CONFIDENTIAL
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AGREEMENT AND PLAN OF MERGER

by and among

LSI CORPORATION,

NAS ACQUISITION CORPORATION,

ONSTOR, INC.

and

SHAREHOLDER REPRESENTATIVE SERVICES LLC

July 21, 2009

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THIS AGREEMENT AND PLAN OF MERGER (this "**Agreement**") is made and entered into as of July 21, 2009 by and among LSI CORPORATION, a Delaware corporation ("**Parent**"), NAS ACQUISITION CORPORATION, a Delaware corporation and a wholly owned subsidiary of Parent ("**Merger Sub**"), ONSTOR, INC., a Delaware corporation (the "**Company**") and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the Stockholder Representative.

RECITALS

A. The Board of Directors of the Company has determined that the Merger is advisable and in the best interests of the Company and its stockholders, and, in furtherance thereof, has approved this Agreement and the transactions contemplated hereby. Parent, as the sole stockholder of Merger Sub, has approved this Agreement and the transactions contemplated hereby.

B. The Board of Directors of Merger Sub has determined that the Merger is advisable and in the best interests of Merger Sub and its stockholder, and, in furtherance thereof, has approved this Agreement and the transactions contemplated hereby.

C. Pursuant to the Merger, among other things, and subject to the terms and conditions of this Agreement, (i) the Merger will become effective under applicable law, (ii) all of the issued and outstanding capital stock of the Company immediately prior to the Effective Time shall be converted into the right to receive the Aggregate Merger Consideration on the terms and conditions set forth herein, (iii) all options to acquire shares of capital stock of the Company (whether vested or unvested), which are issued and outstanding immediately prior to the Effective Time, shall be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto on the terms and conditions set forth herein, (iv) all warrants to acquire shares of capital stock of the Company which are issued and outstanding immediately prior to the Effective Time shall be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto, and (v) Parent will become the sole stockholder and the sole holder of any rights to acquire capital stock of the Company.

D. On the terms and subject to the conditions set forth herein, a portion of the Aggregate Merger Consideration otherwise payable by Parent to the holders of the Company's preferred stock (each, a "**Preferred Stockholder**" and collectively, the "**Preferred Stockholders**") in connection with the Merger shall be held back by Parent as security for the indemnification obligations set forth in this Agreement, to be held and retained by Parent or disbursed to the Preferred Stockholders on the terms and subject to the conditions set forth herein.

E. The Company on the one hand, and Parent and Merger Sub, on the other hand, desire to make certain representations, warranties, covenants and other agreements in connection with the transactions contemplated hereby and to prescribe various conditions to their respective obligations under this Agreement.

F. Immediately following the execution and delivery of this Agreement by the parties hereto and as a material inducement to Parent and Merger Sub to enter into this Agreement, the Company shall obtain and shall deliver to Parent a true, correct and complete copy of an Action by Written Consent of the Stockholders of the Company (the "**Initial Stockholder Consent**"), evidencing the approval of the Merger, this Agreement, the indemnification obligations set forth in

Article VIII hereof, and the transactions contemplated hereby, in the form attached hereto as **Exhibit A** (the "**Stockholder Written Consent**"), signed by certain stockholders constituting the Requisite Stockholder Approval (as defined below).

NOW, THEREFORE, in consideration of the mutual agreements, covenants and other promises set forth herein, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1 Capitalized Terms. For all purposes of and under this Agreement, the following terms shall have the respective meanings ascribed to them below:

"**Aggregate Debt**" shall mean any outstanding debt and other amounts owed by the Company and its Subsidiaries as of the Closing Date (including all interest thereon) under the agreements identified on **Schedule 1.1(a)**.

Aggregate Liquidation Preference" shall mean the sum of (x) the Aggregate Series A-1 Liquidation Preference plus (y) the Aggregate Series A-2 Liquidation Preference.

"**Aggregate Merger Consideration**" shall mean that amount equal to:

(i) $25,000,000;

(ii) *plus* an amount equal to eighty percent (80%) of the value of up to $1,500,000 of the Company's current accounts receivable (which shall include only receivables that are no greater than 90 days old) included in the Closing Date Balance Sheet (the "**Credited A/R**");

(iii) *less* all known outstanding and unpaid Indebtedness of the Company and its Subsidiaries as of the Closing Date, including the Aggregate Debt;

(iv) *less* all known outstanding and unpaid Transaction Expenses incurred by the Company;

(v) *less* all known outstanding and unpaid severance, change in control payments, COBRA premiums and any other costs for Company employees to be terminated in connection with the Closing; and

(vi) *less* all other unpaid known Liabilities (other than (a) the Company's off-balance sheet lease obligation for the Company's leased real property located at 254 East Hacienda Avenue, Campbell, CA, any other lease obligations with a month-to-month or shorter term, and any other lease obligations that may be terminated by the Company upon 60 days' or less notice without penalty and (b) any deferred revenue of the Company as set forth in the Closing Date Balance Sheet), including COBRA premiums for previously terminated employees and accrued vacation amounts for employees terminated in connection with the Closing,

in each case, without duplication of any such amounts.

"**Antitrust Law**" shall mean the Sherman Act, as amended, the Clayton Act, as amended, the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended, the Federal Trade Commission Act, as amended, the EC Merger Regulations and all other federal and state statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

"**Assets and Properties**" with respect to any Person, shall mean all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise and wherever situated), including the goodwill related thereto, operated, owned, licensed or leased by such Person, including cash, cash equivalents, investment assets, accounts and notes receivable, chattel paper, documents, instruments, general intangibles, real estate, equipment, inventory, goods and Intellectual Property Rights and Technology.

"**Bonus Plan**" shall mean the Company's Retention Bonus Plan, as amended (a copy of which has been provided to Parent), which conditions receipt of a payment thereunder upon each Bonus Plan Participant's acknowledgement and acceptance of the Bonus Plan Holdback Amount and the indemnification obligations of such Bonus Plan Participant contained herein.

"**Bonus Plan Participants**" shall mean the participants in the Bonus Plan, as specified in Exhibit A thereto.

"**Business Day**" shall mean a day other than Saturday, Sunday or any day on which banks located in the State of California are authorized or obligated to close.

"**California Law**" shall mean the laws of the State of California.

"**Certificate of Incorporation**" shall mean the Company's Amended and Restated Certificate of Incorporation dated December 17, 2008, as amended on May 18, 2009.

"**Closing Date Balance Sheet**" shall mean the Company's unaudited balance sheet as of the Closing Date prepared in accordance with GAAP and certified as true, complete and correct by the Company's Chief Executive Officer and Chief Financial Officer.

"**COBRA**" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Company Capital Stock**" shall mean shares of Company Common Stock, Company Preferred Stock and any other shares of capital stock of the Company.

"**Company Common Stock**" shall mean shares of common stock of the Company, $0.0001 par value.

"**Company Common Stock Warrants**" shall mean all issued and outstanding warrants to purchase or otherwise acquire shares of Company Common Stock.

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

"**Company Intellectual Property**" shall mean any Technology and Intellectual Property Rights that are owned by the Company or any Subsidiary, including the Company Registered Intellectual Property.

"**Company Intellectual Property Rights**" shall mean any Intellectual Property Rights that are owned by, or exclusively licensed to, the Company or any Subsidiary, including any Registered Intellectual Property.

"**Company Material Adverse Effect**" shall mean any changes, events, violations, inaccuracies, circumstances or effects that, individually or in the aggregate, are or are reasonably likely to be materially adverse to the business, Assets and Properties, Liabilities, condition (financial or otherwise) or results of operations of the Company, taken as a whole; *provided, however*, that none of the following, individually or in combination, shall be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been, or will be, a Company Material Adverse Effect, (i) any facts, changes, developments, events, conditions, occurrences, actions or omissions generally affecting the industry in which the Company primarily operates to the extent they do not disproportionately affect the Company in relation to other companies in the industry in which the Company primarily operates, (ii) any facts, changes, developments, events, conditions, occurrences, actions or omissions generally affecting the economy, or financial or capital markets, including any facts, changes, developments, events, conditions, occurrences, actions or omissions resulting from natural disasters and terrorist attacks, in the United States or elsewhere in the world to the extent they do not disproportionately affect the Company in relation to other companies in the industry in which the Company primarily operates, (iii) any generally applicable change in law, rule or regulation or GAAP to the extent that such conditions do not have a materially disproportionate effect on the Company relative to other companies operating in the industry in which the Company operates, or (iv) any circumstance, change, development, event or effect that results from the public announcement or pendency of the transactions contemplated hereby.

"**Company Optionholders**" shall mean all holders of Company Options.

"**Company Options**" shall mean all options to purchase or otherwise acquire shares of Company Capital Stock, whether or not vested or exercisable, that were granted or otherwise issued under the Company Stock Plan or otherwise.

"**Company Preferred Stock**" shall mean shares of Company Series A-1 Preferred Stock, Company Series A-2 Preferred Stock and any other shares of preferred stock of the Company.

"**Company Series A-1 Preferred Stock**" shall mean shares of the Company's Series A-1 Preferred Stock, $0.0001 par value.

"**Company Series A-2 Preferred Stock**" shall mean shares of the Company's Series A-2 Preferred Stock, $0.0001 par value.

"**Company Source Code**" means, collectively, (A) the source code for any Software that is embodied or incorporated in Company Products, and (B) the net lists, GDS-II files, verilog files and RTL files, or other similar code constituting the designs for any Company Products or upon which the manufacture of any Company Products can be based.

"**Company Stockholders**" shall mean holders of shares of Company Capital Stock.

"**Company Stock Plan**" shall mean the Company's 2000 Stock Plan, as amended.

"**Company Warrantholders**" shall mean all holders of Company Common Stock Warrants.

"**Contract**" shall mean any contract, mortgage, indenture, lease, covenant or other agreement, instrument or commitment, permit, concession, franchise or license, whether written or oral.

"**Delaware Law**" shall mean the General Corporation Law of the State of Delaware.

"**Employee**" shall mean any current employee, consultant, contractor or director of the Company or any ERISA Affiliate.

"**Employee Agreement**" shall mean each employment, management, change in control, severance, consulting, relocation, repatriation or expatriation agreement between the Company or any Subsidiary and any Employee pursuant to which the Company has any outstanding obligations.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" shall mean any other current or former Person or entity under common control with the Company within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

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

"**GAAP**" shall mean United States generally accepted accounting principles consistently applied.

"**Governmental Authority**" shall means any court, tribunal, arbitrator, authority, agency, bureau, board, commission, department, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision and shall include any stock exchange, quotation service and the National Association of Securities Dealers.

"**Holdback Amount**" shall mean an amount of cash equal to ten percent (10%) of the Aggregate Merger Consideration, which amount shall be withheld from the Company Stockholders and the Bonus Plan Participants as set forth in **Section 2.7**.

"**Indebtedness**" shall mean, with respect to any Person, (i) all indebtedness of such Person, whether or not contingent, for borrowed money, (ii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iii) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or other similar facilities, and (iv) all indebtedness of others referenced in the foregoing clauses (i), (ii) and (iii) directly or indirectly guaranteed in any manner by such Person, or in effect directly or indirectly guaranteed by such Person, including by way of agreement (A) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (B) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss, (C) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), or (D) otherwise to assure a creditor against loss.

"**Intellectual Property Rights**" shall mean any or all of the following and all statutory and/or common law rights throughout the world in, arising out of, or associated therewith or with Intellectual Property: (i) all United States and foreign patents and utility models and applications therefor and all reissues, divisions, re examinations, renewals, extensions, provisionals, continuations and continuations in part thereof, and equivalent or similar rights anywhere in the world in inventions and discoveries including without limitation invention disclosures ("**Patents**"); (ii) all trade secrets and other rights in know how and confidential or proprietary information; (iii) all copyrights, copyright registrations and applications therefor and all other rights corresponding thereto throughout the world ("**Copyrights**"); (iv) all industrial designs and any registrations and applications therefor throughout the world; (v) mask works, mask work registrations and applications therefor, and all other rights corresponding thereto throughout the world ("**Mask Works**"); (vi) all rights in World Wide Web addresses and domain names and applications and registrations therefor, all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor and all goodwill associated therewith throughout the world ("**Trademarks**"); (vii) any other rights in or to Technology; and (viii) any similar, corresponding or equivalent rights to any of the foregoing anywhere in the world.

"**International Employee Plan**" shall mean each Company Employee Plan maintained by the Company or any ERISA Affiliate, whether informally or formally, or with respect to which the Company or any ERISA Affiliate will or may have any liability, for the benefit of Employees who perform services outside the United States.

"**IRS**" shall mean the United States Internal Revenue Service.

"**Key Employees**" shall mean those individuals whose names are set forth on **Schedule 7.2(i)** to whom Parent makes an offer of employment at least two (2) Business Days prior to the Effective Time.

"**Liability**" means any Indebtedness, expense, claim, guaranty or endorsement of any type, obligation or other liability, whether absolute or contingent (or based upon any contingency), determined or determinable, matured or unmatured, fixed or otherwise, due or to become due, whether or not accrued or paid and (unless otherwise indicated), whether or not required to be reflected in or reserved against on the financial statements prepared in accordance with GAAP or described in any notes thereto.

"**Material Contract**" shall mean any Contract listed in **Section 3.15** of the Company Disclosure Schedule.

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

"**Parent Material Adverse Effect**" shall mean any changes, events, violations, inaccuracies, circumstances or effects that, individually or in the aggregate, are or are reasonably likely to be materially adverse to the business, Assets and Properties, Liabilities, condition (financial or otherwise) or results of operations of Parent and its Subsidiaries, taken as a whole.

"**Pension Plan**" shall mean an "employee pension benefit plan," within the meaning of Section 3(2) of ERISA.

"**Permitted Liens**" shall mean (i) statutory Liens for Taxes that are not yet due and payable or Liens for Taxes being contested in good faith by appropriate proceedings for which adequate reserves have been established, (ii) statutory Liens to secure obligations to landlords, lessors or renters under leases or rental agreements, (iii) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable law, (iv) statutory Liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like Liens for work not yet completed, and (v) Liens in favor of customs and revenue authorities arising as a matter of applicable law to secure payments of customs duties in connection with the importation of goods.

"**Person**" shall mean any natural person, company, corporation, limited liability company, general partnership, limited partnership, trust, proprietorship, joint venture, business organization or Governmental Authority.

"**Pro Rata Portion**" shall mean, with respect to each Indemnifying Party, a fraction, (i) the numerator of which is the value of the sum of (x) such Indemnifying Party's pro rata portion of the Consideration Holdback Amount plus (y) such Indemnifying Party's pro rata portion of the Bonus Plan Holdback Amount (in each case, without taking into account any applicable tax withholding or the deduction of any Holdback Amount), and (ii) the denominator of which is the total value of the Holdback Amount.

"**Registered Intellectual Property**" shall mean all United States, international and foreign: (i) Patents, including applications therefor; (ii) registered Trademarks, applications to register Trademarks, including intent to use applications, or other registrations or applications related to Trademarks; (iii) Copyrights and (iv) any other Intellectual Property Right that is the subject of an application, certificate, filing, registration or other document issued by, filed with, or recorded by, any state, government or other public legal authority at any time.

"**Required Employees**" shall mean those individuals whose names are set forth on **Schedule 7.2(j)** to whom Parent makes an offer of employment at least two (2) Business Days prior to the Effective Time.

"**Series A-1 Aggregate Liquidation Preference**" shall mean the product of (x) the aggregate number of shares of Company Series A-1 Preferred Stock outstanding as of immediately prior to the Effective Time multiplied by (y) $384.93342.

"**Series A-2 Aggregate Liquidation Preference**" shall mean the product of (x) the aggregate number of shares of Company Series A-2 Preferred Stock outstanding as of immediately prior to the Effective Time multiplied by (y) $0.004997504.

"**Series A-1 Consideration Ratio**" shall mean the quotient of (x) the Series A-1 Aggregate Liquidation Preference divided by (y) the Aggregate Liquidation Preference.

"**Series A-2 Consideration Ratio**" shall mean the quotient of (x) the Series A-2 Aggregate Liquidation Preference divided by (y) the Aggregate Liquidation Preference.

"**Series A-1 Merger Consideration**" shall mean the product of (x) the Aggregate Merger Consideration multiplied by (y) the Series A-1 Consideration Ratio.

"**Series A-2 Merger Consideration**" shall mean the product of (x) the Aggregate Merger Consideration multiplied by (y) the Series A-2 Consideration Ratio.

"**Series A-1 Participating Stock Consideration Per Share**" shall mean that quotient obtained by dividing (x) the Series A-1 Merger Consideration by (y) the aggregate number of shares of Company Series A-1 Preferred Stock outstanding as of immediately prior to the Effective Time.

"**Series A-2 Participating Stock Consideration Per Share**" shall mean that quotient obtained by dividing (x) the Series A-2 Merger Consideration by (y) the aggregate number of shares of Company Series A-2 Preferred Stock outstanding as of immediately prior to the Effective Time.

"**Software**" shall mean any and all computer software and code, including applets, applications, operating systems, libraries, assemblers, compilers, design tools, source code, object code, net lists, GDS-II files, gerber files, test vectors, data (including image and sound data) and user interfaces, in any form or format, however fixed. Software shall include source code listings and documentation.

"**Statement of Employee Expenses**" shall mean a statement prepared by the Company in good faith listing all known severance, change in control payments and any other costs for Company employees to be terminated in connection with the Closing that have not been paid as of the Closing, which shall be certified as true, complete and correct by the Company's Chief Executive Officer and Chief Financial Officer.

"**Statement of Off Balance Sheet Liabilities**" shall mean a statement prepared by the Company in good faith listing all of the Company's unpaid known Liabilities (other than (a) the Company's off-balance sheet lease obligation for the Company's leased real property located at 254 East Hacienda Avenue, Campbell, CA, any other lease obligations with a month-to-month or shorter term, and any other lease obligations that may be terminated by the Company upon 60 days' or less notice without penalty and (b) any deferred revenue of the Company as set forth in the Closing Date Balance Sheet) as of the Closing Date that are not required to be set forth in the Closing Date Balance Sheet in accordance with GAAP, which shall be certified as true, complete and correct by the Company's Chief Executive Officer and Chief Financial Officer, and which shall include all known obligations of the Company to pay money currently or in the future that are not included in the Closing Date Balance Sheet, Statement of Transaction Expenses or Statement of Employee Expenses.

"**Subsidiary**" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other Subsidiary of such party is a general partner (excluding such partnerships where such party or any Subsidiary of such party does not have a majority of the voting interest in such partnership) or (ii) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries.

"**Tax**" shall mean (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes as well as public imposts, fees and social security charges (including but not limited to health, unemployment and pension insurance), together with all interest, penalties and additions imposed with respect to such items, (ii) any liability for the payment of any items of the type described in clause (i) of this definition as a result of being a member of an affiliated, consolidated, combined or unitary group for any period, and (iii) any liability for the payment of any items of the type described in clauses (i) or (ii) of this definition as a result of any express or implied obligation to indemnify any other person or as a result of any obligation under any agreement or arrangement with any other person with respect to such items and including any liability for taxes of a predecessor entity.

"**Taxing Authority**" means the IRS or any other governmental body (whether state, local or foreign) responsible for the administration of any Tax.

"**Technology**" shall mean any or all of the following: (i) works of authorship including, without limitation, Software or otherwise, documentation, designs, files, records and data; (ii) inventions (whether or not patentable), improvements, and technology; (iii) proprietary and confidential information, including technical data and customer and supplier lists, trade secrets, show how, know how and techniques; (iv) databases, data compilations and collections and technical data; (v) processes, devices, prototypes, schematics, bread boards, net lists, mask works, test methodologies and hardware development tools; (vi) logos, trade names, trade dress, trademarks, service marks, World Wide Web addresses and domain names, tools, methods and processes; and all instantiations of the foregoing in any form and embodied in any media.

"**Transaction Expenses**" shall mean all third party fees and expenses incurred in connection with this Agreement, the Merger and the other transactions contemplated hereby (including any fees and expenses of legal counsel, financial advisors, investment bankers, brokers, strategic consultants, tax consultants, outsourced operations service providers, accountants and auditors and costs of obtaining a tail policy with respect to the Company's D&O insurance policy, but excluding any amounts set forth on the Statement of Employee Expenses).

1.2 Other Capitalized Terms. For all purposes of and under this Agreement, the following capitalized terms shall have the respective meanings ascribed to them in the Section of this Agreement set forth opposite each such capitalized term below:

Capitalized Term	**Section**
Acquisition Proposal	5.2(b)
Agreement	Preamble

Capitalized Term	Section
Bonus Plan	1.1
Bonus Plan Holdback Amount	2.7(a)(ii)
Bonus Plan Participants	1.1
Certificate	2.6(b)
Certificate of Merger	2.2(b)
Closing	2.2(a)
Closing Date	2.2(a)
Closing Date Balance Sheet	1.1
Company	Preamble
Company Authorizations	3.17
Company Closing Certificates	8.1(b)
Company Disclosure Schedule	Article III
Company Financial Statements	3.8(a)
Company Insurance Policies	3.24(a)
Company Products	3.14(a)
Company Registered Intellectual Property	3.14(b)
Company Representatives	5.2(a)
Conflict	3.6
Consideration Holdback Amount	2.7(a)(i)
Continuing Employee	6.9(a)
Copyrights	1.1
Credited A/R	1.1
Current Balance Sheet	3.8(a)
Dissenting Share Payments	2.9(c)
Dissenting Shares	2.9(a)
Effective Time	2.2(b)
Equipment	3.13(e)
Export Approvals	3.34(a)
Fraud Claims	8.1
Hazardous Material	3.21(a)
Hazardous Materials Activities	3.21(b)
HCL Agreement	7.2(x)
Holdback Fund	8.5(a)
Holdback Period	8.5(b)
Inbound License Agreements	3.14(k)
Indemnified Parties	8.2
Indemnifying Parties	8.2
Interested Party	3.16(a)
IP Licenses	3.14(k)
Lease Agreements	3.13(b)
Leased Real Property	3.13(a)
Letter of Transmittal	2.10(a)
Liens	3.11(h)
Loss	8.2
Mask Works	1.1
Material Contract	1.1
Merger	2.1
Merger Sub	Preamble

Capitalized Term	Section
Offer Letter	6.9(a)
Officer's Certificate	8.4(a)
Open Source Materials	3.14(r)
Outbound License Agreements	3.14(k)
Parent	Preamble
Parent Disclosure Schedule	Article IV
Parent Plans	6.11
Patents	1.1
Payoff Letter	6.18
Preferred Stockholder	Preamble
Preliminary Statement of Transaction Expenses	6.8(b)
PTO	3.14(b)
Requisite Stockholder Approval	3.5(c)
Returns	3.11(a)
Section 280G Payments	3.23(h)
Section 409A	3.23(l)
Significant Customer	3.29
Significant Supplier	3.30
Spreadsheet	6.7(a)
Standard Form Agreements	3.14(s)
Statement of Transaction Expenses	6.8(b)
Stockholder Representative	8.7(a)
Surviving Corporation	2.1
Terminated Agreements	6.4(b)
Terminated Company Employee Plans	6.9(c)
Terminating Employee	6.9(a)
Third-Party Claim	8.6(a)
Threshold	8.3(c)
Trademarks	1.1
Unvested Company Common Stock	2.6(c)

1.3 Interpretations.

(a) When a reference is made in this Agreement to a Schedule or an Exhibit, such reference shall be to a Schedule or an Exhibit to this Agreement unless otherwise indicated. When a reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated.

(b) The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation".

(c) The headings set forth in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(d) All references in this Agreement to the Company shall be deemed to refer to the Company and its Subsidiaries unless the context otherwise requires.

(e) All references in this Agreement to the Subsidiaries of an entity shall be deemed to include all direct and indirect Subsidiaries of such entity.

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

ARTICLE II

THE MERGER

2.1 The Merger. At the Effective Time and subject to and upon the terms and conditions of this Agreement and the applicable provisions of Delaware Law, Merger Sub shall be merged with and into the Company (the "**Merger**"), the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation. The Company as the surviving corporation after the Merger is sometimes referred herein to as the "**Surviving Corporation**."

2.2 Closing and Effective Time.

(a) Closing. Unless this Agreement is earlier terminated pursuant to **Section 9.1**, the closing of the Merger (the "**Closing**") will take place on a Business Day as promptly as practicable after the execution and delivery of this Agreement by the parties hereto, but no later than five (5) Business Days following satisfaction or waiver of the conditions set forth in **Article VII** (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions), at the offices of Parent, 1621 Barber Lane, Milpitas, California, unless another time and/or place or modality (e.g., by facsimile transmission) is mutually agreed upon in writing by Parent and the Company. The date upon which the Closing actually occurs shall be referred to herein as the "**Closing Date**."

(b) Effective Time. On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing with the Secretary of State of the State of Delaware a certificate of merger in customary form and substance for the Merger (the "**Certificate of Merger**") in accordance with the applicable provisions of Delaware Law. The time of filing of the Certificate of Merger is referred to herein as the "**Effective Time**."

2.3 General Effects of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise agreed to pursuant to the terms of this Agreement, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

2.4 Certificates of Incorporation and Bylaws.

(a) Certificate of Incorporation of Surviving Corporation. The certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to be identical to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time until thereafter amended in accordance with Delaware Law and as provided in such certificate of incorporation.

(b) Bylaws of Surviving Corporation. The bylaws of the Surviving Corporation shall be amended and restated as of the Effective Time to be identical to the bylaws of Merger Sub as in effect immediately prior to the Effective Time, until thereafter amended in accordance with Delaware Law and as provided in the certificate of incorporation of the Surviving Corporation and such bylaws.

2.5 Directors and Officers.

(a) Directors of Surviving Corporation. The directors of the Company shall resign effective as of the Effective Time. The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold the office of a director of the Surviving Corporation in accordance with the provisions of Delaware Law, the certificate of incorporation and bylaws of the Surviving Corporation until their successors are duly elected and qualified, or until their earlier resignation or removal.

(b) Officers of Surviving Corporation. The officers of the Company shall resign effective as of the Effective Time. The officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the provisions of the bylaws of the Surviving Corporation.

2.6 Effect of Merger on Capital Stock.

(a) Merger Sub Capital Stock. At the Effective Time, each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

(b) Company Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or any Company Stockholder, each outstanding share of Company Capital Stock (other than any Dissenting Shares), upon the terms and subject to the conditions set forth in this **Section 2.6** and throughout this Agreement, will be cancelled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such shares of Company Capital Stock (the "**Certificate**"), such portion of the Aggregate Merger Consideration, if any, as set forth below in this **Section 2.6** and as more fully set forth on the Spreadsheet (as defined in **Section 6.7(a)** herein):

(i) each share of Company Series A-1 Preferred Stock that is issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished and converted into the right to receive an amount of cash equal to the Series A-1 Participating Stock Consideration Per Share,

(ii) each share of Company Series A-2 Preferred Stock that is issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished and converted into the right to receive an amount of cash equal to the Series A-2 Participating Stock Consideration Per Share, and

(iii) each share of Company Common Stock that is issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution shall be made with respect thereto.

For purposes of calculating the amount of cash consideration payable to each Company Stockholder at the Effective Time pursuant to this **Section 2.6**, all shares of Company Capital Stock held by each Company Stockholder at the Effective Time shall be aggregated on a certificate-by-certificate basis and such cash consideration shall be rounded up to the nearest whole cent.

(c) At the Effective Time, each share of Company Common Stock outstanding immediately prior to the Effective Time that is unvested or is subject to a repurchase option or obligation, risk of forfeiture or other condition under any applicable restricted stock purchase agreement or other Contract with the Company or under which the Company has any rights ("**Unvested Company Common Stock**") shall become immediately vested and shall, without any action on the part of Parent, the Company or the holder thereof, be cancelled and extinguished without any conversion thereof and no payment or distribution shall be made with respect thereto.

(d) Parent shall not assume or otherwise replace any Company Options. Immediately prior to the Effective Time, each then outstanding Company Option will be cancelled and extinguished without any conversion thereof and no payment or distribution shall be made with respect thereto.

(e) No Company Common Stock Warrants shall be assumed or otherwise replaced by Parent. Immediately prior to the Effective Time, each Company Common Stock Warrant will be cancelled and extinguished without any conversion thereof and no payment or distribution shall be made with respect thereto.

2.7 Holdback.

(a) Notwithstanding anything to the contrary set forth in this Agreement, at the Effective Time, as security for the indemnification obligations under **Article VIII**, Parent will withhold an amount of cash which, in the aggregate, shall be equal to the Holdback Amount from cash that would otherwise be delivered to (x) the Company Stockholders in connection with the distribution of the Aggregate Merger Consideration and (y) the Bonus Plan Participants in connection with the payment of bonuses under the Bonus Plan, as follows.

(i) an amount of cash equal to seventy-five percent (75%) of the Holdback Amount, in the aggregate, will be withheld from the cash that would otherwise be delivered pursuant to this Agreement to the Company Stockholders in connection with the distribution of the Aggregate Merger Consideration (the "**Consideration Holdback Amount**"); and

(ii) an amount of cash equal to twenty-five percent (25%) of the Holdback Amount, in the aggregate, will be withheld from the cash that would otherwise be delivered to the Bonus Plan Participants in connection with the payment of bonuses under the Bonus Plan (the "**Bonus Plan Holdback Amount**").

(b) With respect to the Consideration Holdback Amount, Parent shall withhold from each holder of Company Preferred Stock a Pro Rata Portion of the Consideration Holdback Amount from the Aggregate Merger Consideration otherwise payable to such holder pursuant to this Agreement in respect of such holder's Company Preferred Stock. Each holder of Company

Preferred Stock shall be deemed to have contributed to the Consideration Holdback Amount such holder's Pro Rata Portion of the Consideration Holdback Amount, to be held back by Parent as a portion of the Holdback Amount pursuant to the terms of this Agreement.

(c) With respect to the Bonus Plan Holdback Amount, Parent shall withhold from each Bonus Plan Participant a Pro Rata Portion of the Bonus Plan Holdback Amount from the bonus otherwise payable to such Bonus Plan Participant pursuant to the Bonus Plan. Each Bonus Plan Participant shall be deemed to have contributed to the Bonus Plan Holdback Amount such holder's Pro Rata Portion of the Bonus Plan Holdback Amount, to be held back by Parent as a portion of the Holdback Amount pursuant to the terms of this Agreement.

(d) The Holdback Amount (or any portion thereof) shall be distributed to the Indemnifying Parties and/or Parent, as applicable, at the times, and upon the terms and conditions set forth in this Agreement.

2.8 Withholding Taxes. Parent, the Company and the Surviving Corporation shall be entitled to deduct and withhold from any Aggregate Merger Consideration payable or otherwise issuable pursuant to this Agreement such amounts as are required to be deducted or withheld therefrom under any applicable provision of federal, local or foreign Tax law or under any applicable legal requirement. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

2.9 Dissenting Shares for Holders of Company Capital Stock.

(a) Notwithstanding anything to contrary set forth in this Agreement, any shares of Company Capital Stock that are held by a holder who has not effectively withdrawn or lost such holder's appraisal, dissenter's or similar rights for such shares available under Delaware Law or California Law, as applicable ("**Dissenting Shares**") shall not be converted into or represent a right to receive the Aggregate Merger Consideration payable and issuable in respect of such shares of Company Capital Stock pursuant to this Agreement, but the holder thereof shall only be entitled to such rights as are granted by Delaware Law or California Law, as applicable.

(b) Notwithstanding the provisions of **Section 2.9(a)**, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) his, her or its appraisal or dissenter's rights, then, as of the later of the Effective Time and the occurrence of such event, such holder's Dissenting Shares shall then cease to be Dissenting Shares and shall automatically be converted into and represent only the right to receive the portion of the Aggregate Merger Consideration payable or issuable in respect of such shares of Company Capital Stock pursuant to this Agreement, without interest thereon, upon surrender of the Certificate representing such shares.

(c) The Company shall give Parent (i) prompt notice of any written demand for appraisal or dissenter's rights received by the Company pursuant to the applicable provisions of Delaware Law or California Law, as applicable, and (ii) the opportunity to participate in all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent or if directed to do so by a court order or judgment, voluntarily make any payment with respect to any such demands or offer to settle or settle any such demands. Notwithstanding the foregoing, to the extent that Parent or the Company (i) shall make any payment or payments in respect of any Dissenting Shares in excess of the portion of the Aggregate Merger

Consideration that otherwise would have been payable or issuable in respect of such shares under this Agreement, or (ii) incurs any other costs or expenses in respect of any Dissenting Shares (excluding payments for such shares) (together "**Dissenting Share Payments**"), Parent shall be entitled to indemnification in respect of such Dissenting Share Payments pursuant to **Article VIII**.

2.10 Surrender of Certificates.

(a) Parent shall serve as the exchange and paying agent for the Merger. As soon as reasonably practicable following the date hereof, the Company shall deliver a letter of transmittal, in a form reasonably acceptable to Parent and the Company (the "**Letter of Transmittal**"), including instructions for the surrender of the certificates representing Company Capital Stock, to each Preferred Stockholder at the address set forth opposite each such Preferred Stockholder's name on the Spreadsheet and shall deliver a copy of the Letter of Transmittal to the Stockholder Representative. After receipt of such Letter of Transmittal and following the Effective Time, the Preferred Stockholders will surrender the Certificates to Parent for cancellation together with a duly completed and validly executed Letter of Transmittal. Following the surrender of the Certificates for cancellation to Parent, together with a Letter of Transmittal, in good form and duly completed and validly executed in accordance with the instructions thereto, Parent shall deliver within three (3) Business Days following receipt by Parent of such Letter of Transmittal, in exchange therefor, the amount of the Aggregate Merger Consideration (less the Holdback Amount pursuant to **Section 2.7** hereof) to which such holder is entitled pursuant to **Section 2.6(b)** hereof, and all Certificates so surrendered shall be cancelled; *provided*, *however*, that if a Preferred Stockholder surrenders Certificates for cancellation to Parent, together with a Letter of Transmittal, in good form and duly completed and validly executed in accordance with the instructions thereto at the Closing, Parent shall deliver at the Effective Time, in exchange therefor, the amount of the Aggregate Merger Consideration (less the Holdback Amount pursuant to **Section 2.7** hereof) to which such holder is entitled pursuant to **Section 2.6(b)** hereof, and all Certificates so surrendered shall be cancelled. Until so surrendered, each Certificate outstanding after the Effective Time will be deemed from and for all corporate purposes thereafter, to evidence only the right to receive the portion of the Aggregate Merger Consideration into which such shares of Preferred Stock shall have been converted. No payments of any portion of the Aggregate Merger Consideration will be made to a holder of Preferred Stock until such holder surrenders his, her or its Certificate(s) pursuant hereto.

(b) Notwithstanding anything to the contrary in this **Section 2.10**, neither Parent, nor the Surviving Corporation, nor any party hereto shall be liable to a holder of shares of Company Capital Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

2.11 No Further Ownership Rights in Company Capital Stock. The payment of the Aggregate Merger Consideration in accordance with the terms hereof shall be deemed to be full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this **Article II**.

2.12 Lost, Stolen or Destroyed Certificates or Documentation. In the event any Certificates shall have been lost, stolen or destroyed, the exchange agent shall pay in exchange for such lost, stolen or destroyed certificates or documentation, upon the making of an affidavit of that fact by the holder thereof, such amount of Aggregate Merger Consideration, if any, as may be

required pursuant to **Section 2.6(b)** hereof; *provided, however,* that Parent may, in its reasonable discretion and as a condition precedent to such payment, require the Company Stockholder who is the owner of such lost, stolen or destroyed certificates to provide an indemnification agreement in a form and substance acceptable to Parent, against any claim that may be made against the exchange agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

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

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Merger Sub that, except as set forth in the written disclosure schedule prepared by the Company which is dated as of the date hereof (the "**Company Disclosure Schedule**") and arranged in sections corresponding to the numbered and lettered sections contained in this **Article III** and is being concurrently delivered to Parent in connection herewith; *provided*, *however*, that disclosure in any section of the Company Disclosure Schedule shall be deemed to have been set forth in all other applicable sections of the Company Disclosure Schedule where the applicability of such disclosure to such other sections is reasonably apparent notwithstanding the omission of any cross-reference to such other section in the Company Disclosure Schedule; *provided*, *further*, that the mere listing of the name of a Contract, the parties thereto and the date thereof shall not make the applicability of such disclosure "reasonably apparent" for purposes of the immediately preceding proviso unless such listing contains other descriptive language making the applicability of such disclosure reasonably apparent), as of the date hereof (except where a representation or warranty is made herein as of a specified date) as follows:

3.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under Delaware Law, and has the requisite corporate power and authority to conduct its business as presently conducted and to own, use, license and lease its Assets and Properties. The Company is duly qualified or licensed to do business and is in good standing as a foreign corporation in each jurisdiction where the failure to be so qualified or licensed and in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to have a Company Material Adverse Effect. **Section 3.1** of the Company Disclosure Schedule sets forth (i) each jurisdiction where the Company is so qualified or licensed to do business, and (ii) each other state or country in which the Company owns, uses, licenses, or leases its Assets and Properties, or conducts business or has employees or engages independent contractors. The Company has delivered or made available a true, complete and correct copy of the Certificate of Incorporation and bylaws or any other organizational documents, as applicable, of the Company, as amended to date, to Parent.

3.2 Company Capital Structure.

(a) The authorized capital stock of the Company consists only of 2,760,200,100 shares of Company Common Stock, of which 162,284,702 shares are issued and outstanding as of the date hereof, and 2,163,340,400 shares of Company Preferred Stock, of which (i) 140,300 are

designated Company Series A-1 Preferred Stock, 140,269 of which are issued and outstanding as of the date hereof, and (ii) 2,163,200,100 shares are designated Company Series A-2 Preferred Stock, 1,402,710,877 of which are issued and outstanding as of the date hereof. Each share of Company Preferred Stock is convertible at a 1:1 ratio into Company Common Stock and there are no outstanding antidilution or other adjustments to the respective conversion rates of the Company Preferred Stock. As of the date hereof, the Company Capital Stock is held by the persons with the domicile addresses and in the amounts set forth in **Section 3.2(a)(i)** of the Company Disclosure Schedule. All outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights created by statute, the Certificate of Incorporation or bylaws of the Company, or any agreement to which the Company is a party or by which it is bound, and have been issued in compliance with applicable federal, state and foreign securities laws. **Section 3.2(a)(ii)** of the Company Disclosure Schedule sets forth all outstanding shares of Unvested Company Common Stock, indicating the name of the applicable Company Stockholder. There are no declared or accrued but unpaid dividends with respect to any shares of Company Capital Stock. The Company has no other capital stock authorized, issued or outstanding other than as set forth in this **Section 3.2**. None of the outstanding shares of Company Common Stock or Preferred Stock has been issued in violation of the preemptive rights of any stockholder of the Company.

(b) **Section 3.2(b)(i)** of the Company Disclosure Schedule sets forth all issued and outstanding Company Common Stock Warrants. Except for the Company Stock Plan, the Company has never adopted or maintained any other Company stock option plan or other plan providing for equity compensation (whether payable in stock, cash or other property) of any Person. A true and complete copy of the Company Stock Plan has been provided to Parent. Except as set forth in **Section 3.2(b)(ii)** of the Company Disclosure Schedule, the Company has not granted any options or other compensation rights to purchase or acquire Company Capital Stock other than pursuant to the Company Stock Plan. The Company has reserved (i) for issuance under the Company Stock Plan 352,154,682 shares of Company Common Stock of which (A) options to purchase an aggregate of 7,947,141 shares of Common Stock have been exercised and are reflected in the number of shares of Common Stock outstanding in subsection (a) above, (B) options to purchase an aggregate of 295,652,742 shares of Common Stock have been granted and remain outstanding and (C) an aggregate of 48,554,799 shares of Common Stock remain available for future option and stock purchase right grants under the Company Stock Plan, and (ii) for issuance upon exercise of outstanding warrants to purchase capital stock of the Company 6,667,032 shares of Company Common Stock. **Section 3.2(b)(iii)** of the Company Disclosure Schedule sets forth for each outstanding Company Option, the name of the holder of such option, the domicile address of such holder, the number of shares of Company Capital Stock issuable upon the exercise of such option and the exercise price of such option. **Section 3.2(b)(iv)** of the Company Disclosure Schedule sets forth all outstanding shares of Unvested Company Common Stock issued pursuant to the Company Stock Plan as "restricted stock," the name of the holder of such shares and the purchase price for such shares. All Company Options and shares of Unvested Company Common Stock have been issued in compliance with all applicable federal, state and foreign securities laws. Except for the Company Common Stock Warrants and Company Options set forth in **Sections 3.2(b)(i)**, **3.2(b)(ii)** and **3.2(b)(iii)** of the Company Disclosure Schedule, there are no options, warrants, calls, rights, commitments or agreements of any character, written or oral, to which the Company is a party or by which it is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend, change the price of, otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar equity-based rights (whether

payable in stock, cash or other property) with respect to the Company. True and complete copies of all forms of agreements and instruments relating to or issued under the Company Stock Plan have been provided to Parent, and such agreements and instruments have not been amended, modified or supplemented, and there is no Contract (other than this Agreement) to amend, modify or supplement such agreements or instruments in any case from the forms provided to Parent. Other than as set forth in **Section 3.2(b)(v)** of the Company Disclosure Schedule, all holders of Company Options and shares of Unvested Company Stock are current employees of the Company.

(c) Except for the Company's Certificate of Incorporation and that certain Amended and Restated Voting Agreement, dated as of December 17, 2008, by and among the Company and the other parties specified therein, to the Company's knowledge, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of the Company.

(d) **Section 3.2(d)** of the Company Disclosure Schedule sets forth the outstanding principal, accrued interest and applicable rate of interest on all loans outstanding on the date hereof from any Company Stockholder to the Company, including any and all debt securities, whether or not convertible into shares of Company Capital Stock.

(e) The Spreadsheet, including the allocation of the Aggregate Merger Consideration set forth therein, will, when delivered at Closing, be accurate and consistent with the Company's Certificate of Incorporation.

3.3 Subsidiaries. A complete and accurate list of all of the Company's Subsidiaries, together with the jurisdiction of incorporation of each Subsidiary and the percentage of each Subsidiary's outstanding capital stock owned by the Company or another Subsidiary or affiliate of the Company, is set forth in **Section 3.3** of the Company Disclosure Schedule. Other than the Subsidiaries set forth in **Section 3.3** of the Company Disclosure Schedule, the Company does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, any Person. Each Subsidiary of the Company is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization (to the extent such concepts exist in such jurisdictions) and has all requisite corporate or other power and authority necessary to own, lease and operate the properties it purports to own, lease or operate and to carry on its business as it is presently being conducted, except to the extent that the failure to be so organized or existing or in good standing or have such power or authority would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each Subsidiary of the Company is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction (to the extent such concepts exist in such jurisdictions) where the character or location of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except to the extent that the failure to be so qualified or licensed and in good standing would not reasonably be expected to have, individually or in the aggregate, an Company Material Adverse Effect.

3.4 Directors and Officers. The names of each director and officer of the Company on the date hereof, and his or her position with the Company, as the case may be, are listed in **Section 3.4** of the Company Disclosure Schedule. The Company has provided to Parent all indemnification agreements between the Company and any current or former directors or officers of the Company.

3.5 Authority; Enforceability.

(a) The Company has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, and no further corporate action is required on the part of the Company to authorize this Agreement and the transactions contemplated hereby, subject to the adoption of this Agreement and the approval of the transactions contemplated hereby by the Company Stockholders. Except for the filing and recordation of appropriate merger documents as required by Delaware Law, no other corporate proceedings on the part of the Company are necessary to authorize this Agreement and to perform the transactions contemplated hereby, subject to the adoption of this Agreement and the approval of the transactions contemplated hereby by the Company Stockholders.

(b) As of the date hereof, the Board of Directors of the Company has (i) approved and deemed advisable this Agreement and the transactions contemplated hereby, (ii) determined that this Agreement, the Merger and the other transactions contemplated hereby and thereby are in the best interests of the Company and the Company Stockholders and are on terms that are fair to the Company and such Company Stockholders, and (iii) has recommended the approval of the Merger and the adoption of this Agreement and the consummation of the transactions contemplated hereby to the Company Stockholders.

(c) Pursuant to the provisions of Delaware Law, the Certificate of Incorporation of the Company, the bylaws of the Company and any other applicable law, the only approval of Company Stockholders required to approve the Merger and to approve and adopt this Agreement and the transactions contemplated hereby (the "**Requisite Stockholder Approval**") are the approval of (i) a majority of the outstanding shares of Company Common Stock, Series A-1 Preferred Stock and Series A-2 Preferred Stock voting together as a single class, and (ii) the holders of at least sixty-six and two thirds percent (66 2/3%) of the outstanding shares of Company Preferred Stock voting together as a single class.

(d) This Agreement and the agreements contemplated hereby and thereby to which the Company is a party have been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and the effect of rules of law governing the availability of equitable remedies.

3.6 No Conflict. The execution and delivery by the Company of this Agreement does not, and the consummation of the transactions contemplated hereby will not conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (any such event, a "**Conflict**") (i) any provision of the Certificate of Incorporation or bylaws of the Company, (ii) any Material Contract to which the Company is a party or by which the Company or any of its Assets or Properties (whether tangible or intangible) is subject, except with respect to any consents that Parent may require in connection with assignment of any Contracts, or (iii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its Assets and Properties. Following the Effective Time and in the absence of any modification or amendment to any Material Contract made by Parent or the Surviving Corporation following the Effective Time, the Surviving Corporation will be permitted to exercise all of the Company's rights under the Material Contracts without the payment of any additional

amounts or consideration other than ongoing fees, royalties or payments that the Company would otherwise be required to pay pursuant to the terms of such Material Contracts had the transactions contemplated by this Agreement not occurred.

3.7 Consents. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with any Governmental Authority or any third party, including a party to any Material Contract with the Company (so as not to give rise to any Conflict), is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby or for any such Material Contract to remain in full force and effect without limitation, modification or alteration after the Effective Time, except for (i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, (ii) such consents, notices, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws, and (iii) the adoption of this Agreement and approval of the transactions contemplated hereby by the Company Stockholders.

3.8 Company Financial Statements.

(a) **Section 3.8(a)** of the Company Disclosure Schedule sets forth (i) the Company's audited balance sheets as of December 31, 2006 and 2005 (as restated), and the related statements of income and cash flows and stockholders' equity for the twelve month periods then ended, (ii) the Company's unaudited balance sheets as of December 31, 2008 and 2007, and the related statements of income and cash flows and stockholders' equity for the twelve month periods then ended, and (ii) the Company's unaudited balance sheet as of June 30, 2009 and the related unaudited statements of income and cash flows and stockholders' equity for the six month period then ended (collectively, the "**Company Financial Statements**"). The Company's unaudited balance sheet as of June 30, 2009 is referred to herein as the "**Current Balance Sheet**."

(b) The Company Financial Statements (i) were derived from and accurately reflect the books and records of the Company, (ii) have been prepared in accordance with, and otherwise comply as to form with, GAAP applied on a consistent basis throughout the periods indicated and consistent with each other except that they exclude footnotes and immaterial year end adjustments and (iii) fairly present in all material respects, the consolidated financial condition of the Company at the dates therein indicated and the consolidated results of operations, cash flows and stockholders' equity of the Company for the periods therein specified. Since the date of the Current Balance Sheet, there has been no change in any accounting policies, principles, methods or practices, including any change with respect to reserves (whether for bad debts, contingent liabilities or otherwise), of the Company.

(c) The Company does not have any Liabilities of a nature required to be set forth on a balance sheet prepared in accordance with GAAP other than (i) those set forth or adequately provided for in the Current Balance Sheet or in **Section 3.9** of the Company Disclosure Schedule, (ii) those incurred by the Company since the date of the Current Balance Sheet in the ordinary course of business consistent with past practice, which do not result from any breach of Contract, tort or violation of any law, (iii) those incurred by the Company in connection with the execution of this Agreement, and (iv) those that are immaterial in amount.

(d) The Company has established guidelines and general practices for maintaining, adhering and enforcing a system of internal accounting controls that (i) require the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are

recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company are being made only in accordance with appropriate authorizations of management and the board of directors of the Company and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company.

(e) Neither the Company nor, to the Company's knowledge, any current or former employee, consultant or director of the Company, has identified or been made aware of any fraud, whether or not material, that involves the Company's management or other current or former employees, consultants or directors of the Company who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company, or any claim or allegation regarding any of the foregoing. The Company, nor to the Company's knowledge, any director, officer, employee, auditor, accountant or representative of the Company has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, in each case, regarding deficient accounting or auditing practices, procedures, methodologies or methods of the Company or their respective internal accounting controls or any material inaccuracy in the Company Financial Statements. No attorney representing the Company, whether or not employed by the Company, has reported to the board of directors of the Company or any committee thereof or to any director or officer of the Company evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Company or any of their respective officers, directors, employees or agents.

(f) **Section 3.8(f)** of the Company Disclosure Schedule contains a true and correct list of all Indebtedness of the Company, including, for each item of Indebtedness for money borrowed, the agreement governing such Indebtedness, and the interest rate, maturity date and any Assets or Properties securing such Indebtedness. All Indebtedness of the Company for borrowed money may be prepaid at the Closing without penalty under the terms of the Contracts governing such Indebtedness.

3.9 No Undisclosed Liabilities. The Company does not have any Liability (whether or not required to be reflected on or reserved against in financial statements that are prepared in accordance with GAAP), except for (i) liabilities that are reflected on or reserved against in the Current Balance Sheet (including the notes thereto) or in the Statement of Off Balance Sheet Liabilities, (ii) liabilities that have arisen in the ordinary course of business consistent with past practices since the date of the Current Balance Sheet and prior to the date hereof which do not result from any breach of a Contract, tort or violation of any law, (iii) those incurred by the Company in connection with the execution of this Agreement, and (iv) those that are immaterial in amount and that arise (A) subsequent to the date hereof, (B) in the ordinary course of business consistent with past practice, and (C) other than as a result of a violation of **Section 5.1**. Except for Liabilities reflected in the Current Balance Sheet or in the Statement of Off Balance Sheet Liabilities, the Company has no "off balance sheet" Liability to, or any financial interest in, any third party or entities, the purpose of which is to defer, postpone, reduce or otherwise avoid or adjust the recording of debt or other Liability expenses of the Company. **Section 3.9** of the Company Disclosure Schedule sets forth all known operating leases and other financial obligations of the Company in excess of $10,000 individually, which, other than for the passage of time, are non-contingent and are not recorded on the Current Balance Sheet.

3.10 No Changes. Since the date of the Current Balance Sheet, there has not been, occurred or arisen any:

(a) agreement or arrangement to enter into any Contract involving a strategic alliance, joint development or joint marketing arrangement;

(b) acquisition of any equity interest of any person or any business or any material transaction by the Company, except in the ordinary course of business as conducted on that date and consistent with past practices;

(c) amendments or changes to the Certificate of Incorporation or bylaws of the Company, except as expressly contemplated by this Agreement;

(d) capital expenditure or commitment by the Company exceeding $25,000 individually or $50,000 in the aggregate;

(e) payment, discharge or satisfaction, of any Liability (whether fixed or accrued, absolute or contingent, matured or unmatured, determined or determinable, known or unknown, or otherwise) in excess of $25,000 individually or $50,000 in the aggregate, other than in the ordinary course of business;

(f) destruction of, damage to, or loss of any material assets (whether tangible or intangible), material business or material customer or supplier of the Company (whether or not covered by insurance);

(g) change in accounting policies or procedures (including any change in revenue recognition, reserves for excess or obsolete inventory, doubtful accounts or other reserves, or depreciation or amortization policies or rates) by the Company other than as required by GAAP;

(h) change in any material election in respect of any Tax, adoption or change of any accounting method in respect of any Tax, entry into any Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement or closing agreement, settlement or compromise of any claim or assessment in respect of any Tax, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of any Tax with any Taxing Authority or otherwise;

(i) revaluation by the Company of any of its assets (whether tangible or intangible);

(j) declaration, setting aside or payment of a dividend or other distribution (whether in cash, stock or property) in respect of any Company Capital Stock, or any split, combination or reclassification in respect of any shares of Company Capital Stock, or any issuance or authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock, or any direct or indirect repurchase, redemption, or other acquisition by the Company of any shares of Company Capital Stock (or options, warrants or other rights convertible into, exercisable or exchangeable therefor), except in accordance with the agreements evidencing Company Options and Company Common Stock Warrants;

(k) increase in the salary or other compensation payable or to become payable by the Company to any of its officers, directors, employees or advisors, or the declaration, payment or commitment or obligation of any kind for the payment by the Company of a severance payment, change in control payment, termination payment, bonus or other additional salary or compensation to any such Person;

(l) any termination or extension, or any amendment, waiver or modification of the terms, of any Material Contract, including, without limitation, changes or alterations to customer credit practices or sale of products or services other than in the ordinary course of business consistent with past practice;

(m) sale, lease, sublease, license or other disposition of any of the material Assets and Properties of the Company outside the ordinary course of business, including the sale of any accounts receivable of the Company, or any creation of any Lien (other than Permitted Liens) in such assets or properties;

(n) loan by the Company to any Person, incurring by the Company of any Indebtedness for money borrowed, guarantee by the Company of any Indebtedness for money borrowed, issuance or sale of any debt securities of the Company or guarantee of any debt securities of others, except for advances to Employees for travel and business expenses in the ordinary course of business consistent with past practice;

(o) waiver or release of any material right or claim, including any write off, discount or other compromise of any account;

(p) failure to pay or to otherwise satisfy any Liability of the Company, as the case may be, except (i) Liabilities that are not past due or (ii) Liabilities that are immaterial in amount, individually and in the aggregate, which are being contested in good faith by appropriate means or procedures;

(q) commencement, settlement, notice or, to the Company's knowledge, threat of any lawsuit or proceeding or other investigation against the Company or its affairs, other than as may be disclosed under **Section 3.10(r)** below;

(r) notice of any claim or potential claim of ownership by any Person other than the Company of the Company Intellectual Property owned by or developed or created by the Company or of infringement by the Company of any other Person's Intellectual Property Rights;

(s) issuance or sale, or contract to issue or sell, by the Company of any shares of Company Capital Stock or securities convertible into, or exercisable or exchangeable for, shares of Company Capital Stock, or any securities, warrants, options or rights to purchase any of the foregoing, except for issuances of Company Options and or Company Capital Stock upon the exercise of Company Options, or Company Common Stock Warrants or the conversion of the Company Preferred Stock;

(t) (i) sale or license of any Company Intellectual Property or execution of any agreement with respect to the Company Intellectual Property with any Person or with respect to the Intellectual Property Rights of any Person (other than the license of Company Intellectual Property in the ordinary course of business consistent with past practice), or (ii) purchase or license of any Intellectual Property Rights or execution of any agreement with respect to the Intellectual Property Rights of any Person, (iii) agreement with respect to the development of any Intellectual Property Rights with a third party, or (iv) change in pricing or royalties set or charged by the Company to its customers or licensees or in pricing or royalties set or charged by persons who have licensed Intellectual Property Rights to the Company;

(u) circumstance, change, event or effect of any character that is or is reasonably likely to be material to the Company; or

(v) written or oral commitment or agreement by the Company, or any officer or employee on behalf of the Company, to do any of the things described in the preceding clauses (a) through (u), inclusive, of this **Section 3.10** (other than negotiations with Parent and its representatives regarding the transactions contemplated by this Agreement).

3.11 Tax Matters.

(a) The Company has prepared and timely filed all federal, state, local and foreign returns, estimates, information statements and reports ("**Returns**") required to be filed by it and relating to any and all Taxes concerning or attributable to the Company or its operations, and such Returns are true and correct in all material respects and have been completed in substantial compliance with applicable law.

(b) The Company has paid all Taxes required to be paid (whether or not shown on a Return) and has withheld or paid with respect to its Employees (including former employees), stockholders and other third-parties (and timely paid over to the appropriate Taxing Authority) all federal, state and foreign income taxes, state sales taxes and social security charges and similar fees, Federal Insurance Contribution Act taxes, Federal Unemployment Tax Act taxes and other Taxes required to be withheld or paid by it other than Taxes for which adequate reserves are provided in the Current Balance Sheet in accordance with **Section 3.11(f)**.

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

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

(e) No claim has ever been made by a Taxing authority in a jurisdiction where the Company does not file Returns that it is or may be subject to taxation by that jurisdiction.

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

(g) The Company has delivered to Parent copies of all income and franchise Tax Returns for the Company filed for all periods since 2004.

(h) There are (and immediately following the Effective Time there will be) no liens, pledges, charges, claims, restrictions on transfer, mortgages, security interests or other encumbrances of any sort (collectively, "**Liens**") on the assets of the Company relating to or attributable to Taxes other than Permitted Liens.

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

(j) The Company (i) has never been a member of an affiliated group (within the meaning of Code §1504(a)) filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company), (ii) has never been a party to any Tax sharing, indemnification or allocation agreement, (iii) has no liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treas. Reg. § 1.1502-6 (or any similar provision of state, local or foreign law, including any arrangement for group Tax relief within a jurisdiction or similar arrangement), as a transferee or successor, by contract or agreement, or otherwise, and (iv) has never been a party to any joint venture, partnership or other arrangement that is reasonably likely to be treated as a partnership for Tax purposes.

(k) The Company has never been, at any time, a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(l) No adjustment relating to any Return filed by the Company has been proposed in writing or, to the knowledge of the Company, informally by any Taxing Authority to the Company or any representative thereof.

(m) The Company has not constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax free treatment under Section 355 of the Code.

(n) The Company does not, and has never had, a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

(o) None of the outstanding indebtedness of the Company constitutes indebtedness with respect to which any interest deductions may be disallowed under Sections 163(i), 163(l) or 279 of the Code or under any other provision of applicable law.

(p) The Company has not engaged in a reportable transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction, as set forth in Treas. Reg. § 1.6011-4(b)(2).

(q) The Company will not be required to include any material income or gain or exclude any material deduction or loss from taxable income as a result of (i) any change in method of accounting made prior to the Closing under Section 481(c) of the Code, (ii) closing agreement under Section 7121 of the Code executed prior to the Closing, (iii) deferred intercompany gain or excess loss account existing prior to the Closing under Treasury Regulations under Section 1502 of the Code (or in the case of each of (i), (ii), and (iii), under any similar provision of applicable law), (iv) installment sale or open transaction disposition made prior to the Closing, or (v) prepaid amount received prior to the Closing.

(r) To the Company's knowledge, no Company Stockholder holds shares of Company Common Stock that are non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code with respect to which a valid election under Section 83(b) of the Code has not been made.

3.12 Restrictions on Business Activities. There is no Contract, judgment, injunction, order or decree to which the Company is a party or otherwise binding upon the Company that has, or may reasonably be expected to have, the effect of prohibiting or impairing in a material manner any significant business practice of the Company, any acquisition of property (tangible or intangible) by the Company, the conduct of business by the Company, or otherwise limiting the freedom of the Company to engage in any line of business or to compete with or hire any Person. Without limiting the generality of the foregoing, the Company has not entered into any agreement under which the Company is restricted from selling, licensing or otherwise distributing any Company Intellectual Property or Company Products or from providing services to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of any market.

3.13 Title to Properties; Absence of Liens and Encumbrances; Condition of Equipment.

(a) The Company does not own any real property, nor has the Company ever owned any real property. **Section 3.13(a)** of the Company Disclosure Schedule sets forth a list of all real property currently leased by the Company or otherwise used or occupied by the Company for the operation of its businesses (the "**Leased Real Property**'), the name of the lessor, the date of the lease and each amendment thereto and, with respect to any current lease, the square footage of the premises leased thereunder and the aggregate annual rental payable under any such lease.

(b) The Company has provided to Parent true, correct and complete copies of all leases, lease guaranties, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in or relating to the Leased Real Property, including all amendments, terminations and modifications thereof (the "**Lease Agreements**"); and there are no other Lease Agreements for real property, affecting any Leased Real Property or to which the Company is bound. Each Lease Agreement constitutes the entire agreement of the landlord and the tenant thereunder, and no material term or condition thereof has been modified, amended or waived except as shown in the copies of the Lease Agreements that have previously been delivered by the Company to Parent. The Company has not transferred or assigned any interest in any such Lease Agreement, nor has the Company subleased or otherwise granted rights of use or occupancy of any of the premises described therein to any other Person. All Lease Agreements are valid and enforceable (subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies). The Company is not in default of any Lease Agreement, no rentals are past due, and, to the Company's knowledge, no circumstance exists, which, with notice, the passage of time or both, could constitute a default under any Lease Agreement. The Company has not received any notice of a default, alleged failure to perform, or any offset or counterclaim with respect to any Lease Agreement, which has not been fully remedied and withdrawn. The consummation of the transactions contemplated hereby will not affect the enforceability against any Person of any Lease Agreement or the rights of the Company or the Surviving Corporation to the continued use and possession of the Leased Real Property.

(c) Each Leased Real Property and, to the knowledge of the Company, all of its operating systems are suitable for the conduct of the business as presently conducted. No material law, ordinance, regulation or restriction is, or as of the Closing Date will be, violated by the continued occupancy, maintenance, operation or use of any Leased Real Property in its present manner. No Lease Agreement will require the Company to incur costs or expenses in excess of $25,000 for restoration of the premises subject to such Lease Agreement upon termination of such Lease Agreement.

(d) The Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of the personal properties and assets, used, held for use in and/or necessary for the conduct of the business of the Company as currently conducted, free and clear of any Liens, except (i) as reflected in the Current Balance Sheet, (ii) Liens for Taxes not yet due and payable, (iii) such imperfections of title and encumbrances, if any, that do not detract from the value or interfere with the present use of the property subject thereto or affected thereby, and (iv) Permitted Liens. **Schedule 3.13(d)** of the Company Disclosure Schedule sets forth a list of all Liens other than those described in clauses (ii) – (iv) of the prior sentence.

(e) **Section 3.13(e)(i)** of the Company Disclosure Schedule lists all material items of equipment (collectively the "**Equipment**") owned or leased by the Company, and such Equipment is (i) adequate for the conduct of the business of the Company as currently conducted, and (ii) in good operating condition, regularly and properly maintained, subject to normal wear and tear. **Section 3.13(e)(ii)** of the Company Disclosure Schedule lists all servers and computer equipment having an initial purchase price or leasehold value in excess of $10,000 per item owned or leased by the Company. Since November 30, 2008, the Company has not sold any equipment.

(f) Other than with respect to the ownership interests and other rights of the particular customers and other Persons identified therein (i) the Company has sole and exclusive ownership, free and clear of any Liens (other than Permitted Liens), of all customer lists, customer contact information, customer correspondence and customer licensing and purchasing histories relating to its current and former customers (the "**Customer Information**") and (ii) to the knowledge of the Company, no Person other than the Company possesses any claims or rights with respect to use of the Customer Information.

3.14 Intellectual Property.

(a) **Section 3.14(a)** of the Company Disclosure Schedule contains a complete and accurate list (by name and version number) of (A) all products, software or service offerings that have been sold, distributed, made commercially available, provided or otherwise disposed of by or for the Company since the Company's inception and (B) all products, software or service offerings which the Company, as of the date hereof, plans to sell, distribute, make commercially available, provide or otherwise dispose of in the next twelve (12) months, including any products or service offerings under development (collectively, "**Company Products**").

(b) **Section 3.14(b)** of the Company Disclosure Schedule lists all Registered Intellectual Property owned by, filed in the name of, or applied for, by the Company (the "**Company Registered Intellectual Property**") and lists any proceedings or actions before any court, tribunal (including the United States Patent and Trademark Office (the "**PTO**") or equivalent authority anywhere in the world) related to any of the Company Registered Intellectual Property or Company Intellectual Property as of the date hereof. To the knowledge of the Company, each item of Company Registered Intellectual Property is currently in compliance with all formal legal requirements (including payment of filing, examination and maintenance fees and proofs of use) and, to the extent issued, is valid and enforceable. To the knowledge of the Company, the Company has not taken or failed to take any action (including failure to disclose any information) that would limit the validity, scope or enforceability of any Patents that are Company Registered Intellectual Property. All necessary documents and certificates currently due for filing as of the date hereof in connection with such Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Registered Intellectual Property. To the

knowledge of the Company, there are no actions that must be taken by the Company within one hundred twenty (120) days following the date hereof, including the payment of any registration, maintenance or renewal fees or the filing of any responses to PTO office actions, documents, applications or certificates for the purposes of obtaining, maintaining, perfecting or preserving or renewing any Registered Intellectual Property. The Company has not claimed "small entity status" in the application with the PTO for any Patents.

(c) Except for pending patent or trademark applications, no Company Intellectual Property or Company Product is subject to any proceeding or outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, transfer, provision, sale or licensing thereof by the Company or may affect the validity, use or enforceability of such Company Intellectual Property or Company Products.

(d) In each case in which the Company has acquired or purported to acquire ownership of any Technology or Intellectual Property Right from any Person, the Company has obtained a valid and enforceable assignment sufficient to irrevocably transfer all (or partial, as applicable under the circumstances) rights in such Technology and the associated Intellectual Property Rights (including, if applicable, the right to seek past and future damages with respect thereto) to the Company and all such Contracts are listed in **Section 3.14(k)(i)** of the Company Disclosure Schedule. To the maximum extent provided for by, and in accordance with, applicable laws and regulations, the Company has recorded each such assignment of a Registered Intellectual Property Right assigned to the Company with the relevant Governmental Authority.

(e) To the knowledge of the Company, all Company Intellectual Property Rights, other than pending applications for Registered Intellectual Property, are valid and enforceable. All Company Intellectual Property as of the date hereof is, and, as of immediately following the Effective Time will be, fully transferable, alienable or licensable by Surviving Corporation and/or Parent without restriction and without payment of any kind to any third party. Each item of Company Intellectual Property is free and clear of any Liens except for non exclusive licenses to use Company Products granted to end user customers in the ordinary course of business and consistent with past practices and Permitted Liens. The Company is the exclusive owner or exclusive licensee of all Company Intellectual Property Rights. No Intellectual Property Rights are owned jointly by the Company and any third party. Without limiting the generality of the foregoing, (i) to the knowledge of the Company, the Company is the exclusive owner of all trademarks used in connection with sale or distribution of the Company Products and any trademark registrations that are included within Company Registered Intellectual Property, (ii) the Company owns exclusively, and has good title to, all copyrighted works that are included or incorporated into or used to provide Company Products or which the Company otherwise purports to own, and (iii) the operation or conduct of the business of the Company as it is presently conducted or as proposed to be conducted, including the development, sale, distribution or provision of any Company Products by the Company does not infringe any third-party patents.

(f) The Company has not transferred ownership of, or granted any exclusive license of or right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Technology or Intellectual Property Right that is or was Company Intellectual Property, to any other Person. The Company has made determinations using its commercially reasonable business judgment regarding how Intellectual Property Rights associated with Company Technology should be protected.

(g) Subject to **Section 3.14(k)** and **Section 3.14(r)**, all Technology that is used in or constitutes a part of any Company Product was created or developed by employees of the Company acting within the scope of their employment or by consultants or contractors acting under a Company consulting or contractor agreement and all Intellectual Property Rights therein are owned by the Company. No Person who has licensed any Technology or Intellectual Property Rights to the Company has ownership rights or license rights to improvements or modifications made by the Company in or to such Technology or Intellectual Property Rights.

(h) **Section 3.14(h)** of the Company Disclosure Schedule identifies, for each Company Product, all Technology and Intellectual Property Rights, other than Company Intellectual Property, that are (i) embodied in, incorporated into, combined with or distributed in conjunction with such Company Product, or (ii) otherwise used by the Company in connection with the design, development, manufacture, sale, distribution and provision of such Company Product, and for each such item of Technology or Intellectual Property Rights, the Inbound License Agreement pursuant to which the Company receives rights to such Technology or Intellectual Property Rights.

(i) The Company Intellectual Property, together with all Technology and Intellectual Property Rights licensed to the Company under the Inbound License Agreements set forth in **Section 3.14(i)** of the Company Disclosure Schedule, collectively constitutes all the Technology and Intellectual Property Rights used in and/or necessary to the conduct of the business of the Company as it currently is conducted, including the design, development, manufacture, use, import, sale, distribution and provision of Company Products.

(j) To the knowledge of the Company, (i) the operation of the business of the Company as it is currently conducted, including but not limited to the design, development, use, import, branding, advertising, promotion, marketing, manufacture, sale, distribution and provision of Company Products, does not (and will not when conducted by Parent and/or Surviving Corporation in substantially the same manner following the Closing) infringe or misappropriate any Intellectual Property Right of any Person, violate any right of any Person (including any right to privacy or publicity), or constitute unfair competition or trade practices under the laws of any jurisdiction, and (ii) the Company has not received any written notice from any Person claiming that such operation or any act, product, technology or service (including products, technology or services currently under development) of the Company infringes or misappropriates any Intellectual Property Right of any Person, violates any right of any Person (including any right to privacy or publicity) or constitutes unfair competition or trade practices under the laws of any jurisdiction (nor does the Company have knowledge of any reasonable basis therefor).

(k) Other than Contracts pursuant to which the Company has received a license to commercially available Software, for less than $10,000 and which Software is not incorporated in a Company Product, **Section 3.14(k)(i)** of the Company Disclosure Schedule lists all Contracts to which the Company is a party that grant the Company license, ownership rights, options to, or other rights in or to any Technology or Intellectual Property Rights owned by a third Person or under which the Company receives services related to Software or other Technology (collectively, "**Inbound License Agreements**"). Other than non-exclusive end-user licenses to customers for Company Products or services pursuant to a Standard Form Agreement, **Section 3.14(k)(ii)** of the Company Disclosure Schedule lists all Contracts to which the Company is a party under which the Company grants any third Person license or other rights in or to any Technology or Intellectual Property Rights or provides any service to any third Person (collectively, "**Outbound License Agreements**"; and, together with the Inbound License Agreements, the "**IP Licenses**"). The Company is not in breach of, nor has the Company failed to perform under, any of such IP Licenses

and, to the knowledge of the Company, no other party to any of such IP Licenses is in breach thereof or has failed to perform thereunder. Subject to any consents to assignment that may be necessary in connection with the Merger, all IP Licenses will continue in force to the benefit of Parent after the Closing without the need for approval by any Person. Without limiting the foregoing, to the extent that any Intellectual Property Rights or Technology licensed to the Company by a third Person is used in, or necessary to, the conduct of the business of the Company, following the Closing, the Surviving Corporation and Parent, as the case may be, subject to any consents to assignment that may be necessary in connection with the Merger, shall continue to have, without the payment of any additional consideration all such rights and licenses to such Technology and Intellectual Property rights as the Company had. Except in connection with any consents to assignment that may be necessary in connection with the Merger, the consummation of the transactions contemplated by this Agreement will not violate nor result in the breach, modification, termination or suspension of (or give the other party thereto the right to cause) any IP License and, following the Closing Date, both the Parent and the Surviving Corporation will be permitted to exercise all of the Company's rights and receive all of the Company's benefits (including payments) under such Contracts to the same extent the Company would have been able to had the transactions contemplated by this Agreement not occurred and without the payment of any additional amounts or consideration other than the ongoing fees, royalties or other payments that the Company would otherwise have been required to pay to had the transactions contemplated by this Agreement not occurred.

(l) **Section 3.14(l)** of the Company Disclosure Schedule lists all Contracts, other than non-exclusive end-user licenses to customers for Company Products pursuant to a Standard Form Agreement, the Company's standard distributor agreements and the Company's standard reseller agreements, between the Company and any other Person wherein or whereby, the Company has agreed to, or assumed, any obligation or duty to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any obligation or liability or provide a right of rescission with respect to the infringement or misappropriation by the Company or such other Person of the Intellectual Property Rights of any Person other than the Company.

(m) There are no Contracts between the Company and any other Person with respect to any Technology or Intellectual Property Rights, including under any IP License, under which the Company has received written notice of any dispute regarding the scope of such Contract, or performance under such Contract, including with respect to any payments to be made or received by the Company thereunder.

(n) To the knowledge of the Company, no Person is infringing or misappropriating any material Company Intellectual Property Rights.

(o) The Company has taken all steps that are reasonably required to protect the confidential information and trade secrets of the Company and the Company's rights therein and to protect the confidential information and trade secrets provided by any other Person to the Company. All Employees (including former employees who have been involved in the creation or development of any Technology or Company Intellectual Property Rights) of the Company have signed the Company's standard form of Invention Assignment and Confidentiality Agreement, which is attached to **Section 3.14(o)** of the Company Disclosure Schedule, and such agreement includes enforceable terms pursuant to which all Technology and Intellectual Property Rights developed by such employees within the scope of their employment or other duties to the Company are assigned to the Company.

(p) Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Parent or Surviving Corporation, by operation of law or otherwise, of any Contracts to which the Company is a party, will result, because of any Contract to which Company is a party, in (i) either Parent's or the Surviving Corporation's granting to any third Person any right to or with respect to any Technology or Intellectual Property Right owned by, or licensed to, either of them, (ii) either the Parent or the Surviving Corporation being bound by, or subject to, any non compete or other restriction on the operation or scope of their respective businesses, or (iii) either the Parent or the Surviving Corporation being obligated to pay any royalties or other amounts to any third Person in excess of those payable by the Company, prior to the Closing with respect to the Company's business.

(q) The Company is not a member of, and has not actively participated in, any organization, body or group which is engaged in or which has, or is in the process of, setting, establishing or promulgating any industry or product standards or the terms under which Intellectual Property Rights will be licensed. The Company has not committed to, and is not obligated or bound to license any current or future Company Intellectual Property to any third person other than non-exclusive end-user licenses to customers for Company Products pursuant to a Standard Form Agreement. To the knowledge of the Company, none of the Company Products practice, or require a license with respect to any industry standards including any standards related to the encoding, decoding or processing of audio, video or other data streams.

(r) **Section 3.14(r)(i)** of the Company Disclosure Schedule lists all Software or other Technology that, to the knowledge of the Company, is distributed or licensed as "free software", "open source software" or under a similar licensing or distribution model (including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL) the Sun Industry Standards License (SISL) and the Apache License) (collectively, "**Open Source Materials**") used by the Company in any way, and describes the manner in which such Open Source Materials were used (such description shall include, without limitation, whether (and, if so, how) the Open Source Materials were modified and/or distributed by the Company or any Subsidiary, and what, if any, Company Product(s) such Open Source Materials were used in connection with). Except as set forth in **Section 3.14(r)(ii)** of the Company Disclosure Schedule, the Company has not (i) incorporated Open Source Materials into, or combined Open Source Materials with, any Company Product or Company Intellectual Property or used Open Source Materials to develop, compile, manufacture, distribute or otherwise provide any Company Product; (ii) distributed Open Source Materials in conjunction with or for use with any Company Product or Company Intellectual Property; or (iii) used Open Source Materials that create, or purport to create, obligations for the Company with respect to Intellectual Property Rights or grant, purport to grant or create an obligation to grant, to any third Person, any rights or immunities under Intellectual Property Rights. Except as set forth in **Section 3.14(r)(iii)** of the Company Disclosure Schedule, the Company has not used any Open Source Materials that require, as a condition of use, modification and/or distribution of such Open Source Materials or that other Software incorporated into, derived from or distributed with such Open Source Materials be (x) disclosed or distributed in source code form, (y) be licensed for the purpose of making derivative works, or (z) be redistributable at no charge or with any restriction on the consideration charged therefor.

(s) All products sold, licensed, leased or delivered by the Company to customers and all services provided by or through the Company to customers on or prior to the Closing conform in all material respects to applicable contractual commitments, express and implied warranties, service level commitments, product specifications and product documentation and to any

representations made by the Company to its customers. The Company has no liability (and, to the knowledge of the Company, there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against the Company giving rise to any liability relating to the foregoing contracts) for replacement, repair or redelivery thereof or other damages in connection therewith in excess of any reserves therefor reflected on the Company Financial Statements. Copies of all current and prior standard form agreements for the sale of Company Products (collectively, "**Standard Form Agreements**"), including any standard terms of use for Company Products offered through the Company's Internet website, have been delivered or made available to Parent, and the Company is not in breach of, nor has the Company failed to perform under, such agreements, and, to the knowledge of the Company, no other party to any such agreement is in breach thereof or has failed to perform thereunder.

(t) No (i) government funding; (ii) facilities of a university, college, other educational institution or research center; or (iii) funding from any Person (other than funds received in consideration for Company Capital Stock) was used in the development of the Technology and Intellectual Property Rights owned by the Company. To the knowledge of the Company, no current or former employee, consultant or independent contractor of the Company has performed services directly related to the development of Technology included in the Registered Intellectual Property for any government, university, college or other educational institution or research center during a period of time during which such employee, consultant or independent contractor was also developing related Technology for the Company.

(u) Neither the Company nor any other Person acting on its behalf has disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any Company Source Code or the mask works for any Company Product (other than the disclosure of mask works to the manufacturers of Company Products). No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, result in the disclosure or delivery by the Company or any Person acting on their behalf to any Person of any Company Source Code or the mask works for any Company Product (other than the disclosure of mask works to the manufacturers of Company Products). **Section 3.14(u)** of the Company Disclosure Schedule identifies each contract pursuant to which the Company has deposited, or is or may be required to deposit, with an escrow holder or any other Person acting as an escrow holder, any Company Source Code or the mask works for any Company Product (other than the disclosure of mask works the manufacturers of Company Products), and describes whether the execution of this Agreement or the consummation of the Merger or any of the other transactions contemplated by this Agreement, in and of itself, would reasonably be expected to result in the release from escrow of any Company Source Code.

(v) The Company has not collected any personally identifiable information from any third parties. The Company has complied with all applicable laws (including all laws of the U.S. and the E.U.) and its internal privacy policies relating to (i) the privacy of users of their products and services and all Internet websites owned, maintained or operated by the Company and (ii) the collection, storage and transfer of any personally identifiable information collected by the Company or by third parties having authorized access to the records of the Company. The execution, delivery and performance of this Agreement complies with all applicable laws (including all laws of the U.S. and E.U.) relating to privacy and with the Company's privacy policies. Copies of all current and, to the extent the Company has possession, prior privacy policies of the Company, including the privacy policies included in the Company's Internet website, have been delivered or made available to Parent. Each such privacy policy and all materials distributed or marketed by the Company have at

all times made all disclosures to users or customers required by applicable laws (including all laws of the U.S. and E.U.), and none of such disclosures made or contained in any such privacy policy or in any such materials have been inaccurate, misleading or deceptive or in violation of any applicable laws (including all laws of the U.S. and E.U.).

3.15 Agreements, Contracts and Commitments.

(a) Except as set forth in the corresponding section of the Company Disclosure Schedule, the Company is not a party to, nor is it bound by:

(i) any Employee Agreement, other than Company Options and at-will offer letters that do not provide for severance benefits or other benefits not made generally available to Employees;

(ii) any agreement or plan (including any stock plan, stock appreciation rights plan or stock purchase plan or other equity compensation arrangements (whether payable in securities, cash or otherwise)), any of the benefits of which could be increased, or the vesting of benefits of which could be accelerated (other than the acceleration of Company Options or Unvested Company Common Stock) by the occurrence of any of the transactions contemplated by this Agreement, either alone or upon the occurrence of additional or subsequent events (except as required by this Agreement) or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement, either alone or upon the occurrence of additional or subsequent events;

(iii) any other agreement providing for the sale or other issuance of any Company Capital Stock;

(iv) any lease of personal property providing for payments in excess of $15,000 individually or $50,000 in the aggregate;

(v) any Contract relating to capital expenditures and involving future payments in excess of $15,000 individually or $50,000 in the aggregate;

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

(vii) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other agreements or instruments relating to Indebtedness, the borrowing of money, extension of credit or security interest;

(viii) any pending purchase order or contract for the purchase of materials involving in excess of $25,000 individually or $50,000 in the aggregate;

(ix) any powers of attorney relating to the Company that are currently outstanding;

(x) any standstill or similar Contract;

(xi) any Contracts providing for currency exchange, commodities or other similar hedging transactions;

(xii) any Contract pursuant to which the Company has granted any exclusive rights, rights of first refusal or other similar rights, price protection, "most favored nation" or similar provisions, or otherwise limiting the rights of the Company to sell distribute or manufacture any products or services;

(xiii) any Tax sharing or other similar Contract;

(xiv) any agreements with any United States federal Governmental Authority that contain ongoing obligations;

(xv) any partnership, joint venture, strategic alliance or similar Contract;

(xvi) any Contract to which an Interested Party is a party;

(xvii) any Contract involving the settlement of litigation or other similar claims;

(xviii) any dealer, distribution, joint marketing, development agreement, sales representative, original equipment manufacturer, value added, remarketer, reseller, or independent software vendor, or other agreement for marketing, sales, provision or distribution of the Company's products, technology or services in excess of $15,000 individually or $50,000 in the aggregate; or

(xix) any other agreement, contract or commitment, including any service, operating or management agreement or arrangement with respect to any of the Company's properties (whether leased or owned), that involves payments from the Company in excess of $25,000 individually or $50,000 in the aggregate or more and is not cancelable without penalty within thirty (30) days.

(b) Following the Effective Time and in the absence of any modification or amendment to any Material Contract made by Parent or the Surviving Corporation following the Effective Time, neither Parent nor Merger Sub will have any additional liability, expense or future payment obligations related to the Material Contracts other than the obligations expressly stated in such Material Contracts.

(c) The Company is in compliance in all material respects with, and has not breached, violated or defaulted under in any material respect, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any Material Contract to which the Company is a party or by which any of its Assets and Properties are subject, nor, to the knowledge of the Company, has there occurred any event or condition that could constitute such a breach, violation or default with the lapse of time, giving of notice or both. Each Material Contract to which the Company is a party or by which any of its Assets and Properties are subject is in full force and effect, and the Company is not in default thereunder, nor, to the Company's knowledge, is any party obligated to the Company pursuant to any such Material Contract in default thereunder. To the Company's knowledge, none of the counterparties to any Material Contract has violated any provision of, or committed or failed to perform any act that would constitute a default under the provisions of any such Material Contract.

(d) The Company has delivered or made available to Parent true, correct and complete copies of all Material Contracts, including all amendments, supplements, exhibits and ancillary agreements thereto.

3.16 Interested Party Transactions.

(a) No officer or director of the Company or, to the Company's knowledge, Company Stockholder holding more than five percent (5%) of the Company Capital Stock (nor any parent, sibling, descendent or spouse, of any of such persons, or any trust, partnership, corporation or other entity in which any of such persons has or has had an interest) (an "**Interested Party**"), has or has had, directly or indirectly, (i) an interest in any entity which furnished or sold, or furnishes or sells, services, products or technology that the Company furnishes or sells, or proposes to furnish or sell, (ii) any interest in any entity that purchases from or sells or furnishes to the Company, any goods or services, or (iii) a beneficial interest in any Contract to which the Company is a party; *provided*, *however*, that ownership of no more than five percent (5%) of the outstanding voting stock of a publicly traded corporation or mutual fund shall not be deemed to be an "interest in any entity" for purposes of this **Section 3.16**.

(b) All transactions pursuant to which any Interested Party has purchased any services, products, or technology from, or sold or furnished any services, products or technology to, the Company, that were either entered into after January 1, 2004 or pursuant to which there are continuing obligations to be performed or benefits to be received by the Company, have been on an arms' length basis on terms no less favorable to the Company than would be available from an unaffiliated party.

3.17 Company Authorizations. Each material consent, license, permit, grant or other authorization (a) pursuant to which the Company currently operates or holds any interest in any of its properties, or (b) that is required for the operation of the Company's business as currently conducted or the holding of any such interest (collectively, the "**Company Authorizations**") has been issued or granted to the Company by the applicable governmental authorities. The Company Authorizations are in full force and effect and constitute all Company Authorizations required by such governmental authorities to permit the Company to lawfully operate or conduct its business or hold any interest in its properties or assets.

3.18 Litigation.

(a) Except as set forth in **Section 3.18(a)** of the Company Disclosure Schedule, there is no action, suit, claim or proceeding of any nature pending, or to the Company's knowledge, threatened, against the Company, its Assets and Properties or any of its directors, officers, employees or agents (in their capacities as such) nor, to the Company's knowledge, is there any reasonable basis therefor. There is no investigation or other proceeding pending or, to the Company's knowledge, threatened, against the Company, any of its Assets or Properties or any of its directors, officers, employees or agents (in their capacities as such) by or before any Governmental Authority, nor, to the Company's knowledge, is there any reasonable basis therefor.

(b) No claim for indemnification has been made by any Indemnified Parties or any director or officer of the Company and, to the Company's knowledge, no reasonable basis exists for any such claim for indemnification.

(c) The Company has delivered or made available to Parent all responses of counsel for the Company to any requests made to the Company to provide to its independent auditors for information regarding the actions, suits, claims or proceedings set forth in **Sections 3.18(a) - (b)**, inclusive, of the Company Disclosure Schedule (together with any updates provided by such counsel).

3.19 Accounts Receivable. The Company has delivered to Parent a list of all accounts receivable of the Company as of June 30, 2009, together with a range of days elapsed since invoice. All of the Company's accounts receivable arose in the ordinary course of business, are carried at values determined in accordance with GAAP consistently applied, and are reasonably believed by the Company to be collectible except to the extent of reserves therefor set forth in the Current Balance Sheet or, for receivables arising subsequent to June 30, 2009, as reflected on the books and records of the Company (which are prepared in accordance with GAAP and the reserve practices and methodology used in preparation of the Current Balance Sheet). No Person has any Lien (other than Permitted Liens) on any of the Company's accounts receivable and no request or agreement for deduction or discount has been made with respect to any of the Company's accounts receivable.

3.20 Minute Books. The minute books and stock record books and other similar records of the Company have been provided to Parent or its counsel prior to the execution of this Agreement, and are complete and correct in all material respects. Such minute books contain a true and complete record of all actions taken at all meetings and by all written consents in lieu of meetings of the stockholders, directors, committees of the board of directors of the Company from the date of the Company's incorporation through the date hereof. The Company is not in violation of any provision of its Certificate of Incorporation or bylaws.

3.21 Environmental Matters.

(a) Except as would not be reasonably expected to result in material liability to the Company, no amount of any substance that has been designated by any Governmental Authority or by applicable federal, state or local law to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment, including PCBs, friable asbestos and petroleum and all substances listed as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or defined as a hazardous waste pursuant to the United States Resource Conservation and Recovery Act of 1976, as amended, and the regulations promulgated pursuant to said laws (a "**Hazardous Material**") is present in, on or under any property, including the land and the improvements, ground water and surface water thereof, that the Company has at any time owned, operated, occupied or leased (excluding office and janitorial supplies).

(b) The Company has not transported, stored, used, manufactured, disposed of, released or exposed its Employees (including former employees) or others to Hazardous Materials in violation of any applicable law in a manner that would reasonably be expected to result in material liability to the Company, nor has the Company disposed of, transported, sold, or manufactured any product containing a Hazardous Material (any or all of the foregoing being collectively referred to herein as "**Hazardous Materials Activities**") in violation, in any material respect, of any rule, regulation, treaty or statute promulgated by any Governmental Authority to prohibit, regulate or control Hazardous Materials or any Hazardous Material Activity, except as would not reasonably be expected to result in a material liability to the Company.

(c) The Company possesses all environmental authorizations needed for the operation of its business as conducted prior to the Closing, and the Company is in compliance with the terms of such authorizations except as would not reasonably be expected to result in a material liability to the Company. The Company has not entered into any agreement that may require it to guarantee, reimburse, pledge, defend, hold harmless or indemnify any other party with respect to liabilities arising out of or relating to Hazardous Materials or the Hazardous Materials Activities of the Company or any third Person.

3.22 Brokers' and Finders' Fees. Except as set forth in **Section 3.22** of the Company Disclosure Schedule, the Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby. **Section 3.22** of the Company Disclosure Schedule sets forth the principal terms and conditions of all agreements, written or oral, with respect to such fees, if any, and true and complete copies of each such agreement have been made available or delivered to Parent.

3.23 Employee Benefit Plans and Compensation.

(a) **Section 3.23(a)** of the Company Disclosure Schedule contains an accurate and complete list of each Company Employee Plan and each material Employee Agreement. Neither the Company nor any ERISA Affiliate has any plan or commitment to establish, adopt or enter into any new Company Employee Plan or Employee Agreement, to modify any Company Employee Plan or Employee Agreement (except to the extent required by law or to conform any such Company Employee Plan or Employee Agreement to the requirements of any applicable law).

(b) The Company has delivered or made available to Parent correct and complete copies of: (i) all material documents embodying each Company Employee Plan and each Employee Agreement including (without limitation) all amendments thereto and all related trust documents, administrative service agreements, group annuity contracts, group insurance contracts, and policies pertaining to fiduciary liability insurance covering the fiduciaries for each Company Employee Plan; (ii) the most recent annual actuarial valuations, if any, prepared for each Company Employee Plan; (iii) the three (3) most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan; (iv) if the Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets; (v) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Plan; (vi) all IRS determination, opinion, notification and advisory letters; (vii) all material correspondence to or from any governmental agency relating to any Company Employee Plan in the last three (3) years (other than routine correspondence that is not expected to result in liability to the Company); (viii) all model COBRA forms and related notices (or such forms and notices as required under comparable law); and (ix) the three (3) most recent plan years discrimination tests for each Company Employee Plan (as applicable).

(c) The Company and its ERISA Affiliates have performed in all material respects all obligations required to be performed by them under each Company Employee Plan, and each Company Employee Plan has been established and maintained in all material respects in accordance with its terms and in material compliance with all applicable laws, statutes, orders, rules and regulations, including but not limited to ERISA or the Code. Any Company Employee Plan intended to be qualified under Section 401(a) of the Code and each trust intended to qualify under

Section 501(a) of the Code (i) has either applied for, prior to the expiration of the requisite period under applicable Treasury Regulations or IRS pronouncements, or obtained a favorable determination, notification, advisory and/or opinion letter, as applicable, as to its qualified status from the IRS or still has a remaining period of time under applicable Treasury Regulations or IRS pronouncements in which to apply for such letter and to make any amendments necessary to obtain a favorable determination, and (ii) incorporates or has been amended to incorporate all provisions required to comply with the Tax Reform Act of 1986 and subsequent legislation. For each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code there has been no event, condition or circumstance that has adversely affected or is likely to adversely affect such qualified status. No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Employee Plan that would reasonably be expected to result in any material liability. There are no audits, actions, suits, inquiries, proceedings or claims pending, threatened or, to the knowledge of the Company, reasonably anticipated (other than routine claims for benefits) with respect to or against any Company Employee Plan or against the assets of any Company Employee Plan. Each Company Employee Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability to Parent, Company or any of its ERISA Affiliates (other than ordinary administration expenses). Neither the Company nor any ERISA Affiliate is subject to any penalty or tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code. The Company and each ERISA Affiliate have timely made or otherwise provided for in all material respects all contributions and other payments required by and due under the terms of each Company Employee Plan.

(d) Neither the Company nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, or contributed to, any (i) Pension Plan which is subject to Title IV of ERISA or Section 412 of the Code, (ii) Multiemployer Plan, (iii) "multiple employer plan" as defined in ERISA or the Code or (iv) a "funded welfare plan" within the meaning of Section 19 of the Code. No Company Employee Plan provides health benefits that are not fully insured through an insurance contract.

(e) Except as set forth in **Section 3.23(e)** of the Company Disclosure Schedule, no Company Employee Plan or Employee Agreement provides, or reflects or represents any liability to provide post termination or retiree welfare benefits to any Person for any reason, except as may be required by COBRA or other applicable statute, and neither the Company nor any ERISA Affiliate has ever represented, promised or contracted (whether in oral or written form) to any Employee (either individually or to Employees as a group and including former employees) or any other Person that such Employee(s) or other Person would be provided with post termination or retiree welfare benefits, except to the extent required by statute.

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

(g) Neither the Company nor any ERISA Affiliate is currently obligated to provide an Employee with any compensation or benefits pursuant to an agreement (e.g., an acquisition agreement) with a former employer of such Employee.

(h) Except as set forth in **Section 3.23(h)** of the Company Disclosure Schedule, the execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Employee Plan, Employee Agreement, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee (including former employees) other than as required by the terms of this Agreement. Except as set forth in **Section 3.23(h)** of the Company Disclosure Schedule, no payment or benefit which has been, will be or may be made by the Company or its ERISA Affiliates with respect to any Employee (including former employees) will be, or could reasonably be expected to be, characterized as a "parachute payment," within the meaning of Section 280G(b)(2) of the Code ("**Section 280G Payments**"). Except as set forth in **Section 3.23(h)** of the Company Disclosure Schedule, there is no contract, agreement, plan or arrangement to which the Company or any ERISA Affiliates is a party or by which it is bound to compensate any Employee (including former employees) for excise taxes paid pursuant to Section 4999 of the Code. **Section 3.23(h)** of the Company Disclosure Schedule contains a list of the individuals the Company reasonably believes to be "Disqualified Individuals" as defined under Section 280G of the Code and the regulations thereunder.

(i) The Company: (i) is in compliance in all material respects with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, worker classification, employee health and safety, immigration status, and wages and hours, in each case, with respect to Employees; (ii) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees (including former employees); (iii) is not liable for any arrears of wages, bonuses, severance pay, or any taxes or any penalty for failure to comply with any of the foregoing; and (iv) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (including former employees) (other than routine payments to be made in the normal course of business and consistent with past practice). To the Company's knowledge, there are no pending or threatened claims or actions against the Company under any workers' compensation policy or long term disability policy. Neither the Company nor any ERISA Affiliate has direct or indirect liability with respect to any misclassification of any Person as an independent contractor rather than as an employee, or with respect to any employee leased from another employer, except as would not result in material harm to the Company.

(j) No work stoppage or labor strike against the Company or any ERISA Affiliate is pending, threatened or reasonably anticipated. To the knowledge of the Company, there are no activities or proceedings of any labor union to organize any Employees. There are no actions, suits, claims, labor disputes or grievances pending, threatened or, to the knowledge of the Company, reasonably anticipated relating to any labor, safety or discrimination matters involving any Employee, including, without limitation, charges of unfair labor practices or discrimination complaints, which, if adversely determined, would, individually or in the aggregate, result in any material liability to the Company. The Company has not engaged in any unfair labor practices within the meaning of the National Labor Relations Act. The Company is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated with respect to Employees. The Company has not incurred any material liability or material obligation under the Worker Adjustment and Retraining Notification Act or any similar state or local law that remains unsatisfied.

(k) Neither the Company nor any ERISA Affiliate currently, nor has it ever had the obligation to, maintain, establish, sponsor, participate in, or contribute to any International Employee Plan.

(l) Each "nonqualified deferred compensation plan" subject to Section 409A of the Code has been operated since January 1, 2005 in good faith compliance with Section 409A of the Code and the guidance and regulations thereunder ("**Section 409A**"). No nonqualified deferred compensation plan has been "materially modified" (within the meaning of IRS Notice 2005-1) at any time after October 3, 2004. No stock option or other right to acquire Company Common Stock or other equity of the Company (i) has an exercise price that has been or may be less than the fair market value of the underlying equity as of the date such option or right was granted, as determined by the Board of Directors of the Company in good faith, (ii) has any feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such option or rights, or (iii) has been granted after December 31, 2004, with respect to any class of stock of the Company that is not "service recipient stock" (within the meaning of applicable regulations under Section 409A).

3.24 Insurance.

(a) **Section 3.24(a)** of the Company Disclosure Schedule contains a true and complete list (including the names of the insurers, the expiration dates of the policies, the annual premiums and the coverage amounts) of all liability, property, workers' compensation, directors' and officers' liability and other insurance policies currently in effect that insure any of the business, operations, directors, officers or employees of the Company or affect or relate to the ownership, use or operation of any of the Assets and Properties of the Company and that (i) have been issued to the Company or (ii) to the Company's knowledge, have been issued to any other Person for the benefit of the Company (the "**Company Insurance Policies**"). The insurance coverage provided by the Company Insurance Policies will not terminate or lapse by reason of any of the transactions contemplated by this Agreement or any other of the transactions contemplated hereby. Each Company Insurance Policy issued to the Company is valid and binding and in full force and effect, all premiums due thereunder have been paid and the Company has not received any written notice of cancellation or termination in respect of any such policy or is in default thereunder, and the Company has no knowledge of any reason or state of facts that would reasonably be expected to lead to the cancellation of such policies or of any threatened termination of, or material premium increase with respect to, any of such policies. The Company Insurance Policies are in amounts and have coverages as customarily carried by persons conducting businesses similar to those of the Company.

(b) **Section 3.24(b)** of the Company Disclosure Schedule contains a list of all claims in excess of $25,000 made under any insurance policies covering the Company at any time during the two (2) years immediately preceding the date hereof. The Company has not received notice that any insurer under any Company Insurance Policy is denying, disputing or questioning liability with respect to an outstanding claim thereunder or defending under a reservation of rights clause.

3.25 Compliance with Laws.

(a) The Company and, to the Company's knowledge, none of its directors and officers, have violated in any material respect and are not currently in default or violation in any material respect under, any foreign, federal, state or local statute, law or regulation applicable to the

Company or any of its Assets and Properties, and the Company has not received any notices of any claims of any such violation or default.

(b) The operation of the business of the Company as presently conducted, including the Company's design, development, use, import, manufacture and sale of products, technologies or services does not in any material respect, and, when conducted in substantially same manner following the Closing, will not constitute unfair competition or an unfair trade practice under any foreign, federal, state or local statute, law or regulation (excluding only those foreign, federal, state or local statute, law or regulations that may come into existence or changes in foreign, federal, state or local statute, law or regulations taking effect following Closing) and the Company has not received any notice from any Person claiming that such operation or any act, product, technology or service (including products, technologies and services currently under development) of the Company constitutes unfair competition or trade practices under such foreign, federal, state or local statute, law or regulations.

3.26 Warranties; Indemnities. Except for the warranties, indemnities and service level commitments contained in those Contracts set forth in **Section 3.14(l)** of the Company Disclosure Schedule and warranties implied by law, the Company has not given any warranties, indemnities or service level commitments relating to products or technology sold or services rendered by the Company.

3.27 Complete Copies of Materials. The Company has delivered or made available true and complete copies of each document (or summaries of same) that either is referenced in the Company Disclosure Schedule or has been requested by Parent or its counsel.

3.28 Inventory. The Company's inventory is of good and merchantable quality in all material respects, and none of which is obsolete, damaged or defective, except for items which have been written off, or for which adequate reserves have been provided, in the Current Balance Sheet. The Company has reserved and will have available at the Effective Time a sufficient amount of finished goods inventory of the Company's Bobcat product to support post-Closing warranty claims (such inventory to consist of no less than 45 units).

3.29 Customers. **Section 3.29** of the Company Disclosure Schedule lists the customers who, in the year ended December 31, 2008 and the period ended June 30, 2009, were the ten (10) largest sources of revenues for the Company, based on amounts paid (each, a "**Significant Customer**"). The Company has no knowledge of any outstanding disputes concerning its products and/or services with any Significant Customer, and the Company does not have any knowledge of any intent on the part of a Significant Customer to (a) terminate any Contract between such Significant Customer and the Company or otherwise cease doing business with the Company, (b) refuse to pay, or otherwise seek a refund for, any amount due from such Significant Customer to the Company or its Subsidiaries, (c) return products of the Company, or (d) seek the exercise of any remedy against the Company.

3.30 Suppliers. **Section 3.30** of the Company Disclosure Schedule lists the suppliers who, in the year ended December 31, 2008 and the period ended June 30, 2009, were the ten (10) largest suppliers of goods and services to the Company, based on amounts paid (each, a "**Significant Supplier**"). The Company has no knowledge of any outstanding disputes concerning the products and/or services provided by any Significant Supplier, and the Company has no intent of (a) terminating any Contract with any Significant Supplier, (b) refusing to pay, or otherwise seeking a refund for, any amount due to any Significant Supplier, (c) returning any products to any

Significant Supplier, or (d) seeking to exercise any remedy against any Significant Supplier. The Company does not have any knowledge that any Significant Supplier intends to terminate any Contract between such Significant Supplier and the Company or otherwise cease doing business with the Company or seek to exercise any remedy against the Company.

3.31 Accounts Receivable. All Credited A/R have arisen in the ordinary course of business, represent legal, valid, binding and enforceable obligations to the Company and, to the Company's knowledge, are not subject to any contests, claims, counterclaims or setoffs.

3.32 Terminated Arrangements. Prior to the Effective Time, the Company has terminated all agreements with each of the companies listed on **Section 3.32** of the Company Disclosure Schedule and, as of the Effective Time, the Company has no obligations (prior or future) with respect to any of the companies listed on **Section 3.32** of the Company Disclosure Schedule. Prior to the Effective Time, the Company has terminated the HA development program with Nexenta and, as of the Effective Time, the Company has no obligations (prior or future) with respect to any HA development deliverables or services which Nexenta may have planned or agreed to provide to the Company.

3.33 Foreign Corrupt Practices Act. Neither the Company, nor to the Company's knowledge, any agent, employee or other Person associated with or acting on behalf of the Company has, directly or indirectly, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, made any unlawful payment to any foreign or domestic government official or employee or to any foreign or domestic political party or campaign from corporate funds, violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment.

3.34 Export Control Laws. The Company has at all times conducted its export transactions in accordance with (y) all applicable U.S. export and re-export controls, including the United States Export Administration Act and Regulations and Foreign Assets Control Regulations and (z) all other applicable import/export controls in other countries in which the Company conducts business. Without limiting the foregoing:

(a) The Company has obtained all export licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations and filings with any Governmental Authority required for (i) the export and re-export of products, services, software and technologies and (ii) releases of technologies and software to foreign national employees located in the United States and abroad ("**Export Approvals**").

(b) The Company is in compliance with the terms of all applicable Export Approvals.

3.35 Representations and Warranties Complete. To the Company's knowledge, none of the representations or warranties made by the Company in this Agreement (including the Company Disclosure Schedules and the Exhibits hereto), nor any statements made in any schedule or certificate furnished by the Company pursuant to this Agreement, contains or will contain at the Effective Time any untrue statement of a material fact or omits or will omit at the Effective Time to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not misleading.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub hereby represent and warrant to the Company, except as set forth in the written disclosure schedule prepared by the Company which is dated as of the date hereof (the "**Parent Disclosure Schedule**") and arranged in sections corresponding to the numbered and lettered sections contained in this **Article IV** and is being concurrently delivered to the Company in connection herewith; *provided*, *however*, that disclosure in any section of the Parent Disclosure Schedule shall be deemed to have been set forth in all other applicable sections of the Parent Disclosure Schedule where the applicability of such disclosure to such other sections is reasonably apparent notwithstanding the omission of any cross-reference to such other section in the Parent Disclosure Schedule; *provided*, *further*, that the mere listing of the name of a Contract, the parties thereto and the date thereof shall not make the applicability of such disclosure "reasonably apparent" for purposes of the immediately preceding proviso unless such listing contains other descriptive language making the applicability of such disclosure reasonably apparent), as of the date hereof, as follows:

4.1 Organization and Good Standing. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under Delaware Law. Each of Parent and Merger Sub has the requisite corporate power and authority to conduct its business as presently conducted and to own, use and lease its Assets and Properties.

4.2 Authority; Enforceability. Each of Parent and Merger Sub has all requisite power and authority to enter into the Merger Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub and no further action is required on the part of Parent or Merger Sub to authorize this Agreement and the transactions contemplated hereby. This Agreement and the agreements contemplated hereby and thereby to which Parent and Merger Sub are a party, have been or will be duly executed and delivered by the Parent and Merger Sub, as applicable, and, assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitutes the valid and binding obligations of the Parent and Merger Sub, enforceable against the Parent and Merger Sub in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and the effect of rules of law governing the availability of equitable remedies.

4.3 No Conflict. The execution and delivery by Parent and Merger Sub of this Agreement does not, and the consummation of the transactions contemplated hereby will not, give rise to a Conflict under (a) any provision of the certificate of incorporation and bylaws of Parent or Merger Sub, or (b) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Parent or Merger Sub or their Assets and Properties, except in the case of (b) where such Conflict would not, individually or in the aggregate, reasonably be expected to have an effect on the legality, validity or enforceability of this Agreement.

4.4 Consents. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required by or with respect to Parent or Merger Sub in connection with the execution and delivery of this Agreement or the consummation of

the transactions contemplated hereby, except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware.

4.5 Brokers' and Finders' Fees. Neither Parent nor Merger Sub has incurred, or will incur, directly or indirectly, any liability for brokerage or finders' fees or agent's commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

4.6 Sufficient Funds. Parent has sufficient cash on hand to pay the Aggregate Merger Consideration when required to be paid in accordance with this Agreement.

ARTICLE V

CONDUCT PRIOR TO THE EFFECTIVE TIME

5.1 Conduct of Business of the Company.

(a) During the period from the execution and delivery of this Agreement by each of the parties hereto and continuing until the earlier of the termination of this Agreement and the Effective Time, except as (x) specifically disclosed in **Schedule 5.1(a)**, (y) expressly contemplated by this Agreement or (z) Parent shall otherwise consent to in writing in advance, the Company shall (i) carry on its business in the usual, regular and ordinary course and in any event consistent with past practice, (ii) use all commercially reasonable efforts to pay its Liabilities relating to indebtedness for borrowed money and Taxes consistent with the Company's past practices (and in any event, when due, other than Taxes or other Liabilities contested in good faith through appropriate proceedings), (iii) use all commercially reasonable efforts to pay or perform other obligations when due (other than Taxes or other obligations contested in good faith through appropriate proceedings) consistent with the Company's past practices and (iv) use all commercially reasonable efforts to preserve intact its present business organization, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, independent contractors and other Persons having business dealings with it, in the case of (i) through (iv) above with the express purpose and intent of preserving unimpaired its goodwill and ongoing businesses at the Effective Time.

(b) Except as (a) expressly required by this Agreement, (b) specifically disclosed in **Schedule 5.1(a)** or (c) Parent shall otherwise consent to in writing in advance, during the period from the execution and delivery of this Agreement by each of the parties hereto and continuing until the earlier of the termination of this Agreement and the Effective Time, the Company shall not take (or agree in writing or otherwise to take) any action that would result in the occurrence of any of the changes described in **Section 3.10** or any other action that would prevent the Company from performing (or cause the Company not to perform) its obligations hereunder. Without limiting the generality of the foregoing, during the period from the execution and delivery of this Agreement by each of the parties hereto and continuing until the earlier of the termination of this Agreement or the Effective Time, (x) without the prior written consent of Parent, (y) as specifically disclosed in **Schedule 5.1(a)** or (z) as expressly contemplated by this Agreement, the Company shall not:

(i) make any expenditure or enter into any commitment or transaction exceeding $25,000 individually or $50,000 in the aggregate;

(ii) other than pursuant to standard form agreements (in substantially the form provided or made available to Parent) or as expressly required by Contracts in existence as of the date hereof (A) sell, license, dispose of or transfer to any Person any rights to any Company Intellectual Property or enter into any agreement with respect to any Company Intellectual Property with any Person or with respect to any Intellectual Property Rights of any Person, (B) buy or license any Intellectual Property Rights or enter into any agreement with respect to the Intellectual Property Rights of any Person, (C) enter into any agreement with respect to the development of any Intellectual Property Rights with a third party, (D) or change pricing or royalties charged by the Company to its customers or licensees, or the pricing or royalties set or charged by Persons who have licensed Intellectual Property Rights to the Company;

(iii) other than in the ordinary course of business, terminate or extend, or materially amend, waive, modify, or violate the terms of, any Material Contract (or agree to do so), or enter into any Contract that would have been required to have been disclosed on **Section 3.13** or **Section 3.15** of the Company Disclosure Schedule had such Contract been entered into prior to the date hereof;

(iv) engage in or enter into any transaction or commitment, or relinquish any material right, outside the ordinary course of the Company's business consistent with past practice;

(v) other than in the ordinary course of business enter into or amend, waive or modify the terms of any Contract pursuant to which any other party is granted marketing, distribution, development or similar rights of any type or scope with respect to any products or technology of the Company;

(vi) commence or settle any litigation, other than to enforce its rights under this Agreement;

(vii) declare, set aside, or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Company Capital Stock, or split, combine or reclassify any Company Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of Company Capital Stock (or options, warrants or other rights exercisable therefor) except in accordance with the agreements evidencing Company Options;

(viii) issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, or purchase or propose the purchase of, any shares of Company Capital Stock or any securities convertible into, or subscriptions, rights, warrants or options to acquire, any equity-based awards settled in securities, cash or other property, or other agreements or commitments of any character obligating it to issue or purchase any such shares or other convertible securities convertible into Company Capital Stock, other than issuances of Company Common Stock pursuant to exercises of Company Options or Company Common Stock Warrants in accordance with their terms or the conversion of Company Preferred Stock;

(ix) cause or permit any amendments to its Certificate of Incorporation, bylaws or other organizational documents of the Company, or create any Subsidiary of the Company;

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

(xi) sell, lease, license or otherwise dispose of any of its Assets and Properties with a value in excess of $25,000 in the aggregate, including the sale of any accounts receivable of the Company, except Assets and Properties that are not Company Intellectual Property and only in the ordinary course of business and consistent with past practices; or grant or otherwise create or consent to the creation of any easement, covenant, restriction, assessment or charge affecting any owned property or leased property or any part thereof; convey, assign, sublease, license or otherwise transfer all or any portion of any owned property or leased property or any interest or rights therein;

(xii) incur any Indebtedness (other than trade payables in the ordinary course of business consistent with past practices) or guarantee any Indebtedness or issue or sell any debt securities or guarantee any debt securities or other obligations of others;

(xiii) grant any loans to others or purchase debt securities of others or amend the terms of any outstanding loan agreement, except for advances to Employees for business expenses in the ordinary course of business consistent with past practice;

(xiv) grant, pay or agree or commit to pay any severance, change of control or termination pay to any employee, consultant, director or officer, other than pursuant to the terms and conditions of the Bonus Plan, any Employment Agreements set forth in the Company Disclosure Schedule or the Company's severance policy in existence as of the date of this Agreement, a copy of which has been provided to Parent, or adopt any new severance plan or amend or modify or alter in any respect any such severance plan, agreement or arrangement existing on the date hereof, or grant any equity-based compensation (whether payable in securities, cash or other property);

(xv) adopt or amend any Company Employee Plan except as required by applicable law, enter into or amend any Employee Agreement, pay or agree to pay any special bonus or special remuneration to any director or Employee, or increase or agree to increase the salaries, wage rates, or other compensation or benefits of its Employees except payments made pursuant to written agreements outstanding on the date hereof and disclosed in the Company Disclosure Schedule and payments made in the ordinary course of business consistent with past practice;

(xvi) revalue any of its assets (whether tangible or intangible), including, without limitation, writing off notes or accounts receivable, settle, discount or compromise any accounts receivable, or reverse any reserves other than in the ordinary course of business and consistent with past practice or as required by GAAP;

(xvii) pay, discharge or satisfy any Liability, other than the payment, discharge or satisfaction in the ordinary course of business of Liabilities reflected or reserved against in the Current Balance Sheet without providing notice thereof to Parent;

(xviii) make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, enter into any closing agreement, settle any claim or

assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes, or file any Tax Return (including any amendments thereto) unless such Tax Return has been provided to Parent for review within a reasonable period prior to the due date for filing and Parent has consented to such filing;

(xix) enter into any licensing, distribution, joint venture, strategic alliance or joint marketing or any similar arrangement or agreement, other than non-exclusive licenses entered into in the ordinary course of business consistent with past practice;

(xx) hire, offer to hire or terminate any employees or encourage any employees to resign from the Company, in each case, other than as contemplated by this Agreement;

(xxi) change the Company's accounting policies or procedures, including with respect to reserves for doubtful accounts, or payment or collection policies or practices unless required by applicable law or GAAP; or

(xxii) take, or agree in writing or otherwise to take, any of the actions described in **Section 5.1(b)(i)** through **Section 5.1(b)(xxi)**, inclusive, or any other action that would prevent the Company from performing any of its covenants hereunder.

5.2 No Solicitation.

(a) The Company will not authorize or permit any of its respective officers, directors, affiliates, agents, stockholders or Employees or any investment banker, attorney or other advisor or representative retained by any of them (all of the foregoing collectively being the "**Company Representatives**") to, directly or indirectly, (i) solicit, initiate, seek, entertain, knowingly encourage or facilitate, support or induce (or assist in or cooperate with any Person in) the making, submission or announcement of any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal (as hereinafter defined), (ii) enter into, participate in, maintain or continue any communications (except solely to provide written notice as to the existence of these provisions) or negotiations or otherwise take any action regarding any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (iii) agree to, accept, approve, endorse or recommend (or publicly propose or announce any intention or desire to agree to, accept, approve, endorse or recommend) any Acquisition Proposal, (iv) enter into any letter of intent or any other Contract contemplating or otherwise relating to any Acquisition Proposal, (v) submit any Acquisition Proposal to the vote of any Company Stockholder or any Subsidiary, (vi) consummate or otherwise effect a transaction providing for any acquisition of the Company as contemplated in **Section 5.2(b)** or (vii) disclose or make available any information not customarily disclosed to any Person concerning the Company's businesses, properties, assets or technologies, or afford to any Person access to its properties, technologies, books or records. Each of the Company and its Subsidiaries will immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any Persons conducted prior to or on the date of this Agreement with respect to any Acquisition Proposal.

(b) "**Acquisition Proposal**" shall mean, with respect to the Company, any agreement, offer, proposal or indication of interest (other than this Agreement or any other offer, proposal or indication of interest by Parent), or any public announcement of intention to enter into any such agreement or of (or intention to make) any offer, proposal or bona fide indication of interest (including any request for information from the Company or the Company Representatives), relating

to, or involving the acquisition of all or a significant portion of the Company's businesses, properties, assets or technologies, or any amount of Company Capital Stock (whether or not outstanding), whether by merger, reorganization, purchase of assets, tender offer, license or otherwise (other than issuances of Company Capital Stock pursuant to the exercise of outstanding Company Options and Company Common Stock Warrants or conversion of Company Preferred Stock).

(c) The Company shall promptly notify Parent orally and in writing after receipt by the Company and/or learning of receipt by any Company Representatives of (i) any Acquisition Proposal, (ii) any inquiry, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (iii) any other notice that any Person is considering making an Acquisition Proposal, or (iv) any request for information by any Person or Persons (other than Parent) not customarily disclosed to any Person concerning the Company's businesses, properties, assets or technologies. Such notice shall describe (1) the material terms and conditions of such Acquisition Proposal, inquiry, proposal, offer, notice or request, and (2) the identity of the Person or Group (as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended) making any such Acquisition Proposal, inquiry, proposal, offer, notice or request. The Company shall keep Parent fully informed of the status and details of, and any modification to, any such Acquisition Proposal, inquiry, proposal or offer and any correspondence or communications related thereto and shall provide to Parent a true, correct and complete copy of such Acquisition Proposal, inquiry, proposal or offer and any amendments, correspondence and communications related thereto, if it is in writing, or a reasonable written summary thereof, if it is not in writing. The Company shall provide Parent with 48 hours prior notice (or such lesser prior notice as is provided to the members of the board of directors of the Company) of any meeting of the board of directors of the Company at which the board of directors of the Company is reasonably expected to discuss any Acquisition Proposal.

(d) The Company shall be deemed to have breached the terms of this **Section 5.2** if any Company Representatives shall take any action, whether in his or her capacity as such or in any other capacity, that is prohibited by this **Section 5.2**. The parties hereto agree that irreparable damage would occur in the event that the provisions of this **Section 5.2** were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Parent shall be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this **Section 5.2** and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which Parent may be entitled at law or in equity.

5.3 Procedures for Requesting Parent Consent. If the Company desires to take an action which would be prohibited pursuant to this **Article V** without the written consent of Parent, prior to taking such action the Company may request such written consent by sending an email to each of the following individuals:

Ross Katchman, Head of Corporate Development
Telephone: (408) 433-4069
Email address: Ross.Katchman@lsi.com

Paul Bento, VP - Law
Telephone: (610) 712-5782
Email address: paul.bento@lsi.com

Any of the parties set forth above may grant consent on behalf of Parent to the taking of any action which would otherwise be prohibited pursuant to **Article V** by e-mail or such other notice that complies with the provisions of **Section 10.1**.

ARTICLE VI

ADDITIONAL AGREEMENTS

6.1 Further Assurances. Each party hereto, at the request of another party hereto, shall execute and deliver such other certificates, instruments, agreements and other documents, and do and perform such other acts and things, as may be reasonably necessary or desirable for purposes of effecting completely the consummation of Merger and the other transactions contemplated hereby.

6.2 Commercially Reasonable Efforts. Subject to the terms and conditions set forth in this Agreement, each of the parties hereto shall use commercially reasonable efforts to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, all things necessary, proper or advisable under applicable laws and regulations to satisfy the conditions set forth in **Article VII** and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective this Agreement and the transaction contemplated hereby for the purpose of securing to the parties hereto the benefits contemplated by this Agreement.

6.3 Regulatory Approvals.

(a) In furtherance and not in limitation of the foregoing, each of the Company and Parent shall promptly execute and file, or join in the execution and filing of, any application, notification or other document that may be necessary in order to obtain the authorization, approval or consent of any Governmental Authority, whether federal, state, local or foreign, that may be reasonably required, or that Parent may reasonably request, in connection with the consummation of the transactions contemplated hereby. Each of the Company and Parent shall use commercially reasonable efforts to obtain all such authorizations, approvals and consents. Each of the Company and Parent shall promptly inform the other of any material communication between the Company or Parent (as applicable) and any Governmental Authority regarding the transactions contemplated hereby. If the Company or Parent or any affiliate thereof shall receive any formal or informal request for supplemental information or documentary material from any Governmental Authority with respect to the transactions contemplated hereby, then the Company or Parent (as applicable) shall make, or cause to be made, as soon as reasonably practicable, a response in compliance with such request. Each of the Company and Parent shall direct, in its sole discretion, the making of such response, but shall consider in good faith the views of the other.

(b) Notwithstanding anything to the contrary set forth herein, Parent shall not be required to (i) agree to any license, sale or other disposition or holding separate (through the establishment of a trust or otherwise), of shares of capital stock or of any business, assets or property of Parent, or of the Company or its affiliates, or the imposition of any material limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, properties and stock, or (ii) take any action under this **Section 6.3** if any Governmental Authority that has the authority to enforce any Antitrust Law seeks, or authorizes its staff to seek, a preliminary injunction or restraining order to enjoin consummation of the Merger.

6.4 Contract Consents, Amendments and Terminations.

(a) The Company shall use commercially reasonable efforts to obtain all necessary consents, waivers and approvals of any parties to any Contract, including those listed on listed on **Schedule 7.2(e)**, as are required thereunder in connection with the Merger or for any such Contracts to remain in full force and effect, so as to preserve all rights of, and benefits to, the Company under such Contracts from and after the Effective Time. Such consents, waivers and approvals shall be in a form reasonably acceptable to Parent. In the event the Merger does not close for any reason, Parent shall not have any liability to the Company, the Company Stockholders or any other Person for any costs, claims, liabilities or damages resulting from the Company seeking to obtain such consents, waivers and approvals.

(b) The Company shall use commercially reasonable efforts to terminate each of the agreements listed on **Schedule 7.2(g)** (the "**Terminated Agreements**"), effective as of and contingent upon the Closing, including sending all required notices, such that each such agreement shall be of no further force or effect immediately following the Effective Time. Upon the Closing, the Company shall have paid all amounts owed under the Terminated Agreements (as a result of the termination of the Terminated Agreements or otherwise), and the Surviving Corporation will not incur any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) under any Terminated Agreement following the Closing Date. In the event the Merger does not close for any reason, Parent shall not have any liability to the Company, the Company Stockholders or any other Person for any costs, claims, liabilities or damages resulting from the Company seeking to obtain such consents, waivers and approvals.

(c) The Company shall use commercially reasonable efforts to amend each of the agreements listed on **Schedule 6.4(c)** in the manner set forth on such schedule effective as of and contingent upon the Closing, so that the required amendments are in effect immediately following the Effective Time. Such amendments shall be in a form reasonably acceptable to Parent. In the event the Merger does not close for any reason, Parent shall not have any liability to the Company, the Company Stockholders or any other Person for any costs, claims, liabilities or damages resulting from the Company seeking to obtain such consents, waivers and approvals.

(d) The Company shall provide all necessary notices to any parties to any Contracts listed on **Schedule 7.2(f)** as are required thereunder in connection with the Merger or for any such Contracts to remain in full force and effect, so as to preserve all rights of, and benefits to, the Company under such Contracts from and after the Effective Time. Such notices shall be in a form reasonably acceptable to Parent. In the event the Merger does not close for any reason, Parent shall not have any liability to the Company, the Company Stockholders or any other Person for any costs, claims, liabilities or damages resulting from the Company seeking to obtain such consents, waivers and approvals.

6.5 Notification of Certain Matters.

(a) The Company shall give prompt notice to Parent and the Stockholder Representative of (x) the occurrence or non-occurrence of any event, the occurrence or non occurrence of which would reasonably be expected to result in the failure of the condition set forth in **Section 7.2(a)** to be satisfied at and as of the Closing Date, and (y) any failure of the Company to comply with or satisfy any covenant to be complied with or satisfied by it hereunder which would reasonably be expected to result in the failure of the condition set forth in **Section 7.2(b)** to be satisfied at and as of the Closing Date.

(b) Parent shall give prompt notice to the Company and the Stockholder Representative of (x) the occurrence or non-occurrence of any event, the occurrence or non occurrence of which would reasonably be expected to result in the failure of the condition set forth in **Section 7.3(a)** to be satisfied at and as of the Closing Date, and (y) any failure of the Parent or Merger Sub to comply with or satisfy any covenant to be complied with or satisfied by either Parent or Merger Sub hereunder which would reasonably be expected to result in the failure of the condition set forth in **Section 7.3(b)** to be satisfied at and as of the Closing Date.

(c) The delivery of any notice pursuant to this **Section 6.5** shall not (i) limit or otherwise affect any remedies otherwise available to Parent or the Company, or (ii) constitute an acknowledgment or admission of a breach of this Agreement. No disclosure by the Company or Parent pursuant to this **Section 6.5** shall affect or be deemed to modify, amend or supplement any representation or warranty set forth herein, the Company Disclosure Schedule, the Parent Disclosure Schedule or the conditions to the obligations of the parties to consummate the transactions contemplated hereby in accordance with the terms and conditions hereof, or limit any right to indemnification provided herein.

6.6 Access to Information. The Company shall afford Parent and its accountants, counsel and other representatives, reasonable access during the Company's normal business hours to (a) all of the Company's properties, books, Contracts, commitments and records, (b) all other information concerning the business, properties and personnel (subject to restrictions imposed by applicable law) of the Company as Parent may reasonably request, and (c) all employees of the Company as identified by Parent. The Company shall provide to Parent and its accountants, counsel and other representatives copies of internal financial statements (including Tax Returns and supporting documentation) promptly upon request. No information or knowledge obtained in any investigation pursuant to this **Section 6.6** shall affect or be deemed to modify, amend or supplement any representation or warranty set forth herein, the Company Disclosure Schedule or the conditions to the obligations of the parties to consummate the transactions contemplated hereby in accordance with the terms and conditions hereof, or limit any right to indemnification provided herein.

6.7 Spreadsheet; Closing Balance Sheet; Statement of Off Balance Sheet Liabilities and Statement of Employee Expenses.

(a) The Company shall prepare a spreadsheet (the "**Spreadsheet**') in form reasonably acceptable to Parent, which Spreadsheet shall be certified as complete and correct by the Chief Executive Officer and the Chief Financial Officer of the Company for and on behalf of the Company as of the Closing and shall list, as of the Closing, (i) all Company Stockholders, and their respective addresses, the number and class or series of shares of Company Capital Stock held by such persons, the Aggregate Merger Consideration to be issued to each holder of Company Capital Stock, the Consideration Holdback Amount for each Company Stockholder, and such other information which Parent may reasonably request and (ii) all Bonus Plan Participants, and their respective addresses, the bonuses to be paid to each Bonus Plan Participant under the Bonus Plan, the pro rata potion of the Bonus Plan Holdback Amount for each Bonus Plan Participant, and such other information which Parent may reasonably request. The Company shall deliver the Spreadsheet to Parent and the Stockholder Representative at least three (3) Business Days prior to the Closing Date. In the event that any information in the Spreadsheet becomes inaccurate, after delivery of the Spreadsheet to Parent and prior to the Effective Time, the Company shall deliver an updated Spreadsheet and certification consistent with the first sentence of this **Section 6.7(a)** and such spreadsheet shall be deemed the "Spreadsheet" for all purposes hereunder.

(b) The Company shall deliver to Parent and the Stockholder Representative at least three (3) Business Days prior to the Closing Date (i) the Closing Date Balance Sheet, (ii) the Statement of Off Balance Sheet Liabilities and (iii) the Statement of Employee Expenses. In the event that any information in the Closing Date Balance Sheet, Statement of Off Balance Sheet Liabilities or Statement of Employee Expenses becomes inaccurate, after delivery of the same to Parent and prior to the Effective Time, the Company shall deliver an updated Closing Date Balance Sheet, Statement of Off Balance Sheet Liabilities or Statement of Employee Expenses, as the case may be, and certification(s) consistent and such updated Closing Date Balance Sheet, Statement of Off Balance Sheet Liabilities or Statement of Employee Expenses, as the case may be, shall be deemed the "Closing Date Balance Sheet," the "Statement of Off Balance Sheet Liabilities" or the "Statement of Employee Expenses," as applicable for all purposes hereunder.

6.8 Transaction Expenses.

(a) Whether or not the Merger is consummated, all Transaction Expenses shall be the obligation of the respective party incurring such fees and expenses.

(b) At least three (3) Business Days prior to the Closing Date, the Company shall provide Parent with a statement of its estimated Transaction Expenses as of the Closing Date, such statement showing detail of both the previously paid and currently unpaid Transaction Expenses of the Company incurred in connection with this Agreement and the transactions contemplated hereby, as well as the Transaction Expenses that have been incurred or are expected to be incurred by the Company prior to the Effective Time in connection with this Agreement and the transactions contemplated hereby (the "**Preliminary Statement of Transaction Expenses**"). As of the Closing, the Company shall provide Parent with a statement, which shall be an update of all amounts set forth on the Preliminary Statement of Transaction Expenses, certified as true and correct as of immediately prior to the Closing by the Company's Chief Executive Officer and Chief Financial Officer (the "**Statement of Transaction Expenses**").

6.9 Employment Arrangements

(a) Prior to the Closing, Parent will offer "at will" employment by Parent and/or the Surviving Corporation (which at will employment may be for a transitional period) to (i) the Key Employees, (ii) the Required Employees and (iii) each other employee of the Company that Parent shall determine in its sole discretion, to be effective as of the Closing Date, upon proof of citizenship or appropriate employment authorization from the U.S. Immigration and Naturalization Service or the U.S. Department of State evidencing a right to work in the United States, if applicable, and upon execution of an Employment, Proprietary Information and Inventions Assignment Agreement in Parent's standard form attached hereto as **Exhibit B**. Such "at will" employment arrangements (i) may be set forth in offer letters in form and substance customary for similarly situated employees of Parent (each, an "**Offer Letter**"), which shall include such requirements as Parent shall reasonably determine, (ii) will have terms, including the base salary, performance bonus, equity grant and benefits, commensurate in the aggregate with their position within Parent and/or the Surviving Corporation, and (iii) will supersede any prior employment agreements and other arrangements with such employee in effect prior to the Closing Date. Each employee of the Company who becomes an employee of Parent or the Surviving Corporation as of the Closing Date shall be referred to hereafter as a "**Continuing Employee**." Effective immediately prior to the Closing, the Company shall terminate any employee who is not a Continuing Employee (each, a "**Terminating Employee**") and shall use its commercially reasonable efforts to obtain a valid general release of claims and separation agreement from each Terminating Employee, which release

shall include an acknowledgment that (i) Parent is not assuming or otherwise replacing any Company Options held by such Terminating Employee and (ii) immediately prior to the Effective Time, each then outstanding Company Option held by such Terminating Employee will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto.

(b) The Company shall cause each current employee and contractor of the Company who has not entered into the Company's standard form proprietary information and inventions assignment agreement to enter into and deliver such form to the Company prior to Closing.

(c) Effective as of the day immediately preceding the Closing Date, the Company and its ERISA Affiliates, as applicable, shall each terminate any and all Company Employee Plans, including those intended to include a Code Section 401(k) arrangement (unless Parent provides timely written notice to the Company that any such 401(k) plans shall not be terminated) (collectively, "**Terminated Company Employee Plans**"). Unless Parent provides such written notice to the Company, the Company shall provide Parent with evidence that such Terminated Company Employee Plan(s) have been terminated (effective as of the day immediately preceding the Closing Date) pursuant to resolutions of the Company's board of directors, which resolutions shall include the date of termination and the Closing Date. The Company also shall take such other actions in furtherance of terminating such Terminated Company Employee Plan(s) as Parent may reasonably require.

6.10 Public Announcements. The Company shall not (and shall instruct its representatives not to) issue any statement or communication to any third Person (other than its representatives that are bound by confidentiality restrictions) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without the consent of Parent. Parent shall not issue any statement or communication to any third Person (other than its representatives that are bound by confidentiality restrictions) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without first consulting the Company, except that this restriction shall be subject to Parent's obligation to comply with applicable laws and the rules of the New York Stock Exchange. The Company and Parent shall work together and cooperate to release a public announcement regarding signing of this Agreement on the Business Day following the signing of this Agreement.

6.11 Employee Benefit Matters. As promptly as reasonably practicable after the Effective Time, Parent shall enroll the Continuing Employees in Parent's employee benefit plans for which such employees are eligible (the "**Parent Plans**"), and Parent shall recognize the prior service with the Company of each of the Continuing Employees for purposes of eligibility to participate and vesting (but not benefit accruals with respect to Parent's 401(k) plan only) under Parent's 401(k) plan and for levels of benefits under Parent's vacation policy (but not Parent's sabbatical plan). COBRA shall be available to Employees terminated in connection with the Closing and those prior Employees of the Company who were utilizing COBRA benefits immediately prior to the Closing. To the extent permissible by applicable Law, tax qualification requirements and plan terms, for any Continuing Employee enrolled in a PPO plan sponsored by the Company both as of the date hereof and as of the Closing Date, Parent shall recognize for purposes of satisfying any deductibles, co-pays and out-of-pocket maximums during the current plan year, any payments made by such Continuing Employee towards deductibles, co-pays or out-of-pocket maximums in any such PPO health plan of the Company in the current plan year provided that such Continuing Employee enrolls in an

applicable PPO plan sponsored by Parent. Parent shall waive all limitations as to preexisting conditions exclusions, evidence of insurability requirements and waiting periods with respect to participation and coverage requirements applicable to the Continuing Employees under any medical, dental and vision plans that such employees may be eligible to participate in after the Closing Date. This **Section 6.11** shall not operate to (a) duplicate any benefit provided to any Continuing Employee or to fund any such benefit, (b) require Parent to continue to maintain any severance plan or other employee benefit plan in effect following the Effective Time for Parent's employees, including the Continuing Employees, or (c) be construed to mean the employment of the Continuing Employees is not terminable by Parent at will at any time, with or without cause, for any reason or no reason.

6.12 Company Stockholder Approval.

(a) Immediately following the execution and delivery of this Agreement by the parties hereto, the Company shall obtain and shall deliver to Parent a true, correct and complete copy of the Initial Stockholder Consent, signed by certain stockholders constituting the Requisite Stockholder Approval, including (i) the Parent's holding back of the Holdback Amount and the indemnification obligations set forth in **Article VIII** hereof and (ii) the appointment of the Stockholder Representative as the agent and attorney-in-fact for the Preferred Stockholders, having the powers and rights to limited liability and indemnification set forth herein.

(b) Promptly following the execution of this Agreement, the Company and Parent shall prepare an information statement to be distributed to the Company Stockholders in connection with soliciting the approval of such Company Stockholders of this Agreement and the transactions contemplated hereby, including (i) the Parent's holding back of the Holdback Amount and the indemnification obligations set forth in **Article VIII** hereof and (ii) the appointment of the Stockholder Representative as the agent and attorney-in-fact for the Preferred Stockholders, having the powers and rights to limited liability and indemnification set forth herein (the "**Information Statement**"). Such Information Statement shall include in bold and prominent language a statement requesting all Company Stockholders to return to the Company all Certificates in their possession. Promptly following, but in no event later than one (1) Business Day after the execution of this Agreement, the Company shall deliver the Information Statement and submit this Agreement and the transactions contemplated hereby to the Company Stockholders whose consent was not obtained as described in **Section 6.12(a)** hereof for approval and adoption by such Company Stockholders by execution of the Stockholder Written Consent. To the extent practical, prior to the Effective Time, the Company shall attempt to contact Company Stockholders to request that they deliver their Certificates to the Company. Following receipt of the Requisite Stockholder Vote, the Company shall promptly deliver to any Company Stockholder who has not approved this Agreement and the transactions contemplated hereby a notice of the approval of the Merger and adoption of this Agreement by written consent of the Company Stockholders pursuant to the applicable provisions of Delaware Law and California Law, which notice shall constitute the notice to Company Stockholders required by applicable law that dissenters' and/or appraisal rights may be available to Company Stockholders in accordance with Delaware Law and California Law.

6.13 Section 280G Payments. As soon as reasonably practicable after the execution of this Agreement, the Company shall submit to the Company Stockholders for approval, by such number of Company Stockholders as is required by the terms of Section 280G(b)(5)(B) of the Code, any payments that but for compliance with stockholder provisions of Code Section 280G(b)(5) would constitute Section 280G Payments, such that such payments shall not be deemed to be Section 280G Payments, and prior to the Effective Time the Company shall deliver to Parent

evidence reasonably satisfactory to Parent that (a) a Company Stockholder vote was solicited in conformance with Section 280G of the Code and the regulations promulgated thereunder and the requisite Company Stockholder approval was obtained with respect to any Section 280G Payments that were subject to the Company Stockholder vote, or (b) a Company Stockholder vote was solicited in conformance with Section 280G of the Code and the regulations promulgated thereunder and the requisite Company Stockholder approval was not obtained with respect to any 280G Payments that are subject to the Company Stockholder vote and that such payments and/or benefits shall not be made or provided to the extent they would cause any amounts to constitute Section 280G Payments, pursuant to the waivers of those payments and/or benefits, which were executed by the affected individuals prior to the Company Stockholder vote.

6.14 Cancellation of Corporate Credit Card Accounts; Bank Signatories. Effective no later than the Closing Date, the Company shall terminate any and all corporate credit card accounts and shall provide Parent with evidence that such corporate credit card accounts have been terminated. The Company's board of directors shall also adopt resolutions, effective at the Effective Time, that authorize individuals to be designated prior to the Closing by Parent to be the authorized signatories for all Company bank accounts and any loans or credit agreements or other agreements relating to the borrowing of money or extension of credit, in replacement of such individuals who are currently authorized signatories to such bank accounts. The form and substance of such resolutions shall be subject to review and reasonable approval of Parent.

6.15 Protection of Intellectual Property. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, the Company shall use commercially reasonable efforts (x) to maintain and preserve the Company Registered Intellectual Property, including the payment of any registration, maintenance, renewal fees, annuity fees and Taxes or the filing of any documents, applications or certificates related thereto, and (y) to promptly respond and prepare to respond to all requests, related to the Company Registered Intellectual Property, received from Governmental Authorities.

6.16 Cancellation of Company Options. Immediately following the date hereof, the Company shall have delivered notice, in accordance with the Company Stock Plan or any other applicable document or instrument, to each Company Optionholder that the Company Options, to the extent not exercised, will be cancelled immediately prior to or upon the Effective Time for no consideration as provided in **Section 2.6(d)**, and shall have used its commercially reasonable efforts to take, to the reasonable satisfaction of Parent, any and all other actions necessary to effect this cancellation of Company Options as provided for in **Section 2.6(d)**, including but not limited to, adopting all resolutions and taking any other actions which are reasonably necessary to effectuate such cancellation. Any notices, consents or other communications to Company Optionholders will be subject to the reasonable review and approval of Parent, which approval shall not be unreasonably delayed or withheld.

6.17 Cancellation of Company Common Stock Warrants. The Company shall use its commercially reasonable efforts to effect the provisions set forth in **Section 2.6(e)** with respect to all Company Common Stock Warrants, including without limitation any necessary amendments to any Company Common Stock Warrants and the delivery of all required notices under such Company Common Stock Warrants immediately following the date hereof. Any materials to be submitted to the Company Warrantholders in connection with any notice or amendment required under this **Section 6.16** shall be subject to review and approval by Parent, which approval shall not be unreasonably delayed or withheld.

6.18 Debt and Liability Payment. The Company shall use commercially reasonable efforts to cause the Persons listed on **Schedule 6.18** to execute and deliver prior to the Effective Time an acknowledgement and payoff letter in form and substance reasonably satisfactory to Parent (each, a "**Payoff Letter**") which shall provide that all debt owed to such holder shall have been repaid upon payment of the amount specified therein and that the Liens relating thereto that are set forth in **Schedule 7.2(u)** shall be released effective upon receipt by such holder of such holder's portion of the debt incurred by the Company and outstanding as of the Closing Date.

6.19 Directors' and Officers' Insurance and Indemnification.

(a) For a period of three (3) years after the Effective Time, the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) fulfill and honor in all material respects the obligations of the Company ("**D&O Obligations**") existing in favor of the current and former directors and officers of the Company under the provisions existing on the date of this Agreement in the Company's Certificate of Incorporation or Bylaws, or in any other indemnification agreements between such individuals and the Company, that are in effect prior to the date of this Agreement, and all such provisions shall, with respect to any matter existing or occurring at or prior to the Effective Time (including the transactions contemplated by this Agreement), survive the Effective Time for a period of three (3) years after the Effective Time.

(b) At or prior to the Effective Time, the Company shall purchase a tail policy providing at least the same coverage and amounts and containing terms and conditions that are no less advantageous to former officers and directors of the Company as the current policies of directors' and officers' and fiduciary liability insurance maintained by the Company, covering a period of three (3) years after the Effective Time.

(c) The provisions of this **Section 6.19** are intended to be for the benefit of, and will be enforceable by, each indemnified party, his or her heirs and his or her representatives, and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise.

ARTICLE VII

CONDITIONS TO THE MERGER

7.1 Conditions to Obligations of Each Party. The respective obligations of the Company and Parent to consummate the transactions contemplated hereby shall be subject to the satisfaction, at or prior to the Effective Time, of the following conditions:

(a) No Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Merger or any other transaction contemplated hereby illegal or otherwise prohibiting the consummation of the Merger or any other transaction contemplated hereby.

(b) No Injunctions. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other similar legal restraint that has the effect of prohibiting the consummation of the Merger and the other transactions contemplated to occur after the Effective Time hereby shall be in effect.

(c) Governmental Approvals. Parent and the Company shall have obtained all consents and approvals from any Governmental Authority that are necessary to consummate the Merger, and the other transactions contemplated hereby.

(d) Requisite Stockholder Approval. The Merger shall have been duly approved by (i) the Requisite Stockholder Approval, and (ii) by the Parent in accordance with Delaware Law and the organizational documents of Merger Sub.

(e) Antitrust Approval. If so required by Antitrust Law, all waiting periods (and any extension thereof) relating to the Merger and the other transactions contemplated hereby will have expired or early termination of such waiting periods shall have been granted without any condition or requirement requiring or calling for the disposition or divestiture of any product or other asset of the Company by Parent or the Company or for the imposition of any other antitrust restraint.

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

(a) Representations and Warranties. Each of the representations and warranties of the Company set forth in this Agreement (other than the representations and warranties as of a specified date, which shall be true and correct in all material respects as of such date) (x) shall have been true and correct in all material respects as of the date of this Agreement and (y) shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (it being understood that, for purposes of Parent determining the accuracy of such representations and warranties for purposes of this **Section 7.2(a)**, all qualifications based on the word "material" or similar phrases, including "Material Adverse Effect," set forth in such representations and warranties shall be disregarded).

(b) Covenants. The Company shall have performed and complied in all material respects with the covenants and obligations under this Agreement required to be performed and complied with by the Company prior to or as of the Closing.

(c) No Material Adverse Effect. There shall not have occurred since the date of this Agreement any Company Material Adverse Effect that is continuing at and as of the Closing Date.

(d) No Litigation. There shall be no Governmental Authority or other material third party action, suit, claim or proceeding of any nature pending, or overtly threatened, against Parent or Merger Sub, the Company, any of their respective Assets and Properties or any of their respective directors or officers (in their capacities as such) arising out of the Merger or any other transaction contemplated hereby or that would reasonably be expected to cause a Company Material Adverse Effect or Parent Material Adverse Effect.

(e) Third Party Consents. Parent shall have received all consents, waivers, approvals and assignments listed on **Schedule 7.2(e)**.

(f) Notices for Agreements. The Company shall have sent the notices set forth on **Schedule 7.2(f)** hereto.

(g) Termination of Agreements. The Company shall have terminated each of those agreements set forth on **Schedule 7.2(g)** hereto.

(h) Resignation of Directors and Officers. Parent shall have received a written resignation from each of the directors and officers of the Company from their positions as directors and officers of the Company effective as of the Effective Time.

(i) Key Employees. One hundred percent (100%) of the Key Employees listed on **Schedule 7.2(i)** (i) shall have entered into "at-will" employment arrangements with Parent and/or the Surviving Corporation pursuant to their execution of an Offer Letter which shall be in full force and effect and completed I-9 forms and attachments or other proof reasonably acceptable to Parent of the right to work in the United States, if applicable, (ii) shall have entered into Parent's customary form of confidentiality and proprietary rights agreement, (iii) shall be employees of the Company immediately prior to the Effective Time and (iv) shall not have notified (whether formally or informally) Parent or the Company of such individual's intention of leaving the employ of Parent or the Surviving Corporation following the Effective Time.

(j) Required Employees. Eighty percent (80%) of the Required Employees (i) shall have entered into "at-will" employment arrangements with Parent and/or the Surviving

Corporation pursuant to their execution of an Offer Letter which shall be in full force and effect and completed I-9 forms and attachments or other proof reasonably acceptable to Parent of the right to work in the United States, if applicable, (ii) shall have entered into Parent's customary form of confidentiality and proprietary rights agreement, (iii) shall be employees of the Company immediately prior to the Effective Time and (iv) shall not have notified (whether formally or informally) Parent or the Company of such individual's intention of leaving the employ of Parent or the Surviving Corporation following the Effective Time.

(k) Additional Company Stockholder Approvals; Limitation on Dissenting Shares. This Agreement, the Merger and the transactions contemplated hereby shall have been approved and adopted and the other matters set forth herein shall have been approved by the Requisite Stockholder Approval, and holders of no more than ten percent (10%) of the outstanding shares of the Company Capital Stock entitled to vote on the matters contemplated hereby, voting as a single class on an as converted to Company Common Stock basis, shall retain statutory rights of appraisal or dissent under Delaware Law.

(l) Section 280G Payments. With respect to any payment that would otherwise be a Section 280G Payment, the Company shall have submitted the Section 280G Payments to the Company Stockholders pursuant to the method provided for in the regulations promulgated under Section 280G of the Code, any such Section 280G Payments shall have been approved or disapproved by the Company Stockholders in accordance with **Section 6.12**, and, as a consequence, Parent and its Subsidiaries shall not have any liabilities (or lose any available deductions) with respect to any Section 280G Payments .

(m) Termination of Terminated Company Employee Plans; Termination of Terminating Employees. Unless Parent has explicitly instructed the Company otherwise pursuant to **Section 6.9(c)**, Parent shall have received from the Company evidence reasonably satisfactory to Parent that all Terminated Company Employee Plans have been terminated pursuant to resolution of the board of directors of the Company or the ERISA Affiliate, as the case may be, (the form and substance of which shall have been subject to reasonable review and approval of Parent) effective as of no later than the Closing Date, and Parent shall have received from the Company evidence of the taking of any and all further actions as provided hereof. In addition, all Terminating Employees shall have been terminated by the Company.

(n) Legal Opinion. Parent shall have received a legal opinion from legal counsel to the Company, in a form reasonably acceptable to Parent and the Company.

(o) Spreadsheet; Closing Date Balance Sheet; Statement of Off Balance Sheet Liabilities and Statement of Employee Expenses. Parent shall have received and reasonably approved the Spreadsheet, the Closing Date Balance Sheet, the Statement of Off Balance Sheet Liabilities and the Statement of Employee Expenses.

(p) Payoff Letters. Parent shall have received the Payoff Letters pursuant to **Section 6.18** hereof.

(q) Company Certificate. Parent shall have received a certificate, validly executed by the Chief Executive Officer of the Company for and on behalf of the Company, certifying as to the matters set forth in **Section 7.2(a), (b)** and **(c)**.

(r) Certificate of Secretary of the Company. Parent shall have received a certificate, validly executed by the Secretary of the Company for and on behalf of the Company, certifying as to (i) the Certificate of Incorporation and the bylaws of the Company, each as in effect on the Closing Date, and (ii) the valid adoption of resolutions of the board of directors of the Company and the Company Stockholders approving and adopting this Agreement, the Merger and the consummation of the transactions contemplated hereby, and (iii) as to the incumbency and signature of the officer of the Company executing this Agreement.

(s) Certificate of Good Standing. Parent shall have received a certificate of good standing for the Company from the Secretary of State of the State of Delaware, dated within two (2) Business Days prior to the Closing.

(t) FIRPTA Certificate. Parent shall have received from the Company a properly executed statement, in a form and substance reasonably acceptable to Parent, for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(u) Release of Liens. The Company shall file, or shall have filed, all agreements, instruments, certificates and other documents, in form and substance reasonably satisfactory to Parent, that are necessary or appropriate to effect the release of all known Liens, including those set forth in **Schedule 7.2(u)** hereto.

(v) Letters of Transmittal. Parent shall have received a Letter of Transmittal in good form from each Preferred Stockholder, validly executed by an authorized representative of each Preferred Stockholder.

(w) Certificates. Parent shall have received all Certificates (or lost stock affidavits) for shares of Preferred Stock.

(x) HCL Agreement. Unless the HCL Agreement shall have been amended in all respects as requested by Parent, the Company shall not pay any amount due under the Confidential Settlement Agreement and Release of All Claims dated July 20, 2009 between the Company and HCL America, Inc. (the "**HCL Agreement**").

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

(a) Representations and Warranties. Each of the representations and warranties of Parent and Merger Sub set forth in this Agreement (other than the representations and warranties as of a specified date, which shall be true and correct in all material respects as of such date) (x) shall have been true and correct in all material respects as of the date of this Agreement and (y) shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (it being understood that, for purposes of the Company determining the accuracy of such representations and warranties for purposes of this **Section 7.3(a)**, all qualifications based on the word "material" or similar phrases, including "Material Adverse Effect," set forth in such representations and warranties shall be disregarded)..

(b) Covenants. Parent and Merger Sub shall have performed and complied in all material respects with the covenants and obligations under this Agreement required to be performed and complied with by Parent prior to or as of the Closing.

(c) Parent Certificate. The Company shall have received a certificate, validly executed by an authorized officer of Parent for and on behalf of Parent, certifying as to the matters set forth in **Sections 7.3(a) and (b)**.

(d) Payment of Company Indebtedness and Liabilities. Parent shall have paid, by wire transfer of immediately available funds,

(i) all known outstanding and unpaid Indebtedness of the Company and its Subsidiaries as of the Closing Date, including the Aggregate Debt, set forth on the Closing Date Balance Sheet;

(ii) all known outstanding and unpaid Transaction Expenses incurred by the Company set forth on the Statement of Transaction Expenses;

(iii) all known outstanding and unpaid severance, change in control payments, COBRA premiums and any other costs for Company employees to be terminated in connection with the Closing set forth on the Statement of Employee Liabilities; *provided*, *however*, that any such costs that are to be paid over time (such as COBRA premiums) shall be paid when due and not at Closing; and

(iv) all other unpaid known Liabilities (other than (a) the Company's off-balance sheet lease obligation for the Company's leased real property located at 254 East Hacienda Avenue, Campbell, CA, any other lease obligations with a month-to-month or shorter term, and any other lease obligations that may be terminated by the Company upon 60 days' or less notice without penalty and (b) any deferred revenue of the Company as set forth in the Closing Date Balance Sheet) set forth in the Company's Closing Date Balance Sheet or in the Statement of Off Balance Sheet Liabilities,

in each case, solely to the extent that such amounts were deducted from $25,000,000 in connection with the calculation of the Aggregate Merger Consideration.

ARTICLE VIII

SURVIVAL; INDEMNIFICATION; HOLDBACK FUND; STOCKHOLDER REPRESENTATIVE

8.1 Survival.

(a) Notwithstanding any right of Parent (whether or not exercised) to investigate the affairs of the Company (whether pursuant to **Section 6.6** or otherwise) or a waiver or non-assertion by Parent and Merger Sub of any closing condition set forth in **Article VII** or any termination right set forth in **Article IX**, each party shall have the right to rely fully upon the representations and warranties of the other party or parties hereto set forth in this Agreement and the certificates and other instruments delivered in connection herewith or therewith. Parent shall use commercially reasonable efforts, as determined by Parent in its reasonable discretion, to mitigate Losses upon becoming aware of any event which would have, or does, give rise to Losses.

(b) The representations and warranties of the Company set forth in this Agreement, or in any certificate or other instrument delivered pursuant **Sections 7.2(q), 7.2(s) and 7.2(t)** (collectively, the "**Company Closing Certificates**") of this Agreement, shall survive until 11:59 p.m. (California time) on the twelfth (12) month anniversary of the Closing Date. Notwithstanding the foregoing, claims for fraud with respect to a representation or warranty contained herein or in any of the Company Closing Certificates delivered hereunder ("**Fraud Claims**") shall not expire.

8.2 Indemnification. By virtue of the Merger, subject to the provisions of this **Article VIII**, the Preferred Stockholders and the Bonus Plan Participants (the "**Indemnifying Parties**") shall, severally and not jointly, in accordance with their Pro Rata Portion, indemnify and hold Parent, Merger Sub, the Surviving Corporation and their respective officers, directors, employees, agents and affiliates, including the Surviving Corporation (collectively, the "**Indemnified Parties**"), harmless against any and all losses, liabilities, damages, fees, fines, Taxes, penalties, deficiencies (excluding lost profits, consequential damages, lost business opportunity and diminution in value), fees and expenses, including interest thereon, reasonable expenses of investigation of third party claims (after actually made), court costs, reasonable fees and expenses of attorneys, accountants and other experts and other expenses of any claim, default or assessment (such fees and expenses to include all reasonable fees and expenses, including reasonable fees and expenses of attorneys, incurred in connection with the investigation or defense of any third party claim (after actually made) reduced by the amount of any payment received by such Indemnified Party (or an affiliate thereof), with respect to the Losses to which such indemnity claim relates, from an insurance carrier (including with respect to insurance against professional liability) (hereinafter individually a "**Loss**" and collectively "**Losses**") paid, sustained, incurred, accrued or reserved against by the Indemnified Parties, or any of them, directly or indirectly, arising out of, in connection with or as a result of:

(i) any failure of any representation or warranty of the Company set forth in this Agreement (as qualified by the Company Disclosure Schedule) to be true and correct as of the date hereof and as of the Effective Time as if made on and as of the Effective Time or any failure of any representation or warranty of the Company set forth in any Company Closing Certificate to be true and correct as of the Effective Time as if made on and as of the Effective Time;

(ii) any failure by the Company to perform or comply with any covenant applicable to it set forth in this Agreement or in any Company Closing Certificate;

(iii) any failure of the Spreadsheet to be true and correct in any respect, including without limitation, misstatements of the aggregate amount of consideration received by any holder, or all holders of Company Capital Stock, or the allocation of such consideration among such holders, pursuant to this Agreement;

(iv) any failure of the Closing Date Balance Sheet to be true and correct in any respect;

(v) any failure of the Statement of Employee Expenses to be true and correct in any respect;

(vi) any failure of the Statement of Off Balance Sheet Liabilities to be true and correct in any respect;

(vii) any Dissenting Share Payments;

(viii) any Transaction Expenses of the Company or the Preferred Stockholders that are not reflected in the Statement of Transaction Expenses; and

(ix) any claims brought against the Company by Tudou relating to the Company's products or services or third-party branded products or in respect of claims brought by Tudou against another party relating to the Company's products or services or third-party branded products.

The Indemnifying Parties shall not have any right of contribution from, and may not seek indemnification or advancement of expenses from, the Company, Parent or the Surviving Corporation with respect to any Loss claimed by an Indemnified Party.

The adoption of this Agreement by the Company Stockholders and acceptance of Aggregate Merger Consideration pursuant to **Section 2.6** by the Company Stockholders constitute approval of the indemnification obligations of the Indemnifying Parties who are Company Stockholders set forth in this **Section 8.2**. The Bonus Plan shall reflect the approval of the indemnification obligations of the Indemnifying Parties who are Bonus Plan Participants set forth in this **Section 8.2**.

8.3 Limitations on Indemnification.

(a) Nothing herein shall limit the liability of the Company for any breach of any representation, warranty or covenant set forth in this Agreement if the transactions contemplated hereby are not consummated.

(b) If the transactions contemplated hereby are consummated, the maximum amount that the Indemnified Parties may recover from each of the Indemnifying Parties pursuant to the indemnity set forth in **Section 8.2** shall be an amount equal to each such Indemnifying Party's Pro Rata Portion of the Holdback Amount, except, that notwithstanding the foregoing, the limitation shall not apply to Fraud Claims.

(c) If the transactions contemplated hereby are consummated, the Indemnified Parties may not recover pursuant to the indemnity set forth in **Section 8.2(i)** unless and until one or more Officer's Certificates identifying Losses in excess of one percent (1%) of the Aggregate Merger Consideration, in the aggregate (the "**Threshold**") has or have been delivered to the Stockholder Representative in accordance with this Agreement, in which case Parent shall be entitled to recover pursuant to the indemnity set forth in **Section 8.2(i)** all such Losses (including the amount of the Threshold); *provided, however*, that notwithstanding the foregoing, the Threshold shall not apply to Fraud Claims.

(d) It is understood that nothing in this Agreement shall eliminate the ability of any party hereto to apply for equitable remedies to enforce the other parties' obligations under this Agreement.

(e) The Holdback Amount shall be the Indemnified Parties' sole security for the indemnification obligations of the Indemnifying Parties under **Section 8.2**. Except in the case of any Loss relating to Fraud Claims, notwithstanding any other provision of this Agreement to the contrary, recovery from the Holdback Amount shall be the Indemnified Parties' sole and exclusive recourse against the Indemnifying Parties in respect of the Indemnifying Parties' indemnification obligations under **Section 8.2** and such recovery shall be the Indemnified Parties' exclusive remedy

for recovery of any Losses arising out of this Agreement. The Indemnified Parties shall recover any Losses first from the Holdback Amount, to the extent sufficient or available to satisfy such Losses, and then directly from the Indemnifying Parties to the extent that the Holdback Amount shall be insufficient or is unavailable to satisfy such Losses.

(f) Notwithstanding anything to the contrary in this Agreement, the parties hereto agree and acknowledge that any Indemnified Party may bring a claim for indemnification for any Loss under this **Article VIII** notwithstanding the fact that any Indemnified Party had knowledge of the breach, event or circumstance giving rise to such Loss prior to the Closing or waived any condition to the Closing related thereto.

8.4 Indemnification Claims.

(a) Parent shall give notice of any claim for indemnification under **Section 8.2** by delivering an Officer's Certificate (as defined below) to the Stockholder Representative for any claim for indemnification, at any time prior to 11:59 p.m. (California time) on the last day of the Holdback Period. For all purposes of and under this Agreement, the term "**Officer's Certificate**" shall mean a certificate signed by any officer of Parent: (i) stating that an Indemnified Party has paid, sustained, incurred or accrued Losses, (ii) specifying in reasonable detail the individual items of Loss included in the amount so stated (and the method of computation of each such item of Loss, if applicable), the date each such item of Loss was paid, sustained, incurred or accrued, to the extent applicable, (iii) a brief description in reasonable detail (to the extent available to Parent) of the facts, circumstances or events giving rise to each item of Loss based on Parent's good faith belief thereof, including the identity and address of any third-party claimant and copies of any formal demand or complaint relating thereto, and (iv) the specific basis for indemnification under **Section 8.2** to which such item of Loss is related (including, if applicable, the specific nature of the misrepresentation, breach of warranty or covenant).

(b) Subject to **Section 8.1**, no delay in providing an Officer's Certificate in accordance with the terms hereof shall affect an Indemnified Party's rights hereunder, unless (and then only to the extent that) the Stockholder Representative or any other applicable Indemnifying Parties are materially prejudiced thereby.

(c) If the Stockholder Representative shall not object in writing pursuant to **Section 8.4(e)** to any individual items of Loss set forth in an Officer's Certificate delivered by Parent pursuant to **Section 8.4(a)** within twenty (20) Business Days after the Stockholder Representative's receipt of such Officer's Certificate, the Stockholder Representative shall be conclusively deemed to have acknowledged and irrevocably consented, for and on behalf of the Indemnifying Parties, (i) to the Indemnified Party recovery of the full amount of all such items of Loss set forth in such Officer's Certificate, and (ii) if and to the extent necessary, and without further notice, to have stipulated to the entry of a final judgment for damages against the Indemnifying Parties for such items of Loss in any court having competent jurisdiction over the matter.

(d) In the event that the Stockholder Representative agrees to release any portion of the Holdback Amount to Parent or any other Indemnified Party or Parties any portion of the Holdback Amount pursuant to **Section 8.4(c)**, Parent shall release such portion of the Holdback Amount in accordance with such written instructions. In the event that the Stockholder Representative shall have failed to object in writing pursuant to **Section 8.4(e)** to any individual items of Loss set forth in an Officer's Certificate relating to a claim for indemnification pursuant to

Section 8.2 within twenty (20) Business Days after the Stockholder Representative's receipt of such Officer's Certificate, Parent shall promptly release to Parent or any other Indemnified Party or Parties (as instructed by Parent in writing) out of an amount of cash equal to the amount of all such items of Loss specified in such Officer's Certificate with respect to which the Stockholder Representative has not objected in writing pursuant to **Section 8.4(e)**. Cash released to Parent or any other Indemnified Party or Parties pursuant to the preceding sentence shall be deemed to reduce each Indemnifying Party's interest in the Holdback Fund in accordance with his, her or its Pro Rata Portion of the Holdback Fund

(e) In the event that the Stockholder Representative shall seek to contest any individual items of Loss set forth in an Officer's Certificate received from Parent pursuant to **Section 8.4(c)**, the Stockholder Representative shall notify Parent in writing, within twenty (20) Business Days after receipt of such Officer's Certificate, of the Stockholder's Representative's objection, which notice shall set forth a brief description in reasonable detail of the Stockholder Representative's basis for objecting to each item of Loss based on the Stockholder Representative's good faith belief thereof. Upon Parent's receipt of a written notice of objection from the Stockholder Representative pursuant to the preceding sentence, Parent and the Stockholder Representative shall attempt in good faith to agree upon the rights of the respective parties with respect to the disputed items of Loss. If the Stockholder Representative and Parent should so agree, a memorandum setting forth the agreement reached by the parties with respect to such disputed items of Loss shall be prepared and signed by both parties. Parent shall make distributions from the Holdback Fund, in accordance with any such memorandum.

(f) If within sixty (60) calendar days after the Stockholder Representative's receipt of such Officer's Certificate, and after good faith negotiations, the parties are unable to agree on the rights of the respective parties with respect to any disputed items of Loss set forth in an Officer's Certificate, either Parent or the Stockholder Representative may bring suit in the courts of the State of Delaware and the Federal courts of the United States of America located in the State of Delaware to resolve the matter. The decision of the trial court as to the validity and amount of any claim in such Officer's Certificate shall be nonappealable, binding and conclusive upon the parties to this Agreement, and Parent shall be entitled to act in accordance with such decision and distribute the Holdback Amount in accordance therewith. Judgment upon any award rendered by the trial court may be entered in any court having jurisdiction.

8.5 Holdback Arrangements.

(a) Holdback Fund. The Holdback Amount shall constitute a holdback fund (the "**Holdback Fund**") to be governed by the terms set forth herein. The Holdback Fund shall be the sole source available to compensate the Indemnified Parties (except with respect to Fraud Claims) for any indemnification claims arising under **Section 8.2**.

(b) Holdback Periods; Distribution of Holdback Funds upon Termination of Holdback Period. The period during which claims for indemnification for Losses may be made against the Holdback Fund shall commence at the Effective Time and terminate on the date that is twelve (12) months following the Closing Date (the "**Holdback Period**"). Notwithstanding anything to the contrary contained in this Agreement, at the conclusion of the Holdback Period, such portion of the Holdback Fund as in the reasonable judgment of Parent may be necessary to satisfy any unresolved or unsatisfied claims for indemnification for Losses specified in any Officer's Certificate delivered in accordance with the terms hereof prior to expiration of the Holdback Period shall remain in the Holdback Fund until such claims have been finally and fully resolved or satisfied. The

remainder, if any, of the Holdback Fund shall be paid to the Indemnifying Parties promptly (and in any event within ten (10) Business Days) after the expiration of the Holdback Period. After the expiration of the Holdback Period, upon resolution of a pending claim for Losses, the portion of the Holdback Fund remaining, if any, after such Losses have been satisfied, shall be sent to the Indemnifying Parties promptly (and in any event within ten (10) Business Days) after the final resolution of the underlying claim. Parent shall be entitled to rely on the information in the Spreadsheet when distributing any amounts from the Holdback Fund, and Parent may condition distribution of amounts from the Holdback Fund on receipt of documentation that Parent may reasonably require from the Preferred Stockholders or Bonus Plan Participants, such as updated tax information or a receipt of funds.

8.6 Third Party Claims.

(a) In the event an Indemnified Party becomes aware of the assertion of any claim for which the Indemnifying Parties are required to indemnify the Indemnified Parties hereunder, or the commencement of any action, suit or proceeding by any third party, which the Indemnified Party reasonably believes may result in a Loss for which the Indemnifying Parties are required to indemnify the Indemnified Parties hereunder, the Indemnified Party shall notify the Stockholder Representative of such third party claim if such claim occurs during the Holdback Period, or each of the Indemnifying Parties that Parent (or any other Indemnified Parties) may bring a claim against it if such third party claim is a Fraud Claim that occurs after the Holdback Period. The Stockholder Representative or the Indemnifying Party, as the case may be, shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within twenty (20) Business Days of receipt of notice from the Indemnified Party of the commencement of or assertion of any claim, action, suit or proceeding by a third party in respect of which indemnity may be sought hereunder (a "**Third-Party Claim**"), to assume the defense and control the settlement of such Third-Party Claim that involves (and continues to involve) solely money damages.

(b) The Stockholder Representative, the Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third-Party Claim that the other is defending, as provided in this Agreement.

(c) The Stockholder Representative or the Indemnifying Party, as the case may be, if it has assumed the defense of any Third-Party Claim as provided in this Agreement, shall not consent to a settlement of, or the entry of any judgment arising from, any such Third-Party Claim without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) unless such settlement or judgment relates solely to monetary damages that the Indemnifying Party has agreed to pay in their entirety. Neither the Stockholder Representative nor the Indemnifying Party shall, without the Indemnified Party's prior written consent, enter into any compromise or settlement that (i) commits the Indemnified Party to take, or to forbear to take, any action, or (ii) does not provide for a complete release by such Third Party of the Indemnified Party. The Indemnified Party shall have the sole and exclusive right to settle any Third-Party Claim, on such terms and conditions as it deems reasonably appropriate, to the extent such Third-Party Claim involves equitable or other non-monetary relief against the Indemnified Party, and shall have the right to settle any Third-Party Claim involving money damages for which the Indemnifying Party has not assumed the defense pursuant to this **Section 8.6** with the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed.

8.7 Stockholder Representative.

(a) Each of the Indemnifying Parties hereby appoints Shareholder Representative Services, LLC, a Colorado limited liability company as its agent and attorney in fact to serve as the representative of the Preferred Stockholders (the "**Stockholder Representative**") for and on behalf of the Indemnifying Parties to give and receive notices and communications, to authorize payment to Parent from the Holdback Fund in satisfaction of claims by Parent, to object to such payments, to agree to, negotiate, enter into settlements and compromises of, and demand resolution and comply with orders of courts with respect to such claims, and to take all other actions that are either (i) necessary or appropriate in the judgment of either of the Stockholder Representative for the accomplishment of the foregoing or (ii) specifically mandated by the terms of this Agreement. Parties to this Agreement may rely on actions and instructions by Shareholder Representative Services, LLC, a Colorado limited liability company in its capacity as the Stockholder Representative. Such agency may be changed by the Indemnifying Parties from time to time upon not less than thirty (30) days prior written notice to Parent; *provided, however*, that the Stockholder Representative may not be removed unless holders of at least two-thirds (2/3) of the interest of the Holdback Fund agree to such removal and to the identity of the substituted agent. A vacancy in the position of Stockholder Representative may be filled by the holders of a majority in interest of the Holdback Amount. No bond shall be required of the Stockholder Representative. Notices or communications to or from the Stockholder Representative shall constitute notice to or from the Indemnifying Parties.

(b) The Stockholder Representative shall not be liable for any act done or omitted hereunder as Stockholder Representative while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted to be done pursuant to the advice of legal counsel shall be conclusive evidence of such good faith. The Indemnifying Parties on whose behalf the Holdback Amount was contributed to the Holdback Fund shall jointly and severally indemnify the Stockholder Representative and hold the Stockholder Representative harmless against any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct on the part of the Stockholder Representative and arising out of or in connection with the acceptance or administration of the Stockholder Representative's duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Stockholder Representative.

(c) A decision, act, consent or instruction of the Stockholder Representative shall constitute a decision of the Indemnifying Parties and shall be final, binding and conclusive upon the Indemnifying Parties; and Parent may rely upon any such decision, act, consent or instruction of the Stockholder Representative as being the decision, act, consent or instruction of the Indemnifying Parties. Parent is hereby relieved from any liability to any Person for any acts done in accordance with such decision, act, consent or instruction of the Stockholder Representative.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

9.1 Termination. Except as provided in **Section 9.2**, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by mutual agreement of the Company and Parent;

(b) by Parent or the Company if the Closing Date shall not have occurred by August 14, 2009; *provided, however*, that the right to terminate this Agreement under this **Section 9.1(b)** shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Effective Time to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by Parent or the Company if: (i) there shall be a final nonappealable order of a federal or state court in effect preventing consummation of the Merger, or (ii) there shall be any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Closing by any Governmental Authority that would make consummation of the Merger illegal;

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

(e) by Parent if (i) it is not in material breach of its obligations under this Agreement and (ii) there has been a breach of any representation, warranty (as modified by the Company Disclosure Schedule) or covenant of the Company set forth in this Agreement such that if not cured on or prior to the Closing Date the conditions set forth in **Section 7.2(a)** or **Section 7.2(b)** would not be satisfied, and such breach has not been cured within ten (10) calendar days after written notice thereof to the Company; *provided, however*, that no cure period shall be required for a breach which by its nature cannot be cured;

(f) by the Company if (i) it is not in material breach of its obligations under this Agreement and (ii) there has been a breach of any representation, warranty (as modified by the Parent Disclosure Schedule) or covenant of Parent or Merger Sub set forth in this Agreement such that if not cured on or prior to the Closing Date the conditions set forth in **Section 7.3(a)** or **Section 7.3(b)** would not be satisfied, and such breach has not been cured within ten (10) calendar days after written notice thereof to Parent; *provided, however*, that no cure period shall be required for a breach which by its nature cannot be cured;

(g) by Parent, if a Company Material Adverse Effect has occurred after the date of this Agreement and is continuing; or

(h) by Parent if, if at any time after approval of the Merger, this Agreement, and the transactions contemplated hereby, holders of more than ten percent (10%) of the outstanding shares of Company Capital Stock (determined on a fully diluted basis) shall have exercised any appraisal, dissenters' or other similar rights under applicable law in connection with the Merger.

9.2 Effect of Termination. In the event of termination of this Agreement as provided in **Section 9.1**, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, Merger Sub, the Company, or their respective officers, directors or stockholders, if applicable; *provided, however*, that each party hereto shall remain liable for any willful or intentional breaches of this Agreement prior to its termination; and *provided further, however*, that, the provisions of **Section 6.8** (Transaction Expenses), **Section 6.10** (Public Announcements), this **Section 9.2**, **Article VIII**, **Article X** and the applicable definitions set forth in **Article I** shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this **Article IX**.

9.3 Amendment. This Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of Parent and the Company.

9.4 Extension; Waiver. At any time prior to the Closing, Parent, on the one hand, and the Company on the other hand, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations of the other party hereto, (b) waive any inaccuracies in the representations and warranties made to such party set forth herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions for the benefit of such party set forth herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

ARTICLE X

GENERAL PROVISIONS

10.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed delivered and effective upon the earliest of (a) personal delivery, (b) electronic confirmation of a facsimile transmission received in its entirety at the applicable facsimile number indicated below, after which the notice will be sent within two (2) Business Days by recognized express courier service (such as United Parcel Service), as specified in (c) below, or (c) the earliest of delivery, refusal of the addressee to accept delivery or failure of delivery after at least one (1) attempt during normal business hours, in each case as such events are recorded in the ordinary business records of the delivery service, which will be by recognized express courier service, with all charges prepaid or charged to the sender's account, to the applicable address set forth below or at such other address as shall be specified in writing in accordance with this paragraph; *provided, however*, that notices sent by mail will not be deemed given until received:

(a) if to Parent or the Company (following the Closing), to:

LSI Corporation
1621 Barber Lane
Milpitas, California 95035
Attention: Chief Administrative Officer and Chief Executive Officer
Telephone No.: (408) 433-8000
Facsimile No.: (408) 433-6896

with a copy to:

LSI Corporation
1110 American Parkway NE
Allentown, Pennsylvania 18109
Attention: VP - Law
Telephone No.: (610) 712-5782
Facsimile No.: (610) 712-5712

(b) if to the Company (prior to the Closing) to:

ONStor, Inc.
254 East Hacienda Ave.
Campbell, CA 95008
Attention: Robert C. Miller, President and CEO
Telephone No.: (408) 963-2400
Facsimile No.: (408) 963-2409

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: David J. Segre
Telephone No.: (650) 493-9300
Facsimile No.: (650) 493-6811

(c) If to the Stockholder Representative, to:

Shareholder Representative Services LLC
601 Montgomery Street, Suite 2020
San Francisco, CA 94111
Attention: Managing Director
Facsimile No.: (415) 962-4147

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: David J. Segre
Telephone No.: (650) 493-9300
Facsimile No.: (650) 493-6811

10.2 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by applicable law or otherwise afforded, will be cumulative and not alternative.

10.3 Confidentiality. Each of the parties hereto hereby agrees that the information obtained in any investigation pursuant to **Section 6.6**, or pursuant to the negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, shall be remain confidential.

10.4 Entire Agreement. This Agreement, the Exhibits and Schedules hereto, the Company Disclosure Schedule and the documents and instruments and other agreements among the

parties hereto referenced herein constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings both written and oral, among the parties with respect to the subject matter hereof.

10.5 No Third Party Beneficiaries. Except as expressly provided for herein and therein, including **Section 6.19** hereof, the documents and instruments and other agreements among the parties hereto referenced herein are not intended to confer upon any other Person any rights or remedies hereunder.

10.6 Assignment. This Agreement, the Exhibits and Schedules hereto, the Company Disclosure Schedule and the documents and instruments and other agreements among the parties hereto referenced herein shall not be assigned by any of the parties hereto, by operation of law or otherwise, without the prior written consent of the other parties hereto, except that Parent may assign its rights and delegate its obligations hereunder to its affiliates as long as Parent remains ultimately liable for all of Parent's obligations hereunder. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

10.7 Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

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

10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof, except to the extent that Delaware Law shall require that Delaware Law be applied to the Merger.

10.10 Choice of Jurisdiction and Venue. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any court within the State of Delaware in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process. Each party agrees not to commence any legal proceedings related hereto except in such courts.

10.11 Waiver Of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AND ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

10.12 Headings. The headings and table of contents used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

10.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

10.14 Construction. The parties hereto agree that this Agreement is the product of negotiation between sophisticated parties and individuals, all of who were represented by counsel and each of who had an opportunity to participate in and did participate in the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly or in favor of or against any party hereto but rather shall be given a fair and reasonable construction without regard to the rule of *contra proferentem*.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Stockholder Representative have caused this Agreement to be signed, all as of the date first written above.

LSI CORPORATION

By: Bryon Look
Name: Bryon Look
Title: Executive Vice President, Chief Financial Officer and Chief Administrative Officer

NAS ACQUISITION CORPORATION

By: Bryon Look
Name: Bryon Look
Title: President

ONSTOR, INC.

By: _____
Name: Robert C. Miller
Title: Chief Executive Officer and President

STOCKHOLDER REPRESENTATIVE:

SHAREHOLDER REPRESENTATIVE SERVICES, LLC, A COLORADO LIMITED LIABILITY COMPANY

By: _____
Name:
Title:

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Stockholder Representative have caused this Agreement to be signed, all as of the date first written above.

LSI CORPORATION

By:_____
Name: Bryon Look
Title: Executive Vice President, Chief Financial Officer and Chief Administrative Officer

NAS ACQUISITION CORPORATION

By:_____
Name: Bryon Look
Title: President

ONSTOR, INC.

By:_____
Name: Robert C. Miller
Title: Chief Executive Officer and President

STOCKHOLDER REPRESENTATIVE:

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Title:

IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Stockholder Representative have caused this Agreement to be signed, all as of the date first written above.

LSI CORPORATION

By:_____
Name: Bryon Look
Title: Executive Vice President, Chief Financial Officer and Chief Administrative Officer

NAS ACQUISITION CORPORATION

By:_____
Name: Bryon Look
Title: President

ONSTOR, INC.

By:_____
Name: Robert C. Miller
Title: Chief Executive Officer and President

STOCKHOLDER REPRESENTATIVE:

SHAREHOLDER REPRESENTATIVE SERVICES LLC, A COLORADO LIMITED LIABILITY COMPANY

By:_____
Name: Mark B. Vogel
Title: Managing Director