawsuits, demands or other like claims will be brought against it or Buyer.

5.16 Contracts. Except as set forth in Schedules 5.16(a), 5.19 or 5.20 neither Parent nor Buyer is a party or subject to, whether oral or written, any of the following:

5.16.1 any contracts, commitments or agreements, the consummation or performance of which would, either individually or in the aggregate, have a material adverse impact upon the assets, business, operations, prospects or condition (financial or otherwise) of Parent and Buyer taken as a whole;

5.16.2 any lease, rental agreement or other contract or commitment affecting the ownership or leasing of, title to or use of any interest in, real or personal property;

5.16.3 any note payable or receivable;

5.16.4 any contract or commitment which is outside of the normal, ordinary and usual course of business;

5.16.5 any employment contract or arrangement which is not terminable within thirty (30) days without payment of any amount for any reason whatsoever, or any employment

contract or arrangement that provides for any continuing payment of any type or nature, including, without limitation, any bonuses;

5.16.6 any plan or other arrangement providing for life insurance, disability insurance, medical insurance, dental insurance, pensions, stock rights, distributions, options, deferred compensation, retirement payments, profit sharing, medical reimbursements or other employee benefit plans or arrangements;

5.16.7 any contract, agreement, understanding or arrangement restricting Parent or Buyer from carrying on its business or operations anywhere in the world;

5.16.8 any instrument or arrangement evidencing or related to indebtedness for money borrowed or to be borrowed, whether directly or indirectly, by way of purchase money obligation, guaranty, subordination, conditional sale, lease-purchase, or otherwise;

5.16.9 any contract with any labor organization or any collective bargaining agreement;

5.16.10 any policy of life, fire, liability, medical or other form of insurance;

5.16.11 any order or written approval of any federal, state or local regulatory agency;

5.16.12 any agreement or plan, including, without limitation, any stock option plan, share option agreement, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

5.16.13 any agreement of indemnification or guaranty;

5.16.14 any agreement relating to capital expenditures and involving future payments in excess of \$25,000 individually or \$50,000 in the aggregate;

5.16.15 any agreement relating to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of Parent's and Buyer's business;

5.16.16 any purchase order or contract for the purchase of materials involving \$25,000 or more;

5.16.17 any agreement pursuant to which Parent or Buyer has granted or may grant in the future, to any party a source-code license or option or other right to use or acquire source-code; or

5.16.18 any contract or agreement, not of the type covered by any of the other items of this Section 5.16, which is not in the ordinary course of business or which could have a material adverse impact on the business, assets, prospects, condition (financial or otherwise) or operations of Parent and Buyer taken as a whole.

Schedule 5.16(b) sets forth a list of the top fifty (50) customers of Parent and Buyer according to revenue for the fiscal year ended March 31, 1999, and, to the knowledge of Parent, there is no reason why any such customer would cease purchasing from Parent or Buyer as a result of the consummation of the transactions contemplated by this Agreement.

Except as set forth on Schedule 5.16(a), all of the material contracts, agreements or instruments of Parent and Buyer are in full force and effect and constitute the legal, valid and binding obligations of the respective parties thereto, enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, applicable equitable principles or similar laws from time to time in effect affecting the enforcement of creditors' rights generally, and neither Parent nor Buyer has, and to the best of the Parent's knowledge, no other party to any such contract, agreement or instrument has, breached any provision of, or is in default in any respect (including any event or condition which, with notice or lapse of time, or both, would constitute a default) under, the terms thereof, and there are no existing facts or circumstances known to Parent which would prevent the work in process of Parent and Buyer or each of their contracts and agreements from maturing in due course into collectible accounts receivable. Except as set forth in Schedule 5.11, no consent of any party to any contracts, agreements or instruments of Parent and Buyer to the consummation of the transactions contemplated hereby is required for any of such contracts, agreements or instruments to remain in full force and effect following the Closing.

#### 5.17 Intellectual Property.

5.17.1 Except as set forth on Schedule 5.15, each of Parent and Buyer owns, or is licensed or otherwise possesses legally enforceable rights to use, all patents, registered and unregistered trademarks, trade names, service marks, trade secrets, copyrights, and any applications therefor, maskworks, net lists, schematics, technology, know-how, computer software programs or applications (in both source code and object code form), and tangible or intangible proprietary information or material that are required for the conduct of business of Parent and Buyer as currently conducted by Parent and Buyer or as such rights relate to products currently under development (the "Parent Intellectual Property Rights").

5.17.2 Parent and Buyer have made available to the Company a list compiled by Parent and Buyer (which Parent and Buyer in good faith believe is a complete list) of all patents, registered and unregistered trademarks, registered copyrights, trade names and service marks, and any applications therefor, included in the Parent Intellectual Property Rights, specifying, where applicable, the jurisdictions in which each such Parent Intellectual Property Right has been issued or registered or in which an application for such issuance and registration has been filed, including the respective registration or application numbers and the names of all registered owners. Parent

and Buyer have made available to the Company a list of all material licenses, sublicenses and other agreements to which Parent or Buyer is a party and pursuant to which Parent or Buyer or any other person is authorized to use any Parent Intellectual Property Right (excluding object code end-user licenses granted to end-users in the ordinary course of business that permit use of software products without a right to modify, distribute or sublicense the same) or trade secret of Parent or Buyer, and includes the identity of all parties thereto, a description of the nature and subject matter thereof, the applicable royalty or other fees and the term thereof. Except as set forth on Schedule 5.17, the execution and delivery of this Agreement by Parent and Buyer, and the consummation of the transactions contemplated hereby, will neither cause Parent nor Buyer to be in violation or default under any such license, sublicense or agreement, nor entitle any other party to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement. Except as set forth in Schedule 5.17, either Parent or Buyer is the sole and exclusive owner or licensee of, with all right, title and interest in and to (free and clear of any liens or encumbrances but subject to the license rights of customers under customer agreements, which customer agreements have been disclosed to the extent required elsewhere herein), the Parent Intellectual Property Rights, and has sole and exclusive rights (and is not contractually obligated to pay any compensation to any third party in respect thereof) to the use thereof or the material covered thereby in connection with the services or products in respect of which the Parent Intellectual Property Rights are being used.

5.17.3 Except as set forth on Schedule 5.17, no claims with respect to the Parent Intellectual Property Rights have been asserted or, to the knowledge of Parent, threatened by any person or entity, nor, to the knowledge of Parent, has any other person made an assertion (i) to the effect that the manufacture, sale, licensing or use of any of the products of Parent or Buyer infringes on any copyright, patent, trademark, service mark, trade secret or other proprietary right of a third party, (ii) against the use by Parent or Buyer of any trademarks, service marks, trade names, trade secrets, copyrights, maskworks, patents, technology, know-how or computer software programs and applications used in the business of Parent or Buyer, or (iii) challenging the ownership by Parent or Buyer, validity or effectiveness of any of the Parent Intellectual Property Rights. Except as set forth on Schedule 5.17, to the knowledge of Parent (i) all registered trademarks, service marks and copyrights held by Parent or Buyer are valid and subsisting, (ii) neither Parent nor Buyer has infringed, and the business of Parent and Buyer as currently conducted or as currently proposed to be conducted does not infringe, any copyright, patent, trademark, service mark, trade secret or other proprietary right of any third party, (iii) there is no material unauthorized use, infringement or misappropriation of any of the Parent Intellectual Property Rights by any third party, including any employee or former employee of Parent or Buyer, and (iv) no Parent Intellectual Property Right or product of Parent or Buyer is subject to any outstanding decree, order, judgment, or stipulation restricting in any material manner the licensing thereof by Parent or Buyer. Each employee, consultant or contractor of Parent and Buyer has executed a proprietary information and confidentiality agreement substantially in Parent's or Buyer's standard forms. Except as set forth on Schedule 5.17, all software included in the Parent Intellectual Property Rights is original with Parent or Buyer and has been either created by employees of Parent or Buyer on a work-for-hire basis or by consultants or contractors who have created such software themselves and have assigned or are under an obligation to assign all rights they may have had in such software to Parent or Buyer.

5.17.4 Each of Parent and Buyer is taking commercially reasonable measures to ensure that its internal computer systems will be, as far as reasonably practicable, Y2K Compliant. Attached hereto as Schedule 5.17.4 is a copy of Parent's Year 2000 Certified Compliant Product Release as currently in effect.

5.18 Labor Matters. Except as set forth on Schedule 5.18, within the last three (3) years neither Parent nor Buyer has been the subject of any union activity or labor dispute, nor has there been any strike of any kind called or threatened to be called against Parent or Buyer; and, except as set forth on Schedule 5.18, neither Parent nor Buyer has violated any applicable federal or state law or regulation relating to labor or labor practices.

5.19 Insurance. Schedule 5.19 sets forth a complete and accurate list of all policies (including their respective expiration dates) of fire, employee liability, workmen's compensation, errors and omissions, casualty, business interruption, health, title and other forms of insurance presently in effect with respect to Parent or Buyer (true copies of which have heretofore been made available to the Company). Except as set forth on Schedule 5.17, all such policies are valid, outstanding and enforceable policies; provide adequate insurance coverage for the assets and operations of Parent and Buyer; will remain in full force and effect at least through the respective dates set forth in Schedule 5.19 without the payment of additional premiums; and will not in any way be affected by, or terminate or lapse by reason of, the Merger or the other transactions contemplated by this Agreement. Schedule 5.19 identifies all risks which either Parent or Buyer has designated as being self-insured and the amount of reserve set aside by Parent or Buyer to cover such risk. Neither Parent nor Buyer has been refused any insurance, nor has its coverage been limited, by any insurance carrier to which it has applied for insurance or with which it has carried insurance during the last five years. Schedule 5.19 contains an accurate and complete description of any provision contained in the policies identified in this Schedule 5.19 which provides for retrospective premium adjustment.

5.20 Employee Benefits.

5.20.1 For Parent and Buyer, set forth on Schedule 5.20 is a complete and correct list of (i) any "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (ii) any other employee benefit plan, arrangement or policy, including without limitation, any share option or stock option, stock purchase, stock award, stock appreciation, deferred compensation, pension, retirement, savings, profit sharing, incentive, bonus, health, life insurance, cafeteria, flexible spending, dependent care, fringe benefit, vacation pay, holiday pay, disability, sick pay, workers compensation, unemployment, severance, employee loan, educational assistance plan, arrangement or policy, and (iii) any employment, indemnification, consulting or severance agreement which is sponsored or maintained by Parent or Buyer, or to which Parent or Buyer contributes or is required to contribute, on behalf of current or former employees, consultants or directors or their beneficiaries or dependents, whether or not written (the "Parent Benefit Plans"). Except as contemplated by this Agreement and further except as disclosed on Schedule 5.20, neither Parent nor Buyer has formally adopted or authorized any additional Parent Benefit Plan or any change in

or termination of any existing Parent Benefit Plan. Except as contemplated by this Agreement, or except as disclosed on Schedule 5.20, neither Parent nor Buyer has made any commitment to create any additional Parent Benefit Plan or to terminate or modify or change in any respect any existing Parent Benefit Plan. Except as disclosed on Schedule 5.20, each Parent Benefit Plan covers only current or former employees of Parent or Buyer and their beneficiaries or dependents. Except as set forth on Schedule 5.20, each Parent Benefit Plan is and has been operated and administered in all material respects in accordance with its terms and all applicable laws.

5.20.2 Copies of all Parent Benefit Plans and related documents, including those setting out Parent's and Buyer's personnel policies and procedures, and including any insurance contracts under which benefits are provided, as currently in effect, and descriptions of any such Parent Benefit Plans which are not written, have been provided to the Company.

5.20.3 Each Parent Benefit Plan intended to be tax-qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service as to its tax-qualified status under the Code and nothing has occurred since the date of such favorable determination letter which would adversely affect the qualified status of such Parent Benefit Plan. Except as set forth on Schedule 5.20, no Parent Benefit Plan provides benefits to retirees or other terminated employees of Parent or Buyer other than (i) retirement or death benefits under a retirement plan intended to be tax-qualified under Section 401(a) of the Code or intended to provide life insurance benefits, or (ii) continuation coverage required by Section 4980B of the Code or other applicable law.

5.20.4 Except as set forth on Schedule 5.20, (i) all contributions and premium payments required to have been paid under or with respect to any Parent Benefit Plan prior to the Effective Time have been timely paid when due, (ii) neither Parent nor Buyer maintains or has contributed to or has an obligation to contribute to any "single-employer plan" within the meaning of Section 4001(a)(15) of ERISA or a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA with respect to any Parent Benefit Plan.

5.20.5 Except as set forth on Schedule 5.20, (i) there are no actions, suits or claims (other than routine claims for benefits in the ordinary course) with respect to any Parent Benefit Plan pending which could give rise to a material liability, or to the knowledge of Parent, threatened, and Parent has no knowledge of any facts which could give rise to any such actions, suits or claims (other than routine claims for benefits in the ordinary course), and (ii) no Parent Benefit Plan is currently under governmental investigation or audit and, to the knowledge of Parent, no such investigation or audit is contemplated or under consideration.

5.20.6 Except as set forth on Schedule 5.20, no "prohibited transaction" as defined in Section 406 of ERISA and Section 4975 of the Code, has occurred in respect of any Parent Benefit Plan, and no civil or criminal action brought pursuant to Part 5 of Title I of ERISA is pending or is threatened in writing or orally against any fiduciary of any such Parent Benefit Plan.

5.20.7 Except as set forth on Schedule 5.20, neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will (i) increase the amount of benefits otherwise payable under any Parent Benefit Plan, (ii) result in the acceleration of the time of payment, exercisability, funding or vesting of any such benefits, or (iii) result in any payment (whether severance pay or otherwise) becoming due to, or with respect to, any employee or director of Parent or Buyer. No payment or series of payments that would constitute a "parachute payment" (within the meaning of Section 280G of the Code) has been made or will be made by Parent or Buyer directly or indirectly to any employee of Parent or Buyer in connection with the execution of this Agreement or as a result of the consummation of the transactions contemplated hereby.

5.21 Certain Payments. To the knowledge of Parent, neither Parent, Buyer nor any officer, employee, agent or affiliate of Parent or Buyer, directly or indirectly, has given or agreed to give or solicited or received any gift, rebate or similar benefit to any customer, supplier, governmental employee or other person or entity which (i) might subject Parent or Buyer to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (ii) if not given in the past might have had an adverse effect on the business, assets, operations, prospects or condition (financial or otherwise) of Parent and Buyer taken as a whole, or (iii) if not continued in the future might adversely affect Parent's and Buyer's business, assets, operations, prospects or condition (financial or otherwise) taken as a whole.

5.22 Approvals. Except as set forth on Schedule 5.22 and the filing and recordation of the Certificate of Merger as required by the DGCL and the GBCC, no filing or registration with, and no consent, approval, permit, authorization, license, certificate or order of any governmental authority is required by any applicable law or by any applicable judgment, order or decree or any applicable rule or regulation of any governmental authority, to permit Parent and Buyer to execute, deliver or perform this Agreement or any instrument or agreement required hereby to be executed by such party at or prior to the Closing.

5.23 Transactions With Affiliates. Except as set forth on Schedule 5.23 hereto, since March 31, 1999, neither Parent nor Buyer has purchased, leased, or otherwise acquired any material property or assets or obtained any material property or assets or obtained any material services from, or sold, leased or otherwise disposed of any material property or assets or provided any material services to (except with respect to remuneration for services rendered as a director, officer or employee of the Company in the ordinary course), (i) any employee of Parent or Buyer, (ii) any stockholder of Parent or Buyer, (iii) any person that is, directly or indirectly, controlled by any stockholder of Parent or Buyer, or (iv) any member of the immediate family of any stockholder of Parent or Buyer or any other of the foregoing persons or entities (collectively, a "Parent Affiliate"). Except as set forth in Schedule 5.23 hereto, (a) the contracts, instruments and agreements of Parent and Buyer do not include any obligation or commitment between Parent or Buyer and any Parent Affiliate, (b) the assets of Parent and Buyer do not include any receivable or other obligation or commitment from a Parent Affiliate to Parent or Buyer, and (c) the liabilities reflected on the Parent Financial Statements, and those on the books and records of Parent and Buyer as of the Closing, do not include any obligation or commitment of any Parent Affiliate.

5.24 Schedules and Exhibits. All Schedules and Exhibits provided by Parent and Buyer attached hereto will be true, correct and complete as of the Closing. Matters disclosed on each Schedule and Exhibit shall be deemed disclosed only for purposes of the matters to be disclosed in such Schedule or Exhibit and shall not be deemed to be disclosed for any other purpose, unless expressly provided therein. No statement contained herein or in any certificate, Schedule, Exhibit, document or other instrument furnished to the Company pursuant to the provisions hereof contains or will contain any untrue statement of any material fact or omits or will omit to state a material fact necessary in order to make the statement contained herein or therein not misleading in light of the circumstances under which they were made.

5.25 Registration Rights and Voting. Parent is not under any obligation and has not granted any rights to register under the Securities Act or under the securities laws of the United Kingdom, any of its securities. To Parent's knowledge, except as provided in Parent's Articles of Association as in effect on the date hereof (which Articles of Association shall be superceded on or prior to Closing with the Articles of Association attached as an exhibit to the Shareholders Agreement attached hereto as Exhibit 6.4.1(m), no shareholder of Parent has entered into any agreement with respect to the voting of Parent Stock.

5.26 Reorganization. Parent will have been engaged in an active trade or business outside the United States (as defined in Treas. Reg. Section 1.367 (a) - 2T (b) (2) and (3)) for the entire 36 - month period immediately before the Closing of the Merger. Neither Parent nor Buyer has acquired any assets for the principal purpose of satisfying the substantiality test within the meaning of Treas. Reg. Section 1.367(a)-3(c)(3)(iii)(B)(1)(i)(B). Furthermore, Parent will have held the stock of Buyer for the entire 36-month period immediately before the Closing of the Merger. Parent has no intention to substantially dispose of or discontinue such trade or business, except that Parent may contribute the assets of its trade or business to a wholly-owned subsidiary organized in the United Kingdom.

## 6. CLOSING.

6.1 Time and Place of Closing. The consummation of the transactions contemplated hereby (the "Closing") will take place on July 21, 1999 (the "Closing Date"). The Closing shall be held at the offices of Alston & Bird LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia 30309-3424, commencing at 10:00 a.m., eastern standard time, unless another place or date is agreed to in writing by the Stockholders and Parent. All transactions that take place at the Closing shall be deemed to occur simultaneously.

6.2 Obligations of Parent and Buyer. The obligations of Parent and Buyer to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, all or any of which may be waived, in whole or in part, by Parent for purposes of consummating such transactions, but without prejudice to any other right or remedy which Parent and Buyer may have hereunder as a result of any misrepresentation by, or breach of any covenant or warranty of, the Company or any Stockholder contained in this Agreement or any other certificate or instrument furnished by the Company or any Stockholder hereunder:



(a) Parent shall have approved the schedules to this Agreement provided by the Company and the Stockholders pursuant to Sections 3 and 4 hereof (such approval to be given in the sole discretion of Parent).

(b) Parent shall have approved documentation provided by the Company and the Stockholders evidencing the termination of the Easirun Shareholders Agreement (such approval to be given in the sole discretion of Parent).

(c) Parent shall have approved documentation provided by the Company and the Stockholders evidencing (i) the repayment of all outstanding loans and management fees owed to Comsoft and Sinc, (ii) the write off of the maximum amount allowable under applicable law in respect of the initial \$630,000 paid to Sinc relating to its purchase of FlexGen, and (iii) accepted invoices to a maximum total of \$200,000 in respect of management fees to Comsoft and Sinc (such approval to be given in the sole discretion of Parent).

(d) Parent shall have approved documentation provided by the Company and the Stockholders evidencing the amendment to that certain FlexGen Purchase Agreement dated August 1, 1998, between the Company and Sinc (the "Sinc Agreement") (such approval to be given in the sole discretion of Parent).

(e) Buyer shall have, in its sole discretion, either (i) entered into an employment agreement with David Roth and Hendrik Jacobs on terms and conditions satisfactory to Buyer in its sole discretion, or (ii) assumed the obligations under each of their existing employment agreements with the Company.

(f) The Company and the Stockholders shall have delivered to Parent and Buyer all other certificates, documents, agreements, resolutions, schedules and opinions required by, and in accordance with, the provisions of Section 6.4.1 hereof.

(g) No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the transactions contemplated hereby, or which is related to or arises out of the business of the Company, if such action, proceeding, investigation, regulation or legislation, in the reasonable judgment of Parent, would make it inadvisable to consummate such transactions.

(h) The execution and the delivery of this Agreement and the consummation of the Merger and the other transactions contemplated hereby shall have been approved by: (i) the Board of Directors and shareholders of Parent and Buyer, and (ii) all regulatory authorities whose approvals are required by law.

(i) No Stockholder shall have exercised dissenter's or appraisal rights with respect to the Merger.

6.3 Obligations of the Company and the Stockholders The obligations of the Company and the Stockholders to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, all or any of which may be waived, in whole or in part, by the Company, but without prejudice to any other right or remedy which they may have hereunder as a result of any misrepresentation by, or breach of any covenant or warranty of, Parent or Buyer contained in this Agreement, or any certificate or instrument furnished by them hereunder:

(a) The Company shall have approved the schedules to this Agreement to be delivered by Parent and Buyer pursuant to Section 5 (such approval to be given in the sole discretion of the Company).

(b) The Company shall have approved documentation provided by Parent evidencing the amendment to the Sinc Agreement (such approval to be given in the sole discretion of the Company).

(c) Parent shall have delivered to the Company documentation evidencing the appointment of Hendrick Jacobs and David Roth as members of the Board of Directors of Parent.

(d) Parent shall have delivered to the Company the release agreement as required by Section 6.4.2(k) hereof in the form and substance reasonably satisfactory to the Company and its counsel.

(e) David Roth and Hendrik Jacobs shall have entered into employment agreements with Buyer on terms and conditions satisfactory to each of David Roth and Hendrik Jacobs in their sole discretion (or, at the sole option of Buyer, Buyer shall have assumed the obligations under each of their existing employment agreements with the Company).

(f) Parent and Buyer shall have delivered to the Company and the Stockholders all other certificates, documents, agreements, resolutions, schedules and opinions required by, and in accordance with, the provisions of Section 6.4.2 hereof.

(g) No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the transactions contemplated hereby, or which is related to or arises out of the business of Parent or Buyer, if such action, proceeding, investigation, regulation or legislation, in the reasonable judgment of the Company, would make it inadvisable to consummate such transactions.

(h) The execution and the delivery of this Agreement and the consummation of the Merger and the other transactions contemplated hereby shall have been approved by all regulatory authorities whose approvals are required by law.

(i) Parent shall have executed a Business Transfer Agreement and an Assignment of Trademarks and Trademark Applications to Pitcomp 186 Limited (to be renamed Transoft Limited) on terms reasonably satisfactory to the Company.

6.4 Transactions at Closing. At the Closing, each of the following transactions shall occur:

6.4.1 The Company's and the Stockholders' Performance. At the Closing, the Company and the Stockholders shall deliver to Parent and Buyer, the following:

(a) all certificates representing shares constituting all of the outstanding shares of the Company's capital stock, duly endorsed for transfer or accompanied by instruments of transfer reasonably satisfactory in form and substance to Parent and its counsel;

(b) copies of the consents and waivers described in Section 3.11;

(c) a release agreement executed by each Stockholder, in the form and substance of Exhibit 6.4.1(c), in which each Stockholder completely and irrevocably releases the Company from any and all duties and obligations owed by the Company to such Stockholder as of the Closing, and for any claims or possible claims, whether known or unknown, foreseen or unforeseen, and the consequences thereof, that such Stockholder has, or may have, or may claim to have, against the Company;

(d) certificates of compliance or certificates of good standing of the Company, as of the most recent practicable date, from the appropriate governmental authority of the jurisdiction of its incorporation;

(e) certified copies of resolutions of the Board of Directors and stockholders of the Company approving the transactions contemplated by this Agreement;

(f) resignations of each officer and director of the Company;

(g) certificates of incumbency for the officers of the Company who are executing this Agreement and the other documents contemplated hereunder;

(h) a favorable opinion of counsel for the Company and the Stockholders addressed to Parent and Buyer and dated as of the Closing, in the form and substance reasonably acceptable to Parent;

(i) a certificate executed by the President of the Company certifying that, since March 31, 1999, the Company has not suffered any change in its business, assets, prospects, condition (financial or otherwise) or operations which,

individually or in the aggregate, could have a material adverse affect on the Company;

(j) an amendment, in form and substance satisfactory to Parent in its sole discretion, to the Sinc Agreement;

(k) documentation, in form and substance acceptable to Parent in its sole discretion, evidencing (i) the repayment of all outstanding loans and management fees owed to Compssoft and Sinc, (ii) the write off of the maximum amount allowable under applicable law in respect of the initial \$630,000 paid to Sinc relating to its purchase of FlexGen, and (iii) accepted invoices to a maximum total of \$200,000 in respect of management fees to Compssoft and Sinc;

(l) documentation, in form and substance acceptable to Parent in its sole discretion, evidencing the termination of the Easirun Shareholders Agreement;

(m) a Shareholders Agreement, executed by each shareholder of Parent, in the form and substance of Exhibit 6.4.1(m);

(n) schedules to this Agreement as contemplated by Sections 3 and 4 hereof, in the form and substance acceptable to Parent in its sole discretion;

(o) employment agreements with Buyer executed by David Roth and Hendrik Jacobs on terms and conditions satisfactory to Buyer in its sole discretion (or Buyer, at its sole option, shall assume the obligations under each of their existing employment agreements with the Company); and

(p) such other evidence of the performance of all covenants and satisfaction of all conditions required of the Company and the Stockholders by this Agreement as Parent or its counsel may reasonably require.

6.4.2 Performance by Parent and Buyer. At the Closing, Parent and Buyer shall deliver to the Company and the Stockholders, the following:

(a) to the Stockholders, certificates representing shares of Parent Stock, duly issued as contemplated by Section 1.3 hereof;

(b) a favorable opinion of counsel for Parent and Buyer, addressed to the Stockholders and dated as of the Closing, in the form and substance reasonably acceptable to the Company;

(c) certificate of incumbency of the officers of Parent and Buyer who are executing this Agreement and the other documents contemplated hereunder;

(d) a certificate executed by the President of Parent certifying that, since March 31, 1999, neither Parent nor Buyer suffered any change in its business, assets, prospects, condition (financial or otherwise) or operations which, individually or in the aggregate, could have a material adverse affect on Parent and Buyer taken as a whole;

(e) certified copies of resolutions of the Board of Directors and stockholders of Buyer and Parent (as required under applicable law) approving the transactions contemplated by this Agreement;

(f) certificates of compliance or certificates of good standing of Parent and Buyer, as of the most recent practicable date, from the appropriate governmental authority of the jurisdiction of its incorporation;

(g) a Shareholders Agreement, executed by each shareholder of Parent, in the form and substance of Exhibit 6.4.1(m);

(h) documentation evidencing the appointment of Hendrik Jacobs and David Roth as members of the Board of Directors of Parent;

(i) schedules to this Agreement as contemplated by Section 5 hereof, in the form and substance acceptable to the Company in its sole discretion;

(j) an amendment, in form and substance satisfactory to the Company in its sole discretion, to the Sinc Agreement

(k) a release agreement executed by each shareholder of Parent, in the form and substance reasonably satisfactory to the Company and its counsel, in which each shareholder of Parent completely and irrevocably releases Parent from any and all duties and obligations owed by Parent to such shareholder as of the Closing except for (i) the payment of dividends of up to £77,777, (ii) the issuance of stock options outstanding as of the date hereof to purchase up to 827 shares of Parent Stock, and (iii) compensation and the reimbursement of expenses in the ordinary course of business;

(l) copies of the consents and waivers described in Section 5.11;

(m) employment agreements executed by Buyer with David Roth and Hendrik Jacobs on terms and conditions satisfactory to David Roth and Hendrik Jacobs in their sole discretion (or Buyer, at its sole option, shall assume the obligations under each of their existing employment agreements with the Company); and

(n) such other evidence of the performance of all the covenants and satisfaction of all of the conditions required of Parent and Buyer by this Agreement as the Company or its counsel may reasonably require.

## 7. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION.

7.1 Survival. The representations, warranties, covenants and agreements contained in or made pursuant to this Agreement will survive (and not be affected in any way by) the Closing for a period of two (2) years after the date of the Closing, except those with respect to (i) tax matters (including but not limited to those addressed in Sections 3.7, 3.8, 5.7 and 5.8) which shall survive until the liability to which any claim for indemnification based upon such representations or warranties is barred by all applicable statutes of limitations, (ii) environmental matters (including but not limited to those addressed in Sections 3.15 and 5.15) which shall survive for a period of five years from the date of Closing, and (iii) ownership of securities and capitalization (including but not limited to those contained in Sections 3.2, 3.4, 3.5, 4.4, 5.2, 5.4, and 5.5) which shall survive in perpetuity; provided, that the time limitations set forth in this Section 7.1 shall not apply to any liability, loss, damage or injury arising from any fraudulent breach of any representation or warranty. After the applicable survival period expires, a claim for indemnification in connection with this Agreement and the transactions contemplated hereby based upon, resulting from or arising out of a breach of a representation, warranty, covenant or agreement subject to such expired survival period shall be forever barred; provided, however, that any representation, warranty, covenant or agreement shall survive to the extent a claim for indemnification based upon, resulting from or arising out of a breach of such representation, warranty, covenant or agreement is made prior to the expiration of the applicable survival period until such claim is finally resolved.

### 7.2 Agreements to Indemnify.

7.2.1 Joint and Several Indemnities of Stockholders. Each Stockholder, jointly and severally, hereby agrees to indemnify and hold Parent and Buyer (and the respective directors, officers, employees and affiliates of Parent and Buyer (collectively, the "Parent Indemnified Parties") harmless from and against all liability, loss, damage, or injury and all reasonable costs and expenses (including, without limitation, the costs of any investigation or suit and reasonable counsel fees related thereto) suffered or incurred by the Parent Indemnified Parties arising from any misrepresentation, or breach of any covenant or warranty of the Company or any Stockholder contained in this Agreement or the Schedules or Exhibits hereto (other than Section 4), or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished by the Company or any Stockholder hereunder (other than pursuant to Section 4).

7.2.2 Several Not Joint Indemnities of Stockholders. Each Stockholder, severally and not jointly, hereby agrees to indemnify and hold the Parent Indemnified Parties harmless from and against all liability, loss, damage, or injury and all reasonable costs and expenses (including, without limitation, the costs of any investigation or suit and reasonable counsel fees related thereto) suffered or incurred by the Parent Indemnified Parties arising from any misrepresentation, or breach of any covenant or warranty of such Stockholder contained in Section 4 of this

Agreement or the Schedules or Exhibits referenced therein, or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished by such Stockholder pursuant to Section 4 of this Agreement. In the event that the Stockholders transfer their shares to any member of Sinc Inc., Compssoft LLC, or their respective beneficial owners (each a "UBO") pursuant to Section 6. of the Shareholders Agreement attached as Exhibit 6.4.1(m), then such UBO shall assume, on a proportionate and several basis the Stockholders Indemnity obligations under this Section 7.2.2, provided, however, that notwithstanding anything to the contrary in Section 7.4, the UBO may elect to satisfy the Indemnification obligation solely in Parent Stock.

**7.2.3 Parent and Buyer Indemnity.** Parent and Buyer jointly and severally agree to indemnify and hold the Stockholders and respective directors, officers, employees and affiliates of the Stockholders (collectively, the "Stockholder Indemnified Parties") harmless from and against all liability, loss, damage, or injury and all reasonable costs and expenses (including, without limitation, the costs of any investigation or suit and reasonable counsel fees related thereto) suffered or incurred by the Stockholder Indemnified Parties arising from any misrepresentation, or breach of any covenant or warranty of Parent or Buyer contained in this Agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished by Parent or Buyer hereunder.

**7.3 Limits on Indemnification Obligations.** Notwithstanding anything contained in Section 7 of this Agreement to the contrary:

(a) Parent and Buyer agree that the Parent Indemnified Parties shall not seek recourse against, and shall not recover from the Stockholders under Section 7.2.1 or 7.2.2 hereof for, any liability, loss, damage or injury and all reasonable costs and expenses (including, without limitation, the costs of any investigation or suit and reasonable counsel fees related thereto) with respect to any particular breach or claim not individually in excess of one thousand dollars (\$1,000). The Stockholders agree that the Stockholder Indemnified Parties shall not seek recourse against, and shall not recover from Parent or Buyer under Section 7.2.3 hereof for, any liability, loss, damage or injury and all reasonable costs and expenses (including, without limitation, the costs of any investigation or suit and reasonable counsel fees related thereto) with respect to any particular breach or claim not individually in excess of one thousand dollars (\$1,000).

(b) Parent and Buyer agree that the Parent Indemnified Parties shall not seek recourse against, and shall not recover from the Stockholders under Section 7.2.1 or 7.2.2 hereof for, any liability, loss, damage or injury and all reasonable costs and expenses (including, without limitation, the costs of any investigation or suit and reasonable counsel fees related thereto) with respect to any particular breach or claim in excess of one thousand dollars (\$1,000), but not in excess of ten thousand dollars (\$10,000), until such time as the aggregate liability of all such breaches and claims in excess of one thousand dollars (\$1,000), but not in excess of ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), in which event the Stockholders shall be liable for all the full amount of all such breaches and claims. The Stockholders agree that the Stockholder Indemnified Parties shall not seek recourse against, and shall not recover from Parent or Buyer under Section 7.2.3 hereof for, any liability, loss, damage or injury and all reasonable costs and expenses (including, without limitation, the costs of any investigation or suit and reasonable counsel fees related thereto) with respect to any particular

breach or claim in excess of one thousand dollars (\$1,000), but not in excess of ten thousand dollars (\$10,000), until such time as the aggregate liability of all such breaches and claims in excess of one thousand dollars (\$1,000), but not in excess of ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), in which event Parent and Buyer shall be liable for all the full amount of all such breaches and claims.

(c) Notwithstanding anything in Section 7.3 to the contrary, the limitations on indemnification obligations set forth in Section 7.3 shall not apply any particular breach or claim in excess of ten thousand dollars (\$10,000).

#### 7.4 Procedure for Indemnification Claims.

(a) Parent Indemnified Parties and Stockholders Indemnified Parties are referred to herein as "Indemnified Parties," and the persons or entities from whom indemnification may be sought pursuant to Section 7 hereof are referred to herein as "Indemnifying Parties."

(b) If at any time an Indemnified Party determines to assert a right to indemnification hereunder, the Indemnified Party will give to the Indemnifying Party written notice of such determination. Notwithstanding the preceding sentence, in the case of a claim for indemnification based upon an action, suit, litigation, investigation or proceeding instituted by a third person or entity, the Indemnified Party will give written notice of such claim to the Indemnifying Party within thirty (30) days of obtaining knowledge of such action, suit, litigation, investigation or proceeding, provided that any failure or delay in giving such notice will not relieve the Indemnifying Party of its obligations under this Section 7, except to the extent such failure or delay actually harms or prejudices the Indemnifying Party. Such written notice will indicate whether the Indemnified Party is willing to accept shares of Parent Stock in satisfaction of the Indemnifying Party's indemnification obligations hereunder.

(c) Within ten (10) days after receipt of a notice referred to in paragraph 7.4(b), the Indemnifying Party will (i) acknowledge in writing its responsibility for all or part of such matter for which indemnification is sought under this Section 7, and/or (ii) give written notice to the Indemnified Party of its intention to dispute or contest all or part of such responsibility, and (iii) indicate whether it desires to satisfy its indemnification obligation with respect to such matter (if any) by payment of cash or shares of Parent Stock. If the Indemnified Party is not willing to accept shares of Parent Stock in satisfaction of the Indemnifying Party's indemnification claims, or if the Indemnifying Party desires to satisfy its indemnification claims by payment of cash, the indemnification obligations with respect to such matter shall be satisfied in cash. If the Indemnified Party is willing to accept shares of Parent Stock in satisfaction of the Indemnifying Party's indemnification claims, and if the Indemnifying Party desires to satisfy its indemnification claims with shares of Parent Stock, the indemnification obligations with respect to such matter shall be satisfied with shares of Parent Stock. For purposes of satisfying indemnification claims with shares of Parent Stock, the fair market value of each share of Parent Stock shall be determined as of the most recently completed fiscal quarter of Parent in accordance with Section 7.5 hereof.



(d) Upon delivery of the notice set forth in Section 7.4(c), Parent and the Stockholders shall negotiate in good faith to resolve as promptly as possible (i) any dispute as to responsibility for, or the amount of, any such matter, and (ii) if indemnification obligations will be satisfied in shares of Parent Stock, the fair market value of each share of Parent Stock. In the event such dispute (and/or the fair market value of each share of Parent Stock, if applicable) is not resolved within thirty (30) days after the expiration of the ten (10) day period referred to in Section 7.4(c), all outstanding issues related to such dispute shall be resolved in accordance with Section 7.5 hereof.

#### 7.5 Arbitration.

(a) All disputes arising under this Section 7 (other than claims in equity) shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Arbitration shall be by a single arbitrator experienced in the matters at issue and selected by the Stockholders, on the one hand, and Parent, on the other hand, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held in such place in Atlanta, Georgia as may be specified by the arbitrator (or any place agreed to by the Stockholders, Parent and the arbitrator).

(b) In the event Parent and the Stockholders are unable to agree on the fair market value of each share of Parent Stock during such thirty (30) day period set forth in Section 7.4(d), then, the arbitrator shall choose two appraisers within fifteen (15) days following the expiration of such thirty (30) day period experienced in valuing private businesses and such appraisers shall, within thirty (30) days of their selection, attempt to mutually agree on the fair market value of each share of Parent Stock as of the most recently completed fiscal quarter of Parent. If the appraisers are unable to agree on the fair market value of each share of Parent Stock within such thirty (30) day period, each appraiser shall immediately submit in writing to the arbitrator, Parent and the Stockholders their respective appraisals. If each such appraisal is within ten percent (10%) of the numerical average of both of such appraisals, then the fair market value of each share of Parent Stock shall be conclusively determined by taking the numerical average of both such appraisals. If each appraisal is not within ten percent (10%) of the numerical average of both of such appraisals, then the arbitrator shall, within fifteen (15) days of the expiration of such thirty (30) day period, determine which of the two appraisals most accurately reflects the fair market value of each share of Parent Stock as of the most recently completed fiscal quarter of Parent.

(c) The decision of the arbitrator (and the appraisers if they mutually agree on fair market value pursuant to Section 7.5(b)) shall be final and binding as to any matters submitted under this Section 7; provided, however, if necessary, such decision and satisfaction procedure may be enforced in any court of record having jurisdiction over the subject matter or over any of the parties to this Agreement. All costs and expenses incurred in connection with any such proceeding under this Section 7 (including the costs and expenses of the appraisal process and reasonable attorneys fees) shall be made by the arbitrator on the basis of the arbitrator's assessment of the relative merits of the parties' positions.

7.6 Exclusivity of Indemnification as a Remedy. Except for remedies based upon fraud and except for equitable remedies, the remedies provided in this Section 7 constitute the sole and exclusive remedies for recovery against a party to this Agreement for any misrepresentation or breach of any covenant or warranty contained in this Agreement or the Schedules or Exhibits hereto and for any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished hereunder.

## 8. TERMINATION.

8.1 Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned only as follows:

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

(b) by either the Company or Parent, if the Closing has not occurred by July 30, 1999; provided, that, no party may terminate this Agreement pursuant to this Section 8.1(b) if such party's failure to fulfill any of its obligations under this Agreement shall have been the reason that the Closing shall not have occurred on or before said date; or

(c) by either the Company or Parent, if there shall be any law or regulation that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or if any judgment, injunction, order or decree enjoining the parties hereto from consummating the transactions contemplated by this Agreement is entered and such judgment, injunction, order or decree shall become final and nonappealable.

8.2 Effect of Termination. If this Agreement is terminated pursuant to Sections 8.1 or 8.3, this Agreement shall become void and of no effect with no liability on the part of any party hereto, except that the agreements contained in Section 2.2 shall survive the termination hereof.

8.3 Risk of Loss. The Company and the Stockholders assume all risk of condemnation, destruction, loss or damage due to fire or other casualty from the date of this Agreement up to the Effective Time. If the condemnation, destruction, loss, or damage is such that the business of the Company is materially interrupted or curtailed or the assets of the Company are materially affected, then Parent and Buyer shall have the right to terminate this Agreement by written notice to the Company.

## 9. GENERAL PROVISIONS.

9.1 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered by hand or mailed by registered or certified mail, return receipt requested, first class postage prepaid, or by a nationally recognized overnight delivery service, addressed as follows:

## 9.1.1 If to the Stockholders:

Compsoft LLC  
6404 Nancy Ridge Drive  
San Diego, California 92121

Sinc, Inc.  
7086 Corporate Way  
Dayton, Ohio 45459

and to:

Zevnik Horton Guibord McGovern Palmer & Fognani, L.L.P.  
101 West Broadway  
Seventeenth Floor  
San Diego, California 92101  
Attn: Jerry Gumpel, Esq

## 9.1.2 If to Buyer:

Transoft Limited  
Transoft House  
5J Langley Business Centre, Station Road  
Langley, Slough LS3 805, England  
Attn: Mike Edwards, Chairman

and to:

Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
Attention: James Harvey, Esq.

9.1.3 If delivered personally, the date on which a notice, request, instruction or document is delivered shall be the date on which such delivery is made and, if delivered by mail, the date on which such notice, request, instruction or document is received shall be the date of delivery.

9.1.4 Any party hereto may change its address specified for notices herein by designating a new address by notice in accordance with this Section 9.1.

9.2 Brokers. Each party hereto represents and warrants to the other parties hereto that no investment banker, broker, finder or other person or entity has acted for such party or any entity controlling, controlled by or under common control with such party in connection with the

transactions contemplated by this Agreement. Parent and Buyer, jointly and severally, agree to indemnify and hold harmless the Stockholders against any fee, loss or expense arising out of any claim by any investment banker, broker, finder or other person or entity employed or alleged to have been employed by Parent or Buyer. Each Stockholder agrees, jointly and severally, to indemnify and hold harmless Parent and Buyer (and, after the Effective Time, the Company) against any fee, loss or expense arising out of any claim by any investment banker, broker, finder or other person or entity employed or alleged to have been employed by the Company or any Stockholder.

9.3 Expenses. All expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the Closing of the transactions contemplated hereby, including, without limitation of the generality of the foregoing, all fees and expenses of agents, representatives, counsel and accountants employed by any such party, shall be borne solely and entirely by the party which has incurred the same.

9.4 Further Assurances. Each party covenants that at any time, and from time to time, after the Closing, it will execute such additional instruments and take such actions as may be reasonably requested by the other parties to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement, including without limitation, such cooperation as is reasonably necessary to assure an orderly transition in the management of the Company.

9.5 Waiver. Any failure on the part of any party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived by any other party to whom such compliance is owed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

9.6 Binding Effect. No party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other parties hereto; provided, however, that Parent and Buyer may assign this Agreement and any of its rights, interests or obligations hereunder without the consent of any party hereto in connection with the transfer of the business and assets of Parent to Pitcomp 186 Limited (to be renamed Transoft Limited) provided further, however, that any such assignment shall not relieve Parent or Buyer of any of their obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

9.7 Headings. The section and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and are not a part of this Agreement. References to any "Section" herein (such as "Section 5.0") shall be construed to include a reference to all subsections thereunder (e.g., 5.1, 5.2, 5.3, etc.).

9.8 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, among the parties hereto relating to the transactions

contemplated hereby or the subject matter herein. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an agreement in writing signed by the party against whom or which the enforcement of such change, waiver, discharge or termination is sought.

9.9 Governing Law. This Agreement and any and all disputes, controversies or claims, whether in tort, contract, or otherwise, among the parties arising out of or in connection with the transactions contemplated by this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to conflicts of laws principles.

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

9.11 Pronouns. All pronouns used herein shall be deemed to refer to the masculine, feminine or neuter gender as the context requires.

9.12 Schedules and Exhibits Incorporated. All Schedules and Exhibits attached hereto are incorporated herein by reference, and all blanks in such Schedules and Exhibits, if any, will be filled in as required in order to consummate the transactions contemplated herein and in accordance with this Agreement.

9.13 Time of Essence. Time is of the essence in this Agreement.

9.14 Definitions. As used in this Agreement, (i) the term "to the knowledge of the Company and the Stockholders" shall refer to the knowledge or awareness of Henry Jacobs or David Roth and shall be deemed for all purposes to include the knowledge or awareness which Henry Jacobs or David Roth would have obtained after making a good faith inquiry of those employees of the Company with principal and/or day-to-day operational responsibility with respect to a particular matter, and (ii) the term "to the knowledge of Parent" shall refer to the knowledge or awareness of Mike Edwards, Paul Holland or Geoffrey St George Baker and shall be deemed for all purposes to include the knowledge or awareness which Mike Edwards, Paul Holland or Geoffrey St George Baker would have obtained after making a good faith inquiry of those employees of Parent and Buyer with principal and/or day-to-day operational responsibility with respect to a particular matter

[Signatures on Following Pages]

IN WITNESS WHEREOF, each party hereto has executed or caused this Agreement to be executed on its behalf, all on the day and year first above written.

PARENT:

TRANSOFT LIMITED (to be renamed Transoft Group Limited)

By: Michael Geoffrey Edwards  
Name: Michael Geoffrey Edwards  
Its: CHAIRMAN

BUYER:

TRANSOFT, INC.

By: Michael Geoffrey Edwards  
Name: Michael Geoffrey Edwards  
Title: CHAIRMAN

COMPANY:

EASIRUN USA, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STOCKHOLDERS:

SINC, INC.

By: \_\_\_\_\_  
Name: Hendrik Jacobs  
Title: \_\_\_\_\_

Signature Page to  
Merger Agreement and  
Plan of  
Reorganization

IN WITNESS WHEREOF, each party hereto has executed or caused this Agreement to be executed on its behalf, all on the day and year first above written.

PARENT:

TRANSOFT LIMITED (to be renamed Transoft Group Limited)

By: \_\_\_\_\_  
Name: Michael Geoffrey Edwards  
Its: \_\_\_\_\_

BUYER:

TRANSOFT, INC.

By: \_\_\_\_\_  
Name: Michael Geoffrey Edwards  
Title: \_\_\_\_\_

COMPANY:

EASIRUN USA, INC.

By: [Signature]  
Name: Hendrik Jacobs  
Title: CEO/Chairman

STOCKHOLDERS:

SING, INC.

By: [Signature]  
Name: Hendrik Jacobs  
Title: President

Signature Page to  
Merger Agreement and  
Plan of  
Reorganization

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JUN. 23. 1999 3:51PM ZHGMPF SAN DIEGO

WORKSRV2 printed 40A37712BAF44B7 on 06/23/1999 06:47PM \* Pg 4/5  
NO. 630 P. 4/5

**COMPSOFT LLC**

Roth Family Living Trust

By: *DRoth*  
Name: David Roth  
Title: Trustee of the Roth Family Living Trust  
dated November 1, 1990

Gerber-Glodschmidt (USA), Inc., a  
California corporation

By: \_\_\_\_\_  
Name: David Ellman  
Title: President

Signature Page to  
Merger Agreement and  
Plan of Reorganization

P. 02/02

JUN-22-1999 17:48



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JUN. 23. 1999 3:52PM ZHGMPF SAN DIEGO  
By: \_\_\_\_\_

WORKSRV2 printed 40A37712BAF44B7 on 06/23/1999 06:47PM \* Pg 5/5  
NO. 630 P. 5/5

Name: David Roth

Title: Trustee of the Roth Family Living Trust

dated November 1, 1990

Gerber-Goldschmidt (USA), Inc., a  
Californian Corporation

By:  \_\_\_\_\_

Name: David Eisman

Title: President

Signature Page to  
Merger Agreement and  
Plan of Reorganization

P.01

23-JUN-1999 08:43

SCHEDULE 3.17  
Intellectual Property

1. FlexGen Trademark Registration

LOCATION:+441753773050

RX TIME 11/18 '02 10:31

**RECORDED: 11/29/2002**

**TRADEMARK**  
**REEL: 002638 FRAME: 0289**