

**TRADEMARK ASSIGNMENT**

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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Frogworks Technologies, Inc.		09/01/2000	CORPORATION: WASHINGTON
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<b>City:</b>	Bellingham		
<b>State/Country:</b>	WASHINGTON		
<b>Postal Code:</b>	98226		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: WASHINGTON		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
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<b>Date:</b>	10/25/2006		

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**Total Attachments: 38**

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**ASSET PURCHASE AGREEMENT**

**BETWEEN**

**CLARUS TECHNOLOGIES, LLC**

**AND**

**FROGWORKS TECHNOLOGIES, INC.**

**DATED SEPTEMBER 1, 2000**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "*Agreement*") is entered into and made effective as of this 1<sup>st</sup> day of September, 2000, by and between Frogworks Technologies, Inc., a Washington corporation ("*Seller*"), and Clarus Technologies, LLC, a Washington limited liability company ("*Buyer*").

### RECITALS

WHEREAS, the Buyer was formed by Koniag Development Corporation, an Alaska corporation ("*Koniag*"), for the purpose of acquiring the Assets;

WHEREAS, Koniag initially capitalized the Buyer with an investment of \$500,000, and has agreed to guarantee a \$500,000 line of credit to the Buyer;

WHEREAS, Seller now desires and intends to exchange substantially all of its operating assets and other rights relating to its Business for a 10% escalating membership interest in Buyer on the terms and conditions set forth herein;

WHEREAS, Buyer desires and intends to admit Seller as a member in exchange for substantially all of the operating assets and other rights relating to Seller's operations and the Business, and to assume substantially all of the liabilities relating to such operations, on the terms and conditions set forth herein; and

WHEREAS, following the Closing, Koniag will own a 90% decreasing membership interest in Buyer and Seller will own a 10% escalating membership interest in Buyer as set forth in the Limited Liability Company Agreement.

### AGREEMENT

NOW THEREFORE, in consideration of the premises, mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties stipulate and agree as follows:

#### 1. Definitions

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

1.1 "*Affiliate*": of any person (the "*Subject*") means any other person which, directly or indirectly, controls or is controlled by or is under common control with the Subject and, without limiting the generality of the foregoing, includes, in any event, (a) any person which beneficially owns or holds 10% or more of any class of voting securities of the Subject or 10% or more of the legal or beneficial interest in the Subject and (b) any person of which the Subject beneficially owns or holds 10% or more of any class of voting securities or 10% or more of the legal or beneficial interest. "*Control*" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise.

1.2 "*Agreement*": This Agreement and all Schedules and Exhibits hereto.

- 1.3 **"Assets"**: As defined in Section 2.1.
- 1.4 **"Assumed Liabilities"**: As defined in Section 2.3.
- 1.5 **"Balance Sheet Date"**: As defined in Section 5.5.
- 1.6 **"Bill of Sale and Assignment"**: As defined in Section 2.5.
- 1.7 **"Business"**: The business, operations and activities of Seller relating to the manufacture, development, and sale of equipment related to the reprocessing of spent industrial fluids, including but not limited to fuels, oils, solvents, oily water, glycol and water-based coolant for the metal working market; providing mobile fluid reprocessing services of industrial fluids to military and industrial accounts; and owning the necessary licenses to represent Castrol Industrial North America as its exclusive reprocessor of industrial fluids for the Western half of the United States, including, but not limited to, the research, development, manufacture, use, marketing, promotion, sale and distribution thereof. Without limiting the foregoing, "Business" shall include the operation of the Assets and the Facilities.
- 1.8 **"Claim"**: Any claim, demand, cause of action, suit, proceeding, arbitration, hearing or investigation.
- 1.9 **"Closing"**: The consummation of the purchase and sale of the Assets under this Agreement.
- 1.10 **"Closing Date"**: The date upon which the Closing becomes effective.
- 1.11 **"Code"**: The Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder, as in effect from time to time.
- 1.12 **"Contract"**: Any contract, agreement, lease, license, grant of immunity from suit in regard to intellectual property rights, commitment, arrangement, purchase or sale order, or undertaking, whether written or oral.
- 1.13 **"Employee Benefit Plans"**: All employee pension benefit plans, as defined in Section 3(2) of ERISA, employee welfare benefit plans, as defined in Section (3)(1) of ERISA, and any deferred compensation, performance, bonus, incentive, vacation pay, holiday pay, severance, insurance, retirement, excess benefit, fringe benefit or other plan, trust or arrangement, whether or not covered by ERISA, whether written or oral, for the benefit of the Business employees.
- 1.14 **"ERISA"**: The Employee Retirement Income Security Act of 1974, as amended.
- 1.15 **"Encumbrance"**: Any security interest, mortgage, lien, charge, option, easement, license, adverse claim or restriction of any kind, including, but not limited to, any restriction on the use, transfer, voting, receipt of income or other exercise of any attributes of ownership other than any Permitted Encumbrance.
- 1.16 **"Environment"**: The air, ground (surface and subsurface) or water (surface and groundwater), or the workplace.
- 1.17 **"Environmental and Safety Law"**: Any federal, state, local or other law, statute, rule, ordinance or regulation or any common law pertaining to public or worker health, welfare or safety or the Environment, including, but not limited to, the Comprehensive Environmental



Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq.; the Federal Clean Air Act, 42 U.S.C. § 7401-7626; the Federal Water Pollution Control Act and Federal Clean Water Act of 1977, as amended, 33 U.S.C. § 1251 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 135 et seq.; the Federal Environmental Pesticide Control Act, the Federal Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; and the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.

1.18 "**Excluded Liabilities**": As defined in Section 2.4.

1.19 "**Excluded Real Property**": Any real property listed on Schedule 2.2.

1.20 "**Facilities**": The real property situated at Bellingham, Washington, where Seller conducts the Business, and all of Seller's right, title and interest in the plants, buildings, structures, improvements, machinery and equipment located thereon.

1.21 "**Financial Statements**": As defined in Section 5.5.

1.22 "**Governmental Body**": Any federal, state or other court or governmental body, any subdivision, agency, commission or authority thereof, or any quasi-governmental or private body exercising any regulatory or taxing authority thereunder, domestic or foreign.

1.23 "**Guaranteed Indebtedness**": The debts of Frogworks listed on Schedule 1.26 attached hereto.

1.24 "**Hazardous Materials**": Any hazardous or toxic substances, materials and wastes, including, but not limited to, those substances included in the definitions of "Hazardous Substances," "Hazardous Materials," "Toxic Substances," "Hazardous Waste," "Solid Waste," "Pollutant," or "Contaminant" in any Environmental and Safety Law and the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq., and in the regulations promulgated pursuant to those laws; those substances listed in the United States Department of Transportation Table (49 C.F.R. § 172.101 and any amendments thereto); such other substances, materials and wastes which now or hereafter are regulated or are classified as hazardous or toxic by any Governmental Body; and asbestos, polychlorinated biphenyls and oil and petroleum products or by-products.

1.25 "**indemnified party**": As defined in Section 13.5.

1.26 "**indemnifying party**": As defined in Section 13.5.

1.27 "**Intellectual Property**": As defined in Section 2.1.4.

1.28 "**Inventory**": The inventories of Seller described in Section 2.1.3.

1.29 "**Judgment**": Any judgment, order, award, writ, injunction or decree of any Governmental Body or arbitrator.

1.30 "**Leased Real Property**": As defined in Section 2.1.7.

1.31 "**Limited Liability Company Agreement**": The Buyer's Limited Liability Company Agreement governing the rights duties and responsibilities of its members, a copy of which is attached hereto as *Exhibit A*.

1.32 "**Loss**": Any loss, damage, Judgment, debt, liability, obligation, fine, penalty, cost or expense (including, but not limited to, any legal and accounting fee or expense), whether or not relating to personal injury, property damage, public or worker health, welfare or safety or the Environment and whether or not relating to violations of or liability under Environmental and Safety Law.

1.33 "**Misrepresentation Claims**": As defined in Section 13.4.

1.34 "**Permit**": Any permit, license, approval, certification, endorsement or qualification of any Governmental Body or any other person or entity (including, but not limited to, any customer).

1.35 "**Permitted Encumbrance**" means each of the following: (a) liens for taxes, assessments and governmental charges or levies incurred in the ordinary course of business and not yet due and payable; (b) liens imposed by law, such as materialmen's, mechanics', carriers', workmen's, repairmen's liens and other similar liens, arising in the ordinary course of business; (c) liens with respect to liabilities assumed by Buyer hereunder; (d) liens on the interests of the lessors (but not the lessees) of properties in which the Business holds a leasehold interest; (e) with respect to any real property, liens of record; and (f) any and all other liens that would not reasonably be expected to have a material adverse effect on the operation of the Business.

1.36 "**Personal Property**": As defined in Section 5.8.

1.37 "**Products**": Any and all equipment, inventory or other products relating to the reprocessing of industrial fuels or otherwise that Seller now sells or developed, manufactured or sold in the past or is developing, including, but not limited to, those listed in *Schedule 1.47* hereto, and all raw materials and intermediates utilized in the manufacture of the foregoing.

1.38 "**Purchase Consideration**": As defined in Section 3.1.

1.39 "**Purchased Real Property**": The real property described in Section 2.1.7.

1.40 "**Real Property**": As defined in Section 5.8.

1.41 "**Relevant Employees**": As defined in Section 5.13.

1.42 "**Remedial Action**": Any investigation, site assessment, monitoring or other evaluation of conditions relating to the Environment at a site, or any clean-up, treatment, containment, removal, restoration, corrective action or remedial work involving any Hazardous Materials.

1.43 "**Restricted Activities**": As defined in Section 12.1.

1.44 "**Tax**" or "**Taxes**": All taxes, charges, fees, levies or other assessments, including, without limitation, income, excise, gross receipts, personal property, real property, sales, use, ad valorem, transfer, state, franchise, profits, license, withholding, payroll, employment, severance, stamp, occupation, windfall profits, social security and unemployment or other taxes imposed by the United States or any agency or instrumentality thereof, any state, county, local or foreign

government, or any agency or instrumentality thereof, and any interest or fines, and any and all penalties or additions relating to such taxes, charges, fees, levies or other assessments.

1.45 "**Third-Party Claim**": As defined in Section 13.5.

1.46 "**Threshold**": As defined in Section 13.4.

1.47 "**Transaction Documents**": Any and all of the agreements and documents referenced in Sections 8 and 9.

1.48 "**transfer**": As defined in Section 2.1.

1.49 "**Transferred Real Property**": The Purchased Real Property and the Leased Real Property.

1.50 "**2000 Balance Sheet**": As defined in Section 5.5.

## 2. Purchase and Sale of Assets

### 2.1 Purchase and Sale

Subject to the terms and conditions of this Agreement, at the Closing, Seller shall exchange, transfer, convey, assign and deliver (collectively, "**transfer**"), or cause to be transferred, to Buyer, free and clear of all Encumbrances, and Buyer shall acquire, all of Seller's right, title and interest in and to all of the assets and rights of every type and description, used in or relating to the Business, whether tangible or intangible, real, personal or mixed, wherever located and whether or not reflected on the books and records of Seller, including, but not limited to, the following assets and rights (but excluding the Excluded Assets) (collectively, the "**Assets**");

#### 2.1.1 Equipment

All machinery, equipment, furniture, computer hardware, fixtures, motor vehicles, tooling, leasehold improvements and other tangible personal property owned by Seller and employed primarily or exclusively in Seller's operation of the Business as of the close of business on the Closing Date, including, without limitation, the personal property described in *Schedule 2.1.1*, such personal property and fixtures as are located on the Excluded Real Property, and all rights to the warranties received from the manufacturers and distributors of all such personal property and fixtures and any related claims, credits, rights of recovery and setoffs with respect to such personal property and fixtures.

#### 2.1.2 Equipment and Other Personal Property Leases

All of Seller's right, title and interest in, to and under the leases and rental agreements in respect of equipment or other tangible personal property employed primarily or exclusively in Seller's operation of the Business as of the close of business on the Closing Date, including, without limitation, those leases and agreements described in *Schedule 2.1.2*.

#### 2.1.3 Inventory

All inventory, wherever located (including inventory located on the Excluded Real Property), including raw materials, work-in-process, packaging, finished goods, spare parts and shop and production supplies, produced by or employed primarily or exclusively in Seller's operation of the Business as of the close of business on the Closing Date.

#### **2.1.4 Intellectual Property**

All information (whether or not protectible by patent, copyright or trade secret rights) and intellectual property rights possessed or owned by Seller and employed primarily or exclusively in Seller's operation of the Business as of the close of business on the Closing Date, and all right, title and interest of Seller in, to and under licenses, sublicenses or like agreements providing Seller any right or concession to use any information or intellectual property, and, in each case, employed primarily or exclusively in Seller's operation of the Business as of the close of business on the Closing Date, including all trade names, trademarks (including common-law trademarks), service marks, art work, packaging, plates, emblems, logos, insignia and copyrights, and their registrations and applications, and all goodwill associated therewith, all domestic and foreign patents and patent applications, all technology, know-how, show-how, trade secrets, manufacturing processes, formulae, drawings, designs, systems, forms, technical manuals, data, computer programs, product information and development work-in-progress and all documentary evidence of any of the foregoing, including, without limitation, the trademarks, patents, patent applications, other assets and related agreements described in *Schedule 2.1.4* (collectively, the "*Intellectual Property*").

#### **2.1.5 Permits**

All Permits relating primarily or exclusively to Seller's operation of the Business as of the close of business on the Closing Date, to the extent actually assignable or transferable, including, without limitation, those described in *Schedule 2.1.5*.

#### **2.1.6 Contract Rights and Other Intangible Assets**

All of Seller's right, title and interest in, to and under all contracts and agreements, purchase orders, sales orders, sale and distribution agreements, supply and processing agreements and other instruments and agreements relating primarily or exclusively to Seller's operation of the Business as of the close of business on the Closing Date, and all goodwill associated with the Business, including, without limitation, Seller's right, title and interest in, to and under the contracts, agreements and other assets described in *Schedule 2.1.6*.

#### **2.1.7 Real Property**

All real property, and rights thereto, owned by Seller and used in the operation of the Business as of the close of business on the Closing Date as described in *Schedule 2.1.7(a)* (the "*Purchased Real Property*") and all real property, and rights thereto, leased by Seller and used in the operation of the Business as of the close of business on the Closing Date as described in *Schedule 2.1.7(b)* (the "*Leased Real Property*").

#### **2.1.8 Books and Records**

All of Seller's books and records (including all discs, tapes and other media-storage data and information) relating primarily or exclusively to Seller's operation of the Business as of the close of business on the Closing Date or located on the Real Property.

#### **2.1.9 Other Records, Manuals and Documents**

All of Seller's mailing lists, customer lists, supplier lists, vendor data, marketing information and procedures, sales and customer files, advertising and promotional materials,

current product material, equipment maintenance records, warranty information, records of plant operations and the source and disposition of materials used and produced in such plants, standard forms of documents, manuals of operations or business procedures and other similar procedures, and all other information of Seller relating primarily or exclusively to Seller's operation of the Business as of the close of business on the Closing Date and, with respect to the Transferred Real Property, all soil test reports, building inspection reports, building plans, blueprints, renderings and surveys.

#### **2.1.10 Insurance Proceeds**

All insurance proceeds paid or payable to Seller in respect of any damage to or destruction or loss of any assets or rights of Seller including any assets of Seller that, as far as could reasonably be foreseen, would have been included in the Assets but for such damage, destruction or loss.

#### **2.1.11 Subsidiaries**

Any and all stock, units, membership interests or other interests in any subsidiary or Affiliate, including all of Seller's right title and interest in Clarus, LLC, a Washington limited liability company, and wholly owned subsidiary of the Seller (the "*Subsidiary*").

#### **2.2 Excluded Assets**

Seller and Buyer expressly understand and agree that Seller is not transferring to Buyer pursuant to this Agreement any of the assets or rights of Seller described in *Schedule 2.2* (the "*Excluded Assets*").

#### **2.3 Assumption of Liabilities**

Upon the terms and subject to the conditions of this Agreement, Buyer agrees, effective at the time of Closing, to assume all obligations, contracts, and liabilities of Seller (the "*Assumed Liabilities*") of any kind, character or description, arising out of the conduct of the Business from and after the Closing Date, except for the Excluded Liabilities, and those obligations, contracts, and liabilities expressly set forth on *Schedule 2.3*.

#### **2.4 Excluded Liabilities**

Buyer shall not assume any liabilities other than the Assumed Liabilities, nor shall it assume any of the following obligations or liabilities, which shall remain obligations and liabilities of Seller (all obligations or liabilities not assumed by Buyer herein are called the "*Excluded Liabilities*"):

##### **2.4.1 Litigation**

Except as set forth on disclosure *Schedule 2.4*, any claim, Judgment, penalty, settlement agreement or other obligation to pay in respect of any Claim that is pending or threatened on or prior to the Closing Date.

##### **2.4.2 Claims**

Except as set forth on disclosure *Schedule 2.4*, all claims, liabilities or other obligations that relate to injuries, actions, omissions, conditions or events that occurred or existed on or prior

to the Closing Date, whether based on any act or omission of Seller, in connection with the operation of the Business.

#### **2.4.3 Environmental Liability**

All claims and liabilities arising out of or relating to (a) the treatment, storage or disposal on or prior to the Closing Date of Hazardous Materials by Seller or any other person (including, without limitation, any previous owner, lessor or sublessor) on or at the Real Property or any other real property previously owned, leased, subleased or used by Seller in the operation of the Business; (b) releases of Hazardous Materials on, at or from any assets or properties, including, without limitation, the Real Property, owned, leased, subleased or used by Seller in the operation of the Business at any time such assets or properties were owned, leased, subleased or used by Seller in the operation of the Business; (c) generation or transportation of Hazardous Materials by Seller in the operation of the Business; and (d) releases of Hazardous Materials by any person (including, without limitation, any previous owner, lessee or sublessee) on or from the Real Property prior to Seller's ownership or use thereof.

#### **2.4.4 Severance Costs**

All severance obligations and other costs of terminating employees wherever located resulting from any termination or cessation of employment occurring on or prior to the Closing Date, from whatever source such obligations and costs arise, including, without limitation, contractual obligations, notices to employees, employment manuals, course of dealings, past practices, obligations relating to Section 2806 or 4999 of the Code, or otherwise.

#### **2.4.5 Other**

All liabilities and obligations in respect of any Excluded Asset.

#### **2.5 Instruments of Sale and Transfer**

On or prior to the Closing Date, Seller shall deliver to Buyer and Buyer shall deliver to Seller, as the case may be, such instruments of sale and assignment as shall, in the reasonable judgment of Buyer and Seller, be effective to vest in Buyer on the Closing Date all of Seller's right, title and interest in and to the Assets, including, without limitation, a Bill of Sale and Assignment substantially in the form of *Exhibit A*) (the "*Bill of Sale and Assignment*"). Seller shall take all reasonable additional steps as may be necessary to put Buyer in possession and operating control of the Assets at the Closing.

#### **2.6 Further Assurances**

From time to time following the Closing, Buyer and Seller shall execute and deliver, or cause to be executed and delivered, to the other such additional instruments of conveyance and transfer and evidences of assumption as such party may reasonably request or as may be otherwise necessary or desirable to carry out the purposes of this Agreement.

#### **2.7 Employees**

At Closing, Buyer shall extend offers of employment to all employees of Seller at the same or better wages and with comparable benefits. Buyer shall recognize the years of prior service of each former employee for purposes of determining such employee's eligibility to participate in, eligibility for benefit commencement under, and vesting purposes of each employee benefit

program (including vacation and sick pay policies) maintained by Buyer and generally made available to employees of Buyer.

### **3. Purchase Consideration**

#### **3.1 Escalating Membership Interest**

At the Closing, Buyer shall take all steps necessary to admit the Seller as, and Seller shall become, a member of Buyer in accordance with the terms and conditions of the Limited Liability Company Agreement, with an initial 10% membership interest therein, which interest may be automatically increased from time to time as provided in the Limited Liability Company Agreement (the "*Purchase Consideration*").

### **4. Closing**

#### **4.1 Closing Date**

Subject to the terms and conditions of this Agreement, the Closing shall take place at the offices of Buyer, on September 1, 2000, or at such other location or time as the parties may agree and shall be effective as of midnight of the Closing Date, provided that:

(a) If any of the conditions set forth in Section 9 is not satisfied by the time the Closing would otherwise occur, Seller may, by notice to Buyer, defer the Closing to a business day specified in such notice, but not later than October 1, 2000;

(b) If any of the conditions set forth in Section 8 is not satisfied by the time the Closing would otherwise occur, Buyer may, by notice to Seller, defer the Closing to a business day specified in such notice, but not later than October 1, 2000; and

(c) If both of Sections 4.1(a) and 4.1(b) are applicable, the Closing shall take place on the later of the dates determined in accordance with those Sections.

### **5. Representations and Warranties of Seller**

To induce Buyer to enter into and perform this Agreement, Seller represents and warrants to Buyer (which representations and warranties shall survive the Closing as provided in Section 13) all as follows in this Section 5:

#### **5.1 Organization, Good Standing, etc.**

Each of the Seller and the Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and each has all requisite power and authority to own, operate and lease the Assets and to carry on the Business's business as now being conducted. Each of Seller and the Subsidiary is duly qualified to do business, and is in good standing in the states required due to (a) the ownership or lease of real or personal property for use in the operation of the Business's business or (b) the nature of the Business conducted by the Business.

#### **5.2 Corporate Authority**

Seller has full corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and perform its obligations hereunder and thereunder. The execution and delivery by Seller of this Agreement and the Transaction Documents to which it is a party, the performance by Seller of its obligations hereunder and

thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, and the Transaction Documents to which Seller is a party, when executed and delivered by Seller, will constitute valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

### 5.3 No Conflict

The execution, delivery and performance of this Agreement or the Transaction Documents by Seller and the consummation of the transactions contemplated hereby or thereby will not (a) violate, conflict with, or result in any breach of, any provision of Seller's certificate of incorporation or by-laws (or equivalent documents for the Subsidiary); or (b) except as set forth on *Schedule 5.4*, violate, conflict with, result in any breach of, or constitute a default (or an event that, with notice or lapse of time or both, would constitute a default) under any Contract or Judgment to which Seller or the Subsidiary is a party or by which either is bound or which relates to the Products, the Assets or the Business; or (c) result in the creation of any Encumbrance on any of the Assets; or (d) to Seller's knowledge, violate any applicable law, statute, rule, ordinance or regulation of any Governmental Body; or (e) violate or result in the suspension, revocation, modification, invalidity or limitation of any Permits relating to the Products, the Assets or the Business; or (f) give any party with rights under any Contract, Judgment or other restriction to which Seller is a party or by which it is bound or which relates to the Products, the Assets or the Business, the right to terminate, modify or accelerate any rights, obligations or performance under such Contract, Judgment or restriction.

### 5.4 Consents and Approvals

Except as set forth in *Schedule 5.4*, in order for Buyer to enjoy the material benefits of this Agreement, (a) no consent, approval or authorization of, or declaration, filing or registration with, any Governmental Body is required for the execution, delivery and performance by Seller of this Agreement and the Transaction Documents to which it is a party and for the consummation by Seller of the transactions contemplated hereby and thereby and (b) no consent, approval or authorization of any third party is required for the execution, delivery and performance by Seller of this Agreement and the Transaction Documents to which it is a party and the consummation by Seller of the transactions contemplated hereby and thereby.

### 5.5 Financial Statements

Seller has delivered to Buyer the following financial statements of the Business, which are set forth in *Schedule 5.5* (collectively, the "*Financial Statements*"): an unaudited balance sheet for the Business (the "*2000 Balance Sheet*") as of December 31, 1999 (the "*Balance Sheet Date*"), the related audited statements of income for each of the years then ended, the unaudited interim balance sheet for the Business as of June 30, 2000, and the related unaudited statement of income for the period then ended. The Financial Statements were prepared from the books and records kept by Seller for the Business and fairly present in all material respects the financial position of the Business as of their respective dates and the results of operations of the Business for the respective years or periods then ended, in accordance with generally accepted accounting principles consistently applied, except as to unaudited financial statements, for the omission of notes thereto and normal year-end adjustments. Each accrual reflected on the Financial



Statements is adequate to meet the liability underlying such accrual. The foregoing balance sheets reflect all properties and assets, real, personal or mixed, that are used by Seller in the Business and are required to be reflected on such balance sheets pursuant to generally accepted accounting principles consistently applied.

#### 5.6 Absence of Certain Changes or Events

Except (a) as and to the extent reflected or reserved against in the 2000 Balance Sheet, and (b) for liabilities and obligations incurred in the ordinary course of business since the Balance Sheet Date, which are not material in amount, and (c) as otherwise disclosed in this Agreement or any Schedule, there are no material liabilities or obligations of any nature relating to the Business, due or to become due, known or unknown, accrued, absolute, contingent or otherwise, that would be required to be included in a balance sheet prepared in accordance with generally accepted accounting principles as consistently applied by Seller.

#### 5.7 Taxes

Except as set forth on *Schedule 5.7*, all Tax obligations of Seller with respect to its operation of the Business's business have been timely paid or are being contested in good faith, and, except as reflected in the balance sheets included in the Financial Statements and in any balance sheet hereafter delivered to Buyer, Seller has no material liability for any Tax obligations with respect to its operation of the Business's business and no interest or penalties have accrued or are accruing with respect thereto, whether state, county, local or otherwise with respect to any periods prior to the Closing Date except, in each case, any Tax obligations that, if not timely paid by Seller, could not result in (a) an Encumbrance on any of the Assets or (b) the commencement of a Claim against Buyer.

#### 5.8 Property

(a) Attached as *Schedule 5.8(a)* is a complete and accurate list of all real property (the "*Real Property*") and Seller has provided to Buyer a complete and accurate list of all personal property (the "*Personal Property*") owned, leased or rented by Seller for use in the operation of the Business's business. Seller has delivered to Buyer true and complete copies of all leases, subleases, rental agreements, contracts of sale, tenancies or licenses of any portion of the Transferred Real Property and the Personal Property. Except as set forth in *Schedule 5.8(a)* (whether by item or by category), the Assets, including the Real Property and the Personal Property, include (other than the Excluded Assets) all property used in the conduct of the Business as presently conducted.

(b) Seller has good and marketable title to all Real Personal Property, subject to the equipment leases described in *Schedule 2.1.2*. Except as set forth on *Schedule 2.12* Seller does not lease any Real Property used in the operation of the Business's business.

(c) To Seller's Knowledge, there are no applicable material adverse zoning, building or land use codes or rules, ordinances, regulations or other restrictions relating to zoning or land use that currently may prospectively prevent, or cause the imposition of material fines or penalties as the result of, the use of all or any portion of the Real Property for the conduct thereon of the business of the Business as presently conducted. To Seller's Knowledge, Seller has received all necessary approvals with regard to occupancy and maintenance of the Real Property.

(d) There are no existing leases, subleases, tenancies or licenses of any portion of the Real Property except for those identified in *Schedule 5.8(d)*, true and complete copies of which have been delivered to Buyer by Seller.

(e) Except as set forth on *Schedule 5.8(e)* each lease of any portion of the Real Property, and each lease, license, rental agreement, or contract of sale to which Personal Property is subject, is, to Seller's Knowledge, valid and in good standing, Seller has performed all material obligations imposed on it thereunder, and neither Seller nor, to the Knowledge of Seller, any other party thereto is in material default thereunder in any material respect, nor to Seller's Knowledge is there any event that with notice or lapse of time, or both, would constitute a material default thereunder by Seller or, to the knowledge of Seller, any other party thereto. Seller has not received notice, and Seller is not otherwise aware, that any party to any such lease, license, rental agreement, contract of sale or other agreement intends to cancel, terminate or refuse to renew the same or to exercise or decline to exercise any option or other right thereunder.

(f) Except for Permitted Encumbrances, the Personal Property is free and clear of all liens, mortgages, pledges, deeds of trust, security interest, conditional sales agreements, charges, encumbrances and other adverse claims or interests of any kind, and, other than personal property leased by Seller for use in the operation of the Business's business and so noted on the list supplied pursuant to Section 5.8(a), Seller has good and marketable title thereto.

(g) To Seller's knowledge, Seller is not in default under any covenant, condition, restriction, easement, right-of-way or governmental approval relating to the Real Property.

#### **5.9 Equipment**

To Seller's knowledge, the machinery, equipment, furniture and other physical assets included in the Assets do not have any major structural defects, are in adequate operating condition and repair and are adequate for the conduct of the Business, and they conform in all material aspects to and are free of any building, fire or other violations under all applicable zoning, pollution, health and safety and other laws, statutes, rules, ordinances and regulations.

#### **5.10 Environmental and Safety Matters**

(a) Seller has given Buyer access to all of the following:

- (i) all written communications in Seller's possession or control with the U.S. Environmental Protection Agency, the U.S. Department of Labor, all applicable state and local authorities and all other Governmental Bodies having jurisdiction over or the authorization to enforce any Environmental and Safety Law, relating to the conduct of the Business or the ownership or operation of the Assets or the Facilities;
- (ii) all written materials in Seller's possession or control relating to waste handling, storage, disposal and transport practices, groundwater monitoring, effluent discharges and air emissions on, at, around, under, or from the Assets or the Facilities or otherwise relating to the conduct of the Business; and
- (iii) all manifests of all shipments of waste relating to the conduct of the Business or the ownership or operation of the Assets or the Facilities.

- (b) Seller has delivered to Buyer all of the following:
- (i) copies of all written documentation in Seller's possession or control indicating the presence of any Hazardous Materials or the release or the threat of a release of any Hazardous Materials into the Environment on, at, around or under the Assets or the Facilities or other properties related to the conduct of the Business, or properties currently or previously owned or leased by Seller or by any third party acting on Seller's behalf and related to the Business, or any other locations where Hazardous Materials from the Assets or the Facilities or any such properties were treated, handled, stored, disposed of, transported or abandoned, or any other locations to which Hazardous Materials from the Assets or the Facilities or any such properties were emitted, discharged, spilled, migrated, released, disposed of or placed;
  - (ii) copies of all Permits, whether expired, suspended, revoked or presently in force, issued by the U.S. Environmental Protection Agency or any state or local authorities, that authorize or relate to the generation, treatment, storage, disposal, emission, discharge or release of Hazardous Materials on, at, around, under or from the Assets or the Facilities, and copies of all applications for such permits;
  - (iii) copies of any written notices of violation or alleged violation of any Environmental and Safety Law relating to activities conducted by Seller at the Assets or the Facilities; and
  - (iv) copies of the written summaries of environmental, health or safety audits performed by or at the request of Seller relating to activities conducted at the Assets or the Facilities.
- (c) *Schedule 5.10* describes any and all Judgments, Contracts, Permit conditions and pending or, to Seller's knowledge, threatened Claims (i) that require, provide for or seek damages, injunctive relief or any other remedy, or could cause the incurrence of costs or expenses or result in any liability under any Environmental and Safety Law, or (ii) that require, provide for or seek any Remedial Action, or (iii) that require, provide for or seek any change in the present condition of or any work, repairs, construction or capital expenditures, in each case with respect to the Assets or the Facilities or other properties related to the conduct of the Business, or properties currently or previously owned or leased by Seller or by any third party acting on Seller's behalf and related to the Business, or any other locations where Hazardous Materials from the Assets or the Facilities or any such properties were treated, handled, stored, disposed, transported or abandoned, or any other locations to which Hazardous Materials from the Assets or the Facilities or any such properties were emitted, discharged, spilled, migrated, released, disposed or placed. To Seller's knowledge, there are no conditions, circumstances, activities, practices, events, plans or actions that could interfere with, or prevent the compliance or continued compliance with, or result in any liability under, any Environmental and Safety Laws, any notices or demands issued thereunder or any

Judgments, Contracts or Permit conditions, or otherwise form the basis under any Environmental and Safety Laws of any past, present or future Claims (including, but not limited to, any Claims of the nature described in the foregoing sentence), based on or related to the manufacture, generation, processing, distribution, use, treatment, handling, storage, disposal, transport or abandoning of Hazardous Materials on, at, around or under the Assets or the Facilities or any such properties or locations, or the emission, discharge, spill, migration, release, disposal or placing of Hazardous Materials, or the threat of the same, into the Environment on, at, around or under the Assets or the Facilities or any such properties or locations.

- (d) Except as set forth in *Schedule 5.10*, the Assets and the Facilities and properties currently or previously owned or leased by Seller or by any third party acting on Seller's behalf and related to the Business are not and were not used for the treatment, storage or disposal of Hazardous Materials. The disposal and removal of all Hazardous Materials from the Assets and the Facilities [and such properties] have been conducted in compliance with Environmental and Safety Laws, and have not given rise to Claims of which Seller has knowledge, nor to Seller's knowledge is there any basis for any such Claims. *Schedule 5.10* contains a correct and complete list of all locations at which Hazardous Materials from the Assets and the Facilities and such properties have been treated, stored or disposed.
- (e) Except as set forth in this Section 5.10 or in *Schedule 5.10* or the documents referenced therein, there are no facts known to Seller that would be material to an evaluation by Buyer of the status of the Business or the Assets or the Facilities with respect to compliance with Environmental and Safety Laws, or conditions that now or in the future may require Remedial Action to achieve such compliance.

#### **5.11 Contracts**

*Schedule 5.11* contains a complete and accurate list of all material Contracts, oral or written, to which Seller is a party and which relate to the operation of the Business, including, without limitation, security agreements, conditional sale agreements, instruments relating to the borrowing of money and broker or distributorship agreements. To Seller's knowledge, all such Contracts are valid and in full force and effect, Seller has performed all material obligations imposed on it thereunder, and there are not, under any of such Contracts, any material defaults or events of default on the part of Seller or any other party thereto, that would materially adversely affect the business, assets or financial condition of the Business or that could reasonably be expected to materially adversely affect the business prospects of the Business. Seller has not received notice, nor is Seller otherwise aware, that any party to any such Contract intends to cancel, terminate or refuse to renew such Contract or to exercise or decline to exercise any option or right thereunder.

#### **5.12 Claims and Legal Proceedings**

Except as specifically set forth in *Schedule 5.12*, there are no Claims pending or, to Seller's knowledge, threatened against Seller with respect to the operation of the Business, before or by any Governmental Body or nongovernmental department, commission, board, bureau, agency or instrumentality or any other person. To Seller's knowledge, there is no valid basis for

any Claim, other than as specifically set forth in *Schedule 5.12*, adverse to the Business by or before any Governmental Body or nongovernmental department, commission, board, bureau, agency or instrumentality, or any other person. There are no outstanding or unsatisfied judgments, orders, decrees or stipulations to which Seller with respect to the operation of the Business is a party, that involve the transactions contemplated herein or that would alone or in the aggregate have a material adverse effect on the business, assets or financial condition of the Business or that could reasonably be expected to have a material adverse effect on the business prospects of the Business.

### 5.13 Labor Matters

There are no disputes, material employee grievances or material disciplinary actions pending or, to Seller's knowledge, threatened between Seller and any employees of Seller who either are employed at the Business or have been offered employment by Buyer immediately following the Closing (collectively, the "*Relevant Employees*"). Except as set forth on *Schedule 5.13*, Seller, with respect to the Relevant Employees, has complied in all respects with all provisions of all laws relating to the employment of labor and has no material liability for any arrears of wages or Taxes or penalties for failure to comply with any such laws. Seller has no knowledge of any organizational efforts presently being made or threatened by or on behalf of any labor union with respect to any Relevant Employees.

Except as specifically set forth in *Schedule 5.13*, Seller, with respect to the Relevant Employees, is not a party to any:

- (a) management, employment or other contract providing for the employment or rendition of executive services;
- (b) employment contract that is not terminable without penalty by Seller on 30 days' notice;
- (c) bonus, incentive, deferred compensation, severance pay, pension, profit-sharing, retirement, stock purchase, stock option, employee benefit or similar plan, agreement or arrangement;
- (d) collective bargaining agreement or other agreement with any labor union or other employee organization (and no such agreement is currently being requested by, or is under discussion by management with, any group of employees or others); or
- (e) other employment contract or other compensation agreement or arrangement, oral and written, affecting or relating to current or former employees of the Business.

All such contracts and other agreements and arrangements set forth in *Schedule 5.13* are valid, in full force and effect, Seller has performed all material obligations imposed on it thereunder, and there are, under any of such contracts, agreements or arrangements, no defaults or events of default by Seller or, to its knowledge, any other party thereto that would materially adversely affect the business, assets or financial condition of the Business, that materially adversely affect the relationship of Seller or Buyer with the Business employees or that could reasonably be expected to materially adversely affect the business prospects of the Business.

#### **5.14 Patents, Trademarks and Intellectual Property**

(a) Seller is the sole and exclusive owner of the entire right, title and interest in and to, and has the sole and exclusive right to use, free and clear of any payment obligation or other Encumbrance, all the patents, trade names, trademarks, service marks, copyrights and applications for any of the foregoing, whether registered or not, that are used in the Business, the manufacture, use or sale of the Products by or for Seller, or the use or application of the Products by customers in accordance with promotions or recommendations of Seller, or that are owned by Seller and relate to the Products. *Schedule 5.14* sets forth a list of all registered copyrights, registered trademarks and issued patents, and all pending applications therefor, if any, owned by Seller and utilized or required in the Business. To Seller's knowledge, and except as set forth in *Schedule 5.14*, the ownership and operation by Seller of the Business as presently owned and operated, does not infringe upon or conflict in any material respect with any patent, trademark, trade name, service mark, brand name, or copyright of any other person, and no other person is infringing upon any such rights of Seller.

(b) The consummation of the transactions contemplated by this Agreement and the Transaction Documents will not alter or impair any of the Intellectual Property, and the Intellectual Property may be transferred to Buyer hereunder without the consent or approval of any other party or Governmental Body.

(c) To Seller's knowledge, the Business does not involve the employment of any person in a manner that violates any noncompetition or nondisclosure agreement that such person entered into in connection with his or her employment or activities at any time prior to employment by Seller.

#### **5.15 Accounts and Other Receivables**

To Seller's knowledge, all accounts receivable of the Business reflected in the June 30, 2000 Balance Sheet, or existing at the Closing Date, have been collected or are collectible within 120 days after the date incurred in the amounts at which they are carried on the books of the Business.

#### **5.16 Inventory**

To Seller's knowledge, all items in the inventory reflected in the 2000 Balance Sheet or as currently owned by Seller for use in the operation of the Business (a) have been valued in accordance with generally accepted accounting principles and (b) are of a quality and quantity usable and salable in the ordinary course of business.

#### **5.17 Licenses, Permits, Authorizations, etc.**

Seller has received all currently required governmental approvals, authorizations, consents, licenses, orders, registrations and permits of all agencies, whether federal, state, local or foreign, related to the operation of the Business's business, except such approvals, authorizations, consents, licenses, orders, registrations and permits the failure to obtain which will not, in the aggregate, have a material adverse effect on the operation of the business of the Business or which could reasonably be expected to have a material adverse effect on the business prospects of the Business.

### **5.18 No Adverse Events**

Since the Balance Sheet Date, to Seller's knowledge, there has not been any material adverse change in, or any event, condition or contingency or any damage, destruction or loss (whether or not covered by insurance) that may result in any material adverse change in, the Assets or the conduct, business, operations, properties, condition (financial or otherwise) or prospects of the Business.

### **5.19 Product Warranties**

*Schedule 5.19* sets forth Seller's material warranties currently made with respect to the Products, and current policies with respect to returns of Products in the course of Seller's conduct of the Business. Except as set forth in *Schedule 5.19*, Seller has not made any express product warranties in connection with the sale of the Products.

### **5.20 Compliance With Law**

Seller is and has been in compliance with all laws, statutes, rules, ordinances and regulations promulgated by any Governmental Body and all Judgments applicable to the ownership or operation of the Assets or the Facilities, the conduct of the Business or the sale of the Products to the extent the failure to so comply could be expected to have a material adverse effect on the Business. Except as disclosed to Buyer pursuant to Section 5.10(b)(iii) or otherwise pursuant to this Agreement, Seller has not received any notice of any alleged violation (whether past or present and whether remedied or not), nor is Seller aware of any basis for any claim of any such violation, of any such law, statute, rule, ordinance, regulation or Judgment which could reasonably be expected to materially and adversely affect the Business. To Seller's knowledge, there is no law, statute, rule, ordinance or regulation promulgated by any Governmental Body or any Judgment that materially and adversely affects or is reasonably expected to materially and adversely affect the ability of Seller to own or operate the Assets or the Facilities or to conduct the Business (including, but not limited to, the manufacture, use, marketing, promotion, sale or distribution of the Products) in the same manner as heretofore and currently owned, operated or conducted.

### **5.21 Permits and Qualifications**

All material Permits that are required for the ownership or operation of the Assets or the Facilities or the conduct of the Business (including, but not limited to, the manufacture, use, marketing, promotion, sale or distribution of the Products) have been obtained by Seller, are in full force and effect and are listed in *Schedule 2.1.5*, with their expiration dates, if any. To Seller's knowledge, Seller is and has been in compliance with all such Permits, and Seller has not received any notice of any alleged violation (whether past or present and whether remedied or not) of, nor any threat of the suspension, revocation, modification, invalidity or limitation of, any such Permit, nor is Seller aware of any basis for any claim of any such violation or any such threat. All such Permits will be effectively assigned to Buyer upon compliance after the Closing with applicable recording, registration or filing procedures.

## **5.22 Insurance**

Seller has, with respect to the Business, maintained adequate insurance protection against all liabilities, Claims and risks against which it is customary for corporations engaged in the same or a similar business similarly situated to insure.

## **5.23 Employee Plans**

No Employee Benefit Plan of Seller relating to the Business is a "multi-employer plan," as that term is defined in Section 4001(a)(3) of ERISA.

## **5.24 Excluded Assets**

Except to the extent constituting Excluded Assets, all assets associated with or currently used to produce product for any product line of the Business are included in the Assets.

## **5.25 Brokerage**

Seller has not retained any broker or finder in connection with the transactions contemplated by this Agreement. Any brokerage or finder's fee due to any broker or finder in violation of the foregoing representation shall be paid by Seller.

## **5.26 Customers and Suppliers**

To the knowledge of Seller, (a) no customer or supplier of Seller relating to the Business is involved in, threatened with or affected by, any Claim, Judgment or circumstances that may materially and adversely affect the Assets or the conduct, business, operations, properties, condition (financial or otherwise) or prospects of the Business, (b) there is no indication that any customer or supplier of Seller relating to the Business intends to terminate or modify its relationship with Seller, and (c) the consummation of the transactions contemplated by this Agreement and the Transaction Documents will not adversely affect the post-Closing relationship of Buyer with any customer or supplier of Seller relating to the Business.

## **5.27 Assets Complete**

The Assets to be transferred to Buyer pursuant to this Agreement and the Transaction Documents include all the assets and rights used by Seller, and sufficient to permit Buyer, to conduct the research, development, manufacture, use, marketing, promotion, sale and distribution of the Products, and operate the Business, the Assets and the Facilities, in the same manner as heretofore and currently conducted by Seller. The execution and delivery of the Transaction Documents by the parties and the transfer by Buyer to Seller of the Purchase Consideration of the Assets set forth in Section 3.1 will result, subject to obtaining the consents and approvals set forth in *Schedule 5.4 ("Consents and Approvals")*, in Buyer's immediate acquisition of good, valid and marketable title to the Assets, free and clear of any Encumbrance.

## **5.28 Full Disclosure**

Seller has disclosed to Buyer all material facts and information relating to the Assets and the conduct, business, operations, properties, condition (financial or otherwise) and prospects of the Business. No information furnished by Seller or the Business to Buyer in connection with this Agreement (including, but not limited to, the Financial Statements and all information in the Schedules) is false or misleading in any material respect. In connection with such information and with this Agreement and the transactions contemplated hereby, Seller has not made any untrue



statement of a material fact or omitted to state a material fact necessary in order to make the statements made or information delivered, in light of the circumstances under which they were made, not misleading.

## **6. Representations and Warranties of Buyer**

To induce Seller to enter into this Agreement, Buyer represents and warrants to Seller (which representations and warranties shall survive the Closing as provided in Section 13) all as follows in this Section 6:

### **6.1 Organization, Good Standing, Power, etc.**

Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Washington. Buyer has all requisite power and authority to own or lease and operate its assets and to carry on its business as it is now conducted.

### **6.2 Transaction Documents**

Buyer has full corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and perform its obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and the Transaction Documents to which it is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, and the Transaction Documents to which Buyer is a party, when executed and delivered by Buyer, will constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms.

### **6.3 Membership Interest**

Upon closing, Seller will be admitted as a member of the Buyer holding a 10% capital interest therein, which interest will automatically increase over time in accordance with the terms and conditions of the Limited Liability Company Agreement.

### **6.4 Brokerage**

Buyer has not retained any broker or finder in connection with the transactions contemplated by this Agreement. Any brokerage or finder's fee due to any broker or finder in violation of the foregoing representation shall be paid by Buyer.

### **6.5 Claims and Legal Proceedings**

There are no claims pending or threatened against Buyer. There are no outstanding or unsatisfied judgments, orders, decrees, or stipulations involving Buyer that alone or in the aggregate would have a material adverse effect on Buyer's assets or financial condition or that could reasonably be expected to have a material adverse effect on Buyer or its prospects for operations of the business after the closing of the transactions contemplated by this Agreement.

## 7. Certain Covenants

### 7.1 Access

(a) Prior to the Closing Date, Seller shall (i) give additional access to Buyer and its accounting, legal, business, environmental, engineering, intellectual property and other authorized representatives and advisors full access, during normal business hours, to all plants, offices, warehouses and other facilities and properties of Seller relating to the Products, the Assets and the Business, (ii) furnish Buyer and its authorized representatives and advisors with all documents and information relating to the Products, the Assets and the Business as may be reasonably requested by Buyer and its authorized representatives and advisors, (iii) permit Buyer and its authorized representatives and advisors to review all books, records and Contracts relating to the Products, the Assets and the Business as may be reasonably requested by Buyer and its authorized representatives and advisors, and make copies thereof, (iv) make available Seller's employees and advisors, including those responsible for the management of the Business, and cause Seller's employees and advisors to furnish Buyer and its authorized representatives and advisors with data and other information with respect to the Products, the Assets and the Business as may be reasonably requested by Buyer and its authorized representatives and advisors, and discuss with Buyer and its authorized representatives and advisors the affairs of the Business, and (v) fully cooperate with Buyer and its authorized representatives and advisors in their investigation and examination of the Products, the Assets and the affairs of the Business. No investigation, or receipt of information provided by or on behalf of Seller or review thereof by Buyer or its representatives or advisors, shall diminish or obviate, or relieve Seller from, or affect Buyer's ability or right to rely on, any of the representations, warranties, covenants and agreements of Seller contained in this Agreement and the Transaction Documents.

(b) In the event that the Closing under this Agreement shall not occur, Buyer shall keep confidential and not use or disclose to any party any confidential information acquired by Buyer from Seller pursuant to this Section 7.1 or otherwise disclosed in connection with the negotiation of this Agreement, unless Seller shall give its written consent to the contrary; provided, however, that the foregoing obligations of confidentiality and non-use shall not apply to any information which (i) at the time of disclosure is, or thereafter becomes, available to the public through no breach of this Agreement by Buyer or its Affiliates or breach of any other duty of any other party; or (ii) was known to, or otherwise in the possession of, Buyer or its Affiliates prior to the receipt of such information from Seller; or (iii) is obtained by Buyer from a source other than Seller and other than one who would be breaching a commitment of confidentiality to Seller by disclosing the information to Buyer; or (iv) is required to be disclosed by Buyer in connection with a pending Claim.

### 7.2 Assignment of Contracts

(a) Subject to the terms and conditions of this Agreement, as of the Closing Date, Seller shall assign to Buyer all of the right, title and interest of Seller in and under all Contracts that constitute any of the Assets, and Buyer shall assume the liabilities and obligations of Seller arising under such Contracts after the Closing Date; provided, however, that Buyer shall not succeed to or assume, and Seller shall be responsible for, any liability or obligation arising out of any or all of the following: (i) any breach by Seller of any such Contract or any failure by Seller to discharge or perform any liability or obligation arising on or prior to the Closing Date under

any such Contract unless disclosed on *Schedule 7.2*; and (ii) any Claim relating to any Contract that is required under Section 5.11 to be listed in *Schedules 5.11* but is not so listed.

(b) If any Contract constituting any of the Assets is not assignable by Seller to Buyer without the consent of a third party, or will not continue in effect after the Closing and such assignment without the consent of a third party, then Seller shall use its reasonable efforts to provide Buyer with such third-party consent prior to the Closing Date to the satisfaction of Buyer (but if Seller's assignment or attempted assignment of any such Contract prior to obtaining the third-party consent would constitute a breach of such Contract, then such assignment or attempted assignment shall not be or be deemed effective unless and until the third-party consent is obtained). Buyer shall render such cooperation as is reasonably required to assist Seller in obtaining such third-party consent.

### **7.3 Conduct of Business Prior to Closing**

### **7.4 Covenants to Satisfy Conditions**

Each party shall proceed with all reasonable diligence and use its best efforts to satisfy or cause to be satisfied all of the conditions precedent to the other party's obligation to purchase or sell the Assets that are set forth in Section 8 or 9, as the case may be.

## **8. Conditions Precedent to Obligations of Buyer**

The obligation of Buyer to purchase the Assets at the Closing shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any one or more of which may be waived by Buyer:

### **8.1 No Injunction or Litigation**

As of the Closing Date, there shall not be any Claim or Judgment of any nature or type threatened, pending or made by or before any Governmental Body that questions or challenges the lawfulness of the transactions contemplated by this Agreement or the Transaction Documents under any law or regulation or seeks to delay, restrain or prevent such transactions.

### **8.2 Representations, Warranties and Covenants**

(a) The representations and warranties of Seller made in this Agreement, the Transaction Documents and any certificate furnished pursuant hereto or thereto shall be true, complete and correct on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date;

(b) Seller shall have performed and complied with the covenants and agreements required by this Agreement to be performed and complied with by it on or prior to the Closing Date; and

(c) Seller shall have delivered to Buyer a certificate dated the Closing Date to the foregoing effects, signed by a duly authorized executive officer of Seller.

### 8.3 No Adverse Changes

From the date of this Agreement to the Closing Date, there shall not have been any material adverse change in the Assets or the conduct, business, operations, properties, condition (financial or otherwise) or prospects of the Business, and Seller shall have no knowledge of any such change which is threatened; and Seller shall have delivered to Buyer a certificate dated the Closing Date to the foregoing effects signed by a duly authorized executive officer of Seller.

### 8.4 Consents and Approvals

All material consents, approvals or authorizations of, or declarations, filings or registrations with, all Governmental Bodies required for the consummation of the transactions contemplated by this Agreement and the Transaction Documents shall have been obtained or made on terms satisfactory to Buyer and shall be in full force and effect. Furthermore, all consents, approvals or authorizations of any other third parties required for the consummation of the transactions contemplated by this Agreement and the Transaction Documents, including, but not limited to, all consents of any third parties required for the assignment to Buyer of any Contracts that constitute any of the Assets and the continuation in effect of such Contracts following the Closing and such assignment shall have been obtained to the satisfaction of Buyer and shall be in full force and effect. In addition, the originals of all the consents, approvals and authorizations referenced in this Section 8.4 shall have been delivered to Buyer. Finally, Seller shall use commercially reasonable efforts to obtain all Permits (including but not limited to all certifications, endorsements and qualifications) of any third parties required in connection with the conduct by Buyer of the Business following the Closing in the manner heretofore conducted by Seller.

### 8.5 Taxes

All Taxes and other assessments applicable to the Assets that are due and owing as of the Closing Date shall have been paid, except for Taxes and assessments to be apportioned between the parties as of the Closing pursuant to Section 11.3 or paid pursuant to Section 11.1.

### 8.6 Delivery of Documents

Seller shall deliver the following documents, agreements and supporting papers to Buyer at the Closing, and the delivery of each shall be a condition to Buyer's performance of its obligations to be performed at the Closing:

- (a) an executed Bill of Sale and Assignment;
- (b) an executed and acknowledged general warranty deed conveying title to the Purchased Real Property in due form for recordation with the appropriate Governmental Body, and all other instruments necessary to record such deed.
- (c) any Lease Assignment and Assumptions that may be required pursuant to Section 2.6 duly executed by all parties thereto (other than Buyer), in substantially the form of Exhibit B hereto;
- (d) executed counterparts of one or more Assignments of Trademarks in substantially the form of Exhibit C hereto covering each of the trademarks described in Schedule 2.1.4, in due form for recordation with the appropriate Governmental Body;

(e) executed counterparts of one or more Assignments of Patents in the form of *Exhibit D* covering each of the patents and patent applications described in *Schedule 2.1.4*, in due form for recordation with the appropriate Governmental Body;

(f) any and all certificates of title relating to Personal Property included within the Assets;

(g) written consent to assignment (in form and substance reasonably satisfactory to Buyer) of all material agreements listed on any of the disclosure schedules; and

(h) executed "at will" employment/noncompete agreements for Monte Koreis, Joe Koreis, and Karl Thomas mutually agreeable to employer and employee and substantially in the form of *Exhibit E*.

#### **8.7 Satisfaction of Conditions**

All agreements and other documents required to be delivered by Seller hereunder on or prior to the Closing Date shall be satisfactory in the reasonable judgment of Buyer and its counsel. Buyer shall have received such other agreements, documents and information as it may reasonably request in order to establish satisfaction of the conditions set forth in this Section 8.

#### **9. Conditions Precedent to Obligations of Seller**

The obligation of Seller to sell the Assets to Buyer at the Closing shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any one or more of which may be waived by Seller:

##### **9.1 No Injunction or Litigation**

As of the Closing Date, there shall not be any Claim or Judgment of any nature or type threatened, pending or made by or before any Governmental Body that questions or challenges the lawfulness of the transactions contemplated by this Agreement or the Transaction Documents under any law or regulation or seeks to delay, restrain or prevent such transactions.

##### **9.2 Representations, Warranties and Covenants**

(a) The representations and warranties of Buyer made in this Agreement or in the Transaction Documents or any certificate furnished pursuant hereto or thereto shall be true, complete and correct on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date;

(b) Buyer shall have performed and complied with the covenants and agreements required by this Agreement to be performed and complied with by it on or prior to the Closing Date including, without limitation, delivery to Seller of the Purchase Consideration; and

(c) Buyer shall have delivered to Seller a certificate dated the Closing Date to the foregoing effects signed by a duly authorized executive officer of Buyer.

##### **9.3 Satisfaction of Conditions**

All agreements and other documents required to be delivered by Buyer hereunder on or prior to the Closing Date shall be satisfactory in the reasonable judgment of Seller and its counsel. Seller shall have received such other agreements, documents and information as it may reasonably request in order to establish satisfaction of the conditions set forth in this Section 9.

#### 9.4 Koniag's Contribution of Capital

Koniag shall have capitalized Buyer with an investment of \$500,000 and executed the Limited Liability Company Agreement, which Limited Liability Company Agreement shall be acceptable to Seller.

### 10. Certain Post-Closing Covenants

#### 10.1 Further Assurances

After the Closing Date, Seller shall from time to time at Buyer's request execute and deliver, or cause to be executed and delivered, such further instruments of conveyance, assignment and transfer or other documents, and perform such further acts and obtain such further consents, approvals and authorizations, as Buyer may reasonably require in order to fully effect the conveyance and transfer to Buyer of, or perfect Buyer's right, title and interest in, any of the Assets, to assist Buyer in obtaining possession of any of the Assets, or to otherwise comply with the provisions of this Agreement and consummate the transactions contemplated by this Agreement and the Transaction Documents.

#### 10.2 Books and Records

Not later than 15 days after the Closing Date, Seller shall deliver to Buyer (a) all of the technical information and data and other intellectual property rights to be transferred hereunder (including all of the assets referenced in Section 2.1.4) which have been reduced to writing, (b) all of the original Contracts referenced in Section 2.1.6, (c) all of the books and records referenced in Section 2.1.8, and (d) all of Seller's information and materials referenced in Section 2.1.9.

#### 10.3 Post-Closing Cooperation

After the Closing Date, each party shall provide the other party with such reasonable assistance (without charge) as may be requested by the other party in connection with any Claim or audit of any kind or nature whatsoever or the preparation of any response, demand, inquiry, filing, disclosure or the like (including, but not limited to, any tax return or form) relating to the Products, the Assets or the Business. Such assistance shall include, but not be limited to, permitting the party requesting assistance to have reasonable access to the employees, books and records of the other party. Further, from and after the Closing Date, Buyer agrees to provide Seller and its representatives with access to all books and records deemed necessary by Seller including for purposes of preparing tax returns, responding to an audit or inquiry by any Governmental Authority, responding to any claim or for any other reasonable purpose. Further, for a period of seven years after the Closing Date, Buyer agrees not to destroy such documents or records without giving the other party at least 30 days' written notice (which notice shall describe in reasonable detail the documents or records proposed to be destroyed) prior to destroying or disposing of any such documents or records, and if so requested by the other party, shall deliver such documents or records to the other party (at such other party's cost and expense).

#### 10.4 Guarantees

Certain shareholders of Seller have personally guaranteed the Guaranteed Indebtedness (the "*Personal Guarantees*"). All of Buyer's capital, including the \$500,000 line of credit guaranteed by Koniag, can be used to pay down the Personal Guarantees listed on Schedule 10.4 attached hereto.

## **11. Taxes and Costs; Apportionments**

### **11.1 Transfer Taxes**

Buyer shall be responsible for the payment of all transfer, sales and use and documentary taxes, filing and recordation fees (including fees for the recordation of the deed to the Purchased Real Property included in the Assets) and similar charges relating to the sale or transfer of the Assets hereunder. Buyer shall furnish Seller with any necessary certificates of Tax exemption.

### **11.2 Transaction Costs**

Each party shall be responsible for all costs and expenses incurred in connection with the preparation, negotiation and delivery of this Agreement and the Transaction Documents, including but not limited to attorneys' and accountants' fees and expenses.

## **12. Covenants Not to Compete**

### **12.1 Covenants**

In consideration of the payment of its admission as a member of Buyer at the Closing, Seller covenants and agrees as follows:

(a) So long as Seller or any of its shareholders or Affiliates is a member of Buyer, and for a period of 2 years thereafter, neither Seller nor any of Seller's shareholders or Affiliates shall engage in any Restricted Activities (as such term is defined below), whether directly or indirectly, for its account or otherwise, or as a shareholder, owner, partner, principal, agent, joint venturer, consultant, advisor, franchisor or franchisee, independent contractor or otherwise, in, with or of any person or entity that engages directly or indirectly in any Restricted Activities. As used herein, "*Restricted Activities*" shall mean the research, development, manufacture, marketing, promotion, sale or distribution of any Products, or any products that compete with the Products, in territories then being exploited by the Buyer in connection with the operation of the Business following the Closing.

(b) So long as Seller or any of its shareholders or Affiliates is a member of Buyer, and for a period of 2 years thereafter, neither Seller nor any of its shareholders or Affiliates shall, directly or indirectly, hire, or solicit or encourage to leave the employment of Buyer or any of its Affiliates, any former employee of the Business hired by Buyer or its Affiliates, or any employee of Buyer or its Affiliates engaged in any Restricted Activities, or have any arrangement (financial, consulting or otherwise) with any such individual.

### **12.2 Minor Investments**

Notwithstanding the provisions of Section 12.1(a) above, Seller and its shareholders and Affiliates may at any time own in the aggregate, directly or indirectly, for investment purposes only, 5% or less of any class of securities of any entity traded on any national securities exchange or quoted on the Nasdaq National Market.

### **12.3 Remedies**

Seller acknowledges that compliance with the provisions of this Section 12 is necessary and proper to preserve and protect the Assets acquired by Buyer under this Agreement and to assure that the parties receive the benefits intended to be conveyed pursuant to this Section 12. Seller agrees that any failure by Seller or any of its Affiliates to comply with the provisions of this

Section 12 shall entitle Buyer and its Affiliates, in addition to such other relief and remedies as may be available, to equitable relief, including, but not limited to, the remedy of injunction. Resort to any remedy shall not prevent the concurrent or subsequent employment of any other remedy, or preclude the recovery by Buyer and its Affiliates of monetary damages and compensation.

### **13. Survival and Indemnification**

#### **13.1 Survival**

All representations and warranties of Seller or Buyer contained in this Agreement or in the Transaction Documents or in any certificate delivered pursuant hereto or thereto shall survive until, and expire with, and be terminated and extinguished upon, the second anniversary of the Closing Date provided, however, that the representations and warranties of Seller contained in Section 5.7 hereof ("*Tax Matters*") shall survive until 90 days after following the expiration of the applicable statute of limitations with respect to such Taxes. The covenants and agreements of Seller and Buyer contained in this Agreement or in the Transaction Documents to be performed after the Closing Date shall survive the Closing and shall continue until all obligations with respect thereto shall have been performed or satisfied or shall have been terminated in accordance with their terms.

#### **13.2 Indemnification by Seller**

From and after the Closing Date, and except for Losses identified on Schedule 13.2, Seller shall indemnify and hold Buyer and its Affiliates harmless from and against, and shall reimburse Buyer and its Affiliates for, any and all Losses arising out of or in connection with:

- (a) any inaccuracy in any representation or warranty made by Seller in this Agreement or in the Transaction Documents or in any certificate delivered pursuant hereto or thereto;
- (b) any failure by Seller to perform or comply with any covenant or agreement in this Agreement or in the Transaction Documents;
- (c) any claim by any person or entity for brokerage or finder's fees or commissions; or similar payments based upon any agreement or understanding alleged to have been made by such person or entity directly or indirectly with Seller or any of its officers, directors or employees in connection with any of the transactions contemplated by this Agreement or the Transaction Documents;
- (d) the conduct of the Business, the ownership or operation of the Assets or the Facilities or the sale of the Products on or prior to the Closing Date, including, but not limited to, (i) any Losses arising out of or in connection with any Claims and Judgments relating to the Business, the Assets, the Facilities or the Products which are pending or entered on or prior to the Closing Date or as to which Seller has received notice on or prior to the Closing Date, and (ii) any Losses relating to public or worker health, welfare or safety or the Environment;
- (e) (i) the manufacture, generation, processing, distribution, use, treatment, handling, storage, disposal, transport or abandoning of any material (including but not limited to any Hazardous Materials) on, at, around or under the Assets or the Facilities, or properties currently or previously owned or leased by Seller or by any third party acting on Seller's behalf



and related to the Business, or the emission, discharge, spill, migration, release, disposal or placing of any material (including but not limited to any Hazardous Materials), or the threat of the same, into the Environment on, at, around or under the Assets or the Facilities or such properties, (ii) the treatment, handling, storage, disposal, transport or abandoning of any material (including, but not limited to, any Hazardous Materials) from the Assets or the Facilities or such properties to, on, at, around or under any other locations, (iii) the emission, discharge, spill, migration, release, disposal or placing of any material (including, but not limited to, any Hazardous Materials) from the Assets or the Facilities or such properties, or the threat of the same, into the Environment on, at, around or under any other locations, or (iv) the conduct of the Business, the ownership or operation of the Assets or the Facilities or the sale of the Products, and [in each case] which Losses are related to public or worker health, welfare or safety or the Environment and based on conditions existing on the Closing Date or which arise after the Closing Date on account of events, acts or omissions occurring on or prior to the Closing Date; any Losses referenced in this Section 13.2(e) may include any Losses (including, but not limited to, any costs, liabilities or obligations relating to contractors or consultants' fees, or negotiations, administration, oversight, operation, maintenance or capital expenditures) associated with any Remedial Action which is performed in connection with any Claim brought by any Governmental Body or any other person or entity (including, but not limited to, any threatened enforcement action or any action under any Environmental and Safety Law), or any Remedial Action which is performed by or on behalf of Buyer or its Affiliates in the absence of a Claim brought by any Governmental Body or any other person or entity to address conditions as may be required by Environmental and Safety Law;

(f) any failure to comply with any applicable bulk sales laws in connection with the transactions contemplated by this Agreement or the Transaction Documents; or

(g) any Claim relating to any business or assets of Seller or its Affiliates not acquired by Buyer hereunder, or any obligations or liabilities of Seller or its Affiliates not assumed by Buyer hereunder.

### **13.3 Indemnification by Buyer**

From and after the Closing Date, Buyer shall indemnify and hold harmless Seller and its Affiliates from and against, and shall reimburse Seller and its Affiliates for, any and all Losses arising out of or in connection with:

(a) any inaccuracy in any representation or warranty made by Buyer in this Agreement or in the Transaction Documents or in any certificate delivered pursuant hereto or thereto;

(b) any failure by Buyer to perform or comply with any covenant or agreement in this Agreement or the Transaction Documents;

(c) any Claim by any person or entity for brokerage or finders' fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such person or entity directly or indirectly with Buyer or any of its officers, directors or employees in connection with any of the transactions contemplated by the Agreement or the Transaction Documents;

(d) except to the extent the same constitutes an Excluded Liability, the conduct of the Business, the ownership or operation of the Assets or the Facilities or the sale of the Products from and after the Closing Date; or

(e) except to the extent the same constitutes an Excluded Liability, any Claim relating to any business or assets of Buyer or its Affiliates acquired by Buyer hereunder, or any obligations or liabilities of Buyer or its Affiliates assumed by Buyer hereunder.

#### 13.4 Threshold and Time Limitations

(a) Neither party or its Affiliates shall be entitled to receive any indemnification payment with respect to Claims for indemnification made under Section 13.2 or 13.3, as the case may be (the "*Misrepresentation Claims*"), until the aggregate Losses that such party and its Affiliates would be otherwise entitled to receive as indemnification with respect to the Misrepresentation Claims exceed \$75,000 (the "*Threshold*"); provided, however, that once such aggregate Losses exceed the Threshold, such party and its Affiliates shall be entitled to receive indemnification payment for the aggregate Losses that they would be entitled to receive without regard to the Threshold. Furthermore, neither party or its Affiliates shall be entitled to assert any right of indemnification with respect to any Misrepresentation Claim of which neither such party or its Affiliates have given written notice to the other party on or prior to the end of the survival period set forth in Section 13.1 above, except that if such party or its Affiliates have given written notice of any Misrepresentation Claim to the other party on or prior to the end of such survival period, then they shall continue to have the right to be indemnified with respect to such pending Misrepresentation Claim, notwithstanding the expiration of such survival period.

(b) Notwithstanding anything to the contrary in this Agreement, the indemnifications in Sections 13.2 and 13.3 will be the sole and exclusive remedies available to Buyer or Seller after the Closing for breaches of any representations or warranties or any covenants or agreements contained in this Agreement or any other Transaction Document to be performed on or before the Closing Date. Further, if any party hereto shall have disclosed as of the Closing Date an existing breach of any representation, warranty, covenant or agreement of such party (and the other party hereto shall have determined to proceed with the Closing notwithstanding such breach), such party shall not be liable for, nor in any manner responsible for, any Losses resulting from such breach hereunder, and no claim for indemnification may be made with respect thereto.

(c) Notwithstanding anything to the contrary in the Agreement, all indemnification obligations of Seller under this Agreement shall be limited to an aggregate amount not to exceed \$334,000.

#### 13.5 Procedure

(a) Subject to Section 13.1, any party hereto or any of its Affiliates seeking indemnification hereunder (in this context, the "*indemnified party*") shall notify the other party (in this context, the "*indemnifying party*") in writing reasonably promptly after the assertion against the indemnified party of any Claim by a third party (a "*Third-Party Claim*") in respect of which the indemnified party intends to base a Claim for indemnification hereunder, but the failure or delay so to notify the indemnifying party shall not relieve it of any obligation or liability that it may have to the indemnified party except to the extent that the indemnifying party demonstrates that its ability to defend or resolve such Third-Party Claim is adversely affected thereby.

(b) (i) Subject to the provisions of Sections 13.5(d) and 13.5(g) below, the indemnifying party shall have the right, upon written notice given to the indemnified party within 30 days after receipt of the notice from the indemnified party of any Third-Party Claim, to assume the defense or handling of such Third-Party Claim, at the indemnifying party's sole expense, in which case the provisions of Section 13.5(b)(ii) below shall govern. (ii) The indemnifying party shall select counsel reasonably acceptable to the indemnified party in connection with conducting the defense or handling of such Third-Party Claim, and the indemnifying party shall defend or handle the same in consultation with the indemnified party, [and] shall keep the indemnified party timely apprised of the status of such Third-Party Claim, and shall not, without the prior written consent of the indemnified party, directly or indirectly assume any position or take any action that would impose any obligation of any kind on or restrict the actions of the indemnified party. The indemnifying party shall not, without the prior written consent of the indemnified party, agree to a settlement of any Third-Party Claim that could directly or indirectly lead to liability or create any financial or other obligation on the part of the indemnified party for which the indemnified party is not entitled to indemnification hereunder. The indemnified party shall cooperate with the indemnifying party and shall be entitled to participate in the defense or handling of such Third-Party Claim with its own counsel and at its own expense.

(c) (i) If the indemnifying party does not give written notice to the indemnified party, within 30 days after receipt of the notice from the indemnified party of any Third-Party Claim, of the indemnifying party's election to assume the defense or handling of such Third-Party Claim, the provisions of Section 13.5(c)(ii) below shall govern. (ii) The indemnified party may, at the indemnifying party's expense, select counsel in connection with conducting the defense or handling of such Third-Party Claim and defend or handle such Third-Party Claim in such manner as it may deem appropriate, provided, however, that the indemnified party shall keep the indemnifying party timely apprised of the status of such Third-Party Claim and shall not settle such Third-Party Claim without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld. If the indemnified party defends or handles such Third-Party Claim, the indemnifying party shall cooperate with the indemnified party and shall be entitled to participate in the defense or handling of such Third-Party Claim with its own counsel and at its own expense.

(d) In the case of any Third-Party Claim that is brought by any customer or supplier with respect to the business acquired hereunder and that Buyer or its Affiliates intend to base a Claim for indemnification hereunder, notwithstanding anything in Section 13.5(b) to the contrary, Buyer or its Affiliates may, at Seller's expense, select counsel and defend or handle such Third-Party Claim in accordance with Section 13.5(c)(ii) and the provisions of Section 13.5(c)(ii) shall govern.

(e) If the indemnified party intends to seek indemnification hereunder, other than for a Third Party Claim, then it shall notify the indemnifying party in writing promptly after its discovery of facts upon which it intends to base its Claim for indemnification hereunder, but the failure or delay so to notify the indemnifying party shall not relieve the indemnifying party of any obligation or liability that the indemnifying party may have to the indemnified party except to the extent that the indemnifying party demonstrates that the indemnifying party's ability to defend or resolve such Claim is adversely affected thereby.

(f) The indemnified party may notify the indemnifying party with respect to a Misrepresentation Claim even though the amount thereof plus the amount of other Misrepresentation Claims previously notified by the indemnified party aggregate less than the Threshold.

(g) Notwithstanding anything in this Agreement to the contrary, in connection with any Remedial Action, the Losses with respect to which are covered in Section 13.2(f), Buyer and its Affiliates shall have the right, at their election, and regardless of whether a Third Party Claim is involved or not, to manage, administer, direct and regulate all activities relating to the Remedial Action, including, but not limited to, the right to select and direct the activities of contractors, consultants and counsel, to communicate directly, lead discussions and make final agreements with any Governmental Body or any other person or entity, to design and implement the Remedial Action and to defend or handle any Claims relating to the Remedial Action in such manner as they may deem appropriate, in each case with such advice and consultation as Seller may provide, and Buyer and its Affiliates shall give good faith consideration to such advice and consultation. If Buyer or its Affiliates elect to manage the activities relating to the Remedial Action, they shall keep Seller timely apprised of any material event relating to the Remedial Action to allow Seller the opportunity for informed and meaningful participation in the Remedial Action process, and Seller shall be entitled to participate in the activities arising out of the Remedial Action with its own counsel and at its own expense. Each party and its Affiliates shall cooperate with the other party and its Affiliates in good faith in connection with the Remedial Action. Any costs and expenses incurred by Buyer or its Affiliates in connection with the Remedial Action shall be promptly reimbursed by Seller upon demand, or promptly paid by Seller directly, at the option of Buyer or its Affiliates.

### **13.6 Election of Remedies**

In the event that any party or any of its Affiliates alleges that it is entitled to indemnification hereunder, and that its Claim is covered under more than one provision of this Section 13, such party or Affiliate shall be entitled to elect the provision or provisions under which it may bring a claim for indemnification.

### **13.7 Specific Performance**

The parties to this Agreement acknowledge that it may be impossible to measure in money the damages that a party would incur if any covenant or agreement contained in this Agreement were not performed in accordance with its terms and agree that each of the parties hereto shall be entitled to obtain an injunction to require specific performance of, and prevent any violation of the terms of, this Agreement, in addition to any other remedy available hereunder. In any such action specifically to enforce any provision of this Agreement, each party hereby waives any claim or defense therein that an adequate remedy at law or in damages exists.

## **14. Termination**

### **14.1 Termination**

This Agreement may be terminated before the Closing:

(a) by Seller, by giving written notice to Buyer at any time, if any of the conditions set forth in Section 9 is not satisfied at the time at which the Closing (as it may be

deferred pursuant to Section 4) would otherwise occur, or if the satisfaction of any such condition is or becomes impossible;

(b) by Buyer, by giving written notice to Seller at any time, if any of the conditions set forth in Section 8 is not satisfied at the time at which the Closing (as it may be deferred pursuant to Section 4) would otherwise occur, or if the satisfaction of any such condition is or becomes impossible;

(c) by Seller, by giving written notice to Buyer at any time, if Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement;

(d) by Buyer, by giving written notice to Seller at any time, if Seller has breached any representation, warranty, covenant or agreement contained in this Agreement;

(e) by mutual written agreement of Seller and Buyer; and

(f) by Seller or Buyer, by giving written notice to the other, at any time after September 15, 2000.

#### **14.2 Effect of Termination**

In the event of the termination of this Agreement pursuant to Section 14.1 above, (a) each party shall return or destroy all documents containing confidential information of the other party (and, upon request, certify as to the destruction thereof), and (b) no party hereto shall have any liability or further obligation to the other party hereunder, except for obligations of confidentiality and non-use with respect to the other party's confidential information, which shall survive the termination of this Agreement, and except for liabilities or obligations relating to any breach by any party of any representation, warranty, covenant or agreement set forth herein.

### **15. Miscellaneous**

#### **15.1 Confidentiality Obligations of Seller Following the Closing**

From and after the Closing, Seller and its Affiliates shall keep confidential and not use or disclose to any party any confidential information relating to the assets, business or affairs of Buyer or the Assets or the Business. The confidentiality and non-use obligations set forth in this Section 15.1 shall not apply to any information which is available to the public through no breach of this Agreement by Seller, or is disclosed to Seller by third parties who are not under any duty of confidentiality with respect thereto, or is required to be disclosed by Seller in connection with pending litigation or investigation; provided, however, that in the event Seller becomes required in connection with pending litigation or investigation to disclose any of the confidential information relating to the assets, business or affairs of Buyer or the Assets or the Business, then Seller shall provide Buyer with reasonable notice so that Buyer may seek a court order protecting against or limiting such disclosure or any other appropriate remedy; and in the event such protective order or other remedy is not sought, or is sought but not obtained, Seller shall furnish only that portion of the information that is required and shall endeavor, at Buyer's expense, to obtain a protective order or other assurance that the portion of the information furnished by Seller will be accorded confidential treatment.

**15.2 Public Announcements**

Each party agrees not to make any public announcement in regard to the transactions contemplated by this Agreement and the Transaction Documents without the other party's prior consent, except as may be required by law, in which case the parties shall use reasonable efforts to coordinate with each other with respect to the timing, form and content of such required disclosures.

**15.3 Severability**

If any court determines that any part or provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be given full force and effect and remain binding upon the parties. Furthermore the court shall have the power to replace the invalid or unenforceable part or provision with a provision that accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner. Such replacement shall apply only with respect to the particular jurisdiction in which the adjudication is made. Without in any way limiting the generality of the foregoing, it is understood and agreed that this Section 15.3 shall apply to the provisions of Section 12 and that the provisions of Section 12, as they relate to each jurisdiction within their geographical scope, constitute separate and distinct covenants.

**15.4 Modification and Waiver**

This Agreement may not be amended or modified in any manner, except by an instrument in writing signed by each of the parties hereto. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, or in any way affect the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.

**15.5 Notices**

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be sent by email or facsimile transmission, or mailed postage prepaid by first-class certified or registered mail, or mailed by a nationally recognized express courier service, or hand-delivered, addressed as follows:

if to Buyer:	Clarus 2015 Bellingham, Attention: Kurt Martens	Alpine Way, Washington	Technologies, Suite	LLC A 98226
with a copy to:	Koniag 4300 Anchorage, Attention: Kurt Martens	B Street, Alaska	Development Suite	Corporation 407 99503
if to Seller:	Frogworks 2015 Bellingham, Attention: Karl Thomas	Alpine Way, Washington	Technologies, Suite	Inc. A 98226

with a copy to:                   705                                   Donovan                                   Avenue  
  Bellingham,                           Washington                               98225  
  Attention: Karl Thomas

Either party may change the persons or addresses to which any notices or other communications to it should be addressed by notifying the other party as provided above. Any notice or other communication, if addressed and sent, mailed or delivered as provided above, shall be deemed given or received three days after the date of mailing as indicated on the certified or registered mail receipt, or on the next business day if mailed by express courier service, or on the date of delivery or transmission if hand-delivered or sent by electronic transmission.

**15.6           Assignment**

Neither Seller nor Buyer may assign any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, Buyer may assign its rights and obligations under this Agreement to any Affiliate of Buyer. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**15.7           Captions**

The captions and headings used in this Agreement have been inserted for convenience of reference only and shall not be considered part of this Agreement or be used in the interpretation thereof.

**15.8           Entire Agreement**

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, representations and statements, whether oral, written, implied or expressed, relating to such subject matter.

**15.9           No Third-Party Rights**

Nothing in this Agreement is intended, nor shall be construed, to confer upon any person or entity other than Buyer and Seller (and only to the extent expressly provided herein, their respective Affiliates) any right or remedy under or by reason of this Agreement.

**15.10          Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one agreement.

**15.11          Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington as though made and to be fully performed in that State.

**[SIGNATURES CONTAINED ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective representatives hereunto authorized as of the day and year first above written.

**CLARUS TECHNOLOGIES, LLC,**  
a Washington limited liability company

By \_\_\_\_\_

Print Name

Title

Steve L. CROSS  
CHAIRMAN, KONING DEVELOPMENT CORP  
MEMBER, CLARUS TECH LLC

**FROGWORKS TECHNOLOGIES, INC.,**  
a Washington corporation

By \_\_\_\_\_

Print Name

Title

Karl Thomas  
CEO